

Decis. 94^t

Proceedings



SUPREME COURT OF THE DISTRICT OF COLUMBIA,
HOLDING A CRIMINAL TERM.

Hon. ANDREW WYLIE, Justice.

PROCEEDINGS

IN

THE SECOND TRIAL OF THE CASE

OF

THE UNITED STATES

VS.

JOHN W. DORSEY, JOHN R. MINER, JOHN M. PECK,
STEPHEN W. DORSEY, HARVEY M. VAILE, MONT-
FORT C. RERDELL, AND THOMAS J. BRADY.

FOR CONSPIRACY.

VOL. IV.

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WALTER D. DAVIDGE,
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ago, and the parties continued to work, so to speak, under that conspiracy up until within three years, and then the indictment was found for that conspiracy, the prosecution would not be barred in such a case as that. That is what I understand you to say. In other words, that it is one of those continuing things like a nuisance, as the court said, which, if there is anything done under it within the period of the statute, the prosecution is not barred. That is my understanding of what the court has said. Now, if your honor please, what we undertake to maintain is this, that a conspiracy is an agreement between the parties——

The COURT. [Interposing.] That is the same point Mr. Davidge made. Of course you will have a chance at some stage or another to argue that question at large.

Mr. WILSON. Very well.

The COURT. And as it lies at the foundation of this prosecution, as it were, we may as well settle that.

Mr. DAVIDGE. I was going to suggest this, your honor: I have taken a good deal of pains to put in a simple and perspicuous form the propositions of law. I do not want to argue any of them, but if your honor would take them and find that any one or more, in your judgment, ought to be settled in advance of the argument, I would be very glad to have it so.

The COURT. I will do so with pleasure. As to this other point—the one you recurred to so often, and which has shown its face so frequently in the progress of this trial—I presume that it would be as well to have that settled in advance, too.

Mr. MERRICK. I would like to argue that. There are some authorities upon that point, and there are several that are quite important. I do not know that it is worth while to settle it in advance. I would rather make my argument when I could make it all at once, and not waste the time of the court unnecessarily, as we have done to-day, without meaning any reflection on the counsel on the other side.

Mr. DAVIDGE. If you make your argument at the close nobody will have an opportunity to respond.

The COURT. Oh, yes.

Mr. WILSON. I am afraid I always try the patience of the court——

The COURT. [Interposing.] No; not at all. Your modesty detains you always until the case is exhausted by your brethren.

Mr. MERRICK. And then he comes upon an impatient court.

Mr. WILSON. Modesty is one of my faults, but my Brother Merrick always takes me off of my feet.

Mr. MERRICK. You took me off of my feet this time.

The COURT. Adjourn the court.

Thereupon (at 4 o'clock and 20 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

THURSDAY, APRIL 19, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. CHANDLER. If your honor please, I understood yesterday that after the arguments closed on the facts, and the prayers were offered,

such arguments as were thought desirable by the party offering the instructions might then be heard on the law questions.

I do not want to go into an argument of the facts without that matter being understood, and so I call your honor's attention to it.

Mr. MERRICK. I understood that the prayers could be offered almost any time, but that the argument upon the law would be made at the same time with the argument to the jury. Otherwise we will only be consuming time at the close, after the argument to the jury, by having another argument to the court.

The COURT. No. That was not my view. In a case like this particularly I am not disposed to restrict the argument. What I said yesterday was that I thought it expedient to postpone the presentation of the prayers upon the points of law until after the arguments upon the facts to the jury were closed, for the reason that the court itself will be better prepared at the end of those arguments to decide the questions of law as applicable to the facts in the case. I do not know what influence the arguments of counsel on the facts to the jury might have on the mind of the court in respect to the questions of law. The abstract questions of law would not be changed at all. I refer only to questions of law as applicable to the evidence in the cause. It appears to me that the court will be better able to appreciate the points of law after hearing the arguments of counsel upon the facts to the jury. It is not my wish, however, when the propositions of law are presented, after the argument to the jury has been closed on both sides, to cut off the counsel from discussing those points of law, if they think proper.

Mr. MERRICK. All I want to say is this, that I had supposed, understanding distinctly that your honor had indicated yesterday what you now more formally declare, namely, that it is your desire to hear a discussion of the facts with a view to the application of the principles of law before deciding the facts, that in discussing those facts counsel would bring forward their law and show their application to the facts.

The COURT. They can state their views of the law, of course, but I do not expect the argument to the jury to be interrupted by a formal argument of questions of law. The counsel will argue the facts with a view to their own points of law. As an exception, however, to the course that I proposed yesterday, the court did admit the presentation yesterday of one or two prayers which counsel for the defense thought were prayers that lay at the root of the case. I think I have disposed of those prayers. I heard an intimation of Mr. Davidge yesterday that there were some other of those radical questions that possibly might be presented for the consideration of the court this morning.

Mr. DAVIDGE. I was about bringing that to the attention of your honor. I concur in the views you have expressed that there are some matters that will be and must be enlightened by argument to the jury in advance of any ruling. At the same time all must concede, I think, that there are certain other matters, organic and fundamental in their nature, that can have no sort of light thrown upon them by any argument however able or however protracted. It seems to me that the very purpose of the prayers is to fix, as far as we can, in advance the lines of the case so as to enable the jury properly to apply the evidence and properly to apply the arguments of counsel upon the evidence. I do not see why there should be any departure from a practice which is calculated in that respect to help the trial of the cause, and I understood yesterday that the intimation of the court was that any other matter that counsel might desire to bring to the attention of the court, unless you thought it would not be enlightened by the argument of counsel,

you would proceed to take up and consider in advance. Itold you yesterday, you will recollect, of a recent ruling of the Supreme Court that seemed to me to bring a point within the exceptional category referred to by your honor in your ruling. I suppose to-day the first thing to be done is to inform us as to the order of this argument and whether there are to be two closing speeches made to this jury.

Mr. INGERSOLL. I would like to be heard one moment on that point before the court decides it.

Mr. DAVIDGE. After that, there is a matter identical in principle with the one discussed on yesterday, and I understand it is the wish of some of my brethren to discuss that question to the court, in view of the fact that it had a good deal of light thrown upon it by a recent decision of the Supreme Court. Whilst I am on my feet I may as well make one general remark. We have been trying this case for four months. The evidence is necessarily in a confused state on account of the time and on account of the character of the case. Your honor has felt and expressed more than once the impossibility in a case of this sort of keeping out all evidence that you would perhaps keep out if you knew all that is known to the officers of the Government. But you have said over and over again, "What am I to do? It may be connected. It may lead somewhere. It may, although insignificant and apparently absurd, turn out before we get through to have something in it." That is the condition of the evidence. Then, your honor has told us in regard to your rulings at the last trial, that whilst they would be regarded as authority, you would not regard yourself as absolutely bound by them. Now, in this confused state of the evidence, without any chart or compass, without a central point or a legal line being determined in advance, it is proposed to begin the argument. That argument it is my fear will produce still more confusion. If gentlemen speak as long as I apprehend they will speak—and I will not discriminate between sides—and if some two or three weeks are occupied in the argument, I do not know that the existing confusion is likely to be much clarified. Then we will have more confusion. Now, that is a bad time to bring in the prayers, I think. The mischief that would be guarded against by drawing the lines of the case in the beginning has all been done, and not only been done, but it is very difficult indeed to remove that mischief. Now, it would be particularly objectionable from our stand-point to allow, as your honor has intimated you would do, two opening speeches to the Government and two conclusions to the Government.

The COURT. Two summing up conclusions.

Mr. DAVIDGE. I mean two conclusions. Those two conclusions may cover two weeks. Heaven only knows where they will begin and where they will close.

The COURT. There are limits to everything, you know.

Mr. DAVIDGE. There are no limits to the star-route case.

The COURT. I mean to human endurance.

Mr. DAVIDGE. The only limit is there. The Government don't die. That is the trouble. The Government don't die, and we may.

The COURT. Its agents do.

Mr. DAVIDGE. But how easy to get other agents. You must recollect that the Government——

The COURT. [Interposing.] I would not allow new agents to come in here.

Mr. DAVIDGE. The Government holds out to its agents no ordinary inducements, as we have all heard, and I do not think there would be

any difficulty in supplying the places of these gentlemen representing the Government if fate should be so unkind as to remove them from their present sphere of duty. At any rate we do protest against duplicating the forces of the Government in the advance guard and the forces of the Government in the rear guard; and I desire to ascertain the view of the court on that subject, in order that I may take an exception should the decision be adverse.

The COURT. The court is going to announce its decision.

Mr. MERRICK. I will say to your honor and Mr. Davidge—

Mr. DAVIDGE. [Interposing.] One moment. I understand that you will announce your decision upon that subject. I will then ask that one proposition of law, which is independent wholly of the evidence, as will be many other propositions, if not concluded by what your honor is about to rule, may be argued. The argument will be only of an organic and fundamental character.

Mr. MERRICK. The remark I was about to make to your honor is simply this. I was going to state, and it becomes necessary to state, especially in view of Mr. Davidge's suggesting an exception to the ruling of the court, that what the Government now asks is that which is uniformly the practice in cases so elaborate and intricate as this, where there are so many counsel and so many parties, the privilege or the right of opening by two of its counsel. What the Government will ask when the time comes to close is not now brought directly before the court in such shape that there can be a formal ruling upon it, although of course the court can say for the information of counsel what it will do when that subject is formally brought before it.

The other suggestions of Mr. Davidge are in relation to a matter already considered and disposed of, except probably that as to the abstract prayer or the prayer in relation to an abstract principle of law of which he has spoken.

Mr. INGERSOLL. I would like to say one word, if the court please, before any decision is made as to the order of argument. I understand that the custom was in England, or has been since England became somewhat civilized, to allow first the prosecution to state the case of the Government in one statement. I now say that I know of no reported case and never heard of one in any English court or any American court where there were two openings. After the opening had been made by the Government it was then the custom to call the witnesses, and then if the defendant called any witnesses he had the right to open after the prosecution had closed their case and before the defendant introduced any witnesses. The witnesses would then be examined, and after the examination of the witnesses closed the defendant would have a speech, and then the prosecution would close. In other words, there were allowed where there was but one defendant, in every English trial, and have been for many years, four speeches and no more, an opening speech for the Crown, an opening speech for the defendant, then another speech for the defendant after his evidence was in, and a reply by the Government. I have here a little work I happened to pick up this morning, entitled *The History of the Criminal Law of England*, by Stephen, and I find in the first volume of that a little parallel drawn upon the French and the English practice. I will read:

Now, in the French court after the witnesses have been examined the jury are addressed by the party, and the public minister and the prisoner in succession. But in England it is true the greatest possible number of speeches would be four, supposing the prisoner to call witnesses and to sum up as well as to open their evidence, and so to give the reply to the Crown.

Now, I find also by the statute of 28 and 29 Victoria, the counsel for the prosecution is authorized when the counsel for the defense introduced no evidence to sum up in a closing speech. So I imagine that before the passage of that law, if the defense interposed no evidence and the prosecution had opened, the prosecution did not have by custom the right to close.

The COURT. That is our practice here, too.

Mr. INGERSOLL. That seems to have been the law. Then I find further that in every case where the defendants have counsel each defendant and his counsel, respectively, is entitled to open the case, to examine witnesses, and to sum up the evidence, respectively, when the right of reply remains unaltered.

The COURT. Is that laid down there?

Mr. INGERSOLL. It seems to be in the statute, but I suppose we must go by what the common law was before. Now, by our Constitution, of course every defendant has a right to be heard. The question then arises, what is the right at common law, or what was it? Now, unless some case can be found where some court some time allowed the Government two openings, I think we are entitled to draw the inference that two openings are not allowed, because I think every Government officer always takes whatever the law gives.

The COURT. If it is money, he does certainly.

Mr. INGERSOLL. Consequently we have the right to say there is no such law, and never was any such law. Now, was there ever any such custom? I fail to find any such reported case. If, then, there never has been given to the Government two openings has the Government ever been allowed in a jury trial two closings? I defy the gentlemen of the prosecution to bring forward a case in this world in any court in the veins of which ran Anglo Saxon blood where two closing speeches have been given to the Government. Now, when a man is put upon his trial, with the power of the Government against him, with all its wealth, with its hydra hands and its argus eyes——

Mr. WILSON. [Interposing.] Briarean hands.

Mr. INGERSOLL. Briareus was the fellow with the hands I think and Argus was the chap with the eyes. Well, they are all in the employ of the Government. The Government is everywhere. The Government has unlimited means at its command. Now, to say that on the trial of a case the Government shall have the advantage; that the Government shall have not only one closing speech, but two, and these speeches, of course, be unlimited, is not right or fair. Why, if each defendant has the right to be heard, should not each defendant, after the evidence is closed, have the right to reply? It seems to me that the court here ought to follow the general custom of the common law that gives the Government one opening and that gives the Government one closing, and no more. It gives to each defendant the right to be heard, and the Constitution of the country gives the same right to each defendant. Now I think it of infinite importance to the Government, to the court, and to the cause of justice that there be no violation of law, no violation of custom, and no violation of propriety in the prosecution of any man.

Upon a trial only the other day in Ireland of a man indicted for murder the counsel for the Crown opened the case, the evidence for the Crown was heard, the evidence for the defense was heard, the case was closed, the jury retired and brought in a verdict of guilty, the man made a motion for a new trial, which was overruled, and he was sentenced to be hanged. All this was done without the court even having

taken a recess. Such a trial is a scandal. The idea that a man should be tried in that way, with no more thought, with no more consideration, with no more opportunity, is a scandal; and no matter how guilty a man may be the world feels as if it was the result of the action of a mob, although the mob happened to be in the form of a court. So in any criminal case, if the judge oversteps propriety, if he oversteps custom, if he violates law, and does it on the side of the Government, and does it against the citizen and against liberty, the whole world feels that a very dangerous precedent has been set. In this case I want these defendants tried exactly in accordance with the law. I want nothing given to the prosecution to which it is not entitled. I suppose if anybody is to close this case after it has been closed by the gentlemen who have tried it and who are acquainted with it, that that is to be the Attorney-General of the United States. Of all men he has the least right to close the case, because he has not tried it. He has not been here. Consequently his own sense of propriety should prevent his endeavoring to throw his office or his position in the scale against a defendant on trial. I take it for granted that he is the one who wishes to make the second closing speech.

Mr. MERRICK. If your honor will allow me to interrupt the counsel upon a point of order, there is nothing in reference to the Attorney-General before the court.

The COURT. He is speaking on a hypothesis.

Mr. INGERSOLL. I am saying suppose that is so, and the reason I suppose it is so is because it was attempted at the last trial.

The COURT. It was done, too.

Mr. INGERSOLL. At the last trial he spoke.

Mr. MERRICK. He closed the case.

The COURT. He closed the case.

Mr. INGERSOLL. He came and closed the case, and while he was closing it I believe the court asked him a question, and he requested that Mr. Merrick be allowed to reply, and thereupon Mr. Wilson objected to Mr. Merrick's replying unless he, Mr. Wilson, was given an opportunity to answer Mr. Merrick. The court then held that the gentleman who was making the closing speech must make it, and that he could not call for volunteers.

Mr. WILSON. To help him out.

Mr. INGERSOLL. To help him out in the midst of that speech, however much he may have needed it. I take it for granted that he now wishes to reply. I have nothing to say against him personally, but I do say that it is not in good taste for him to offer to throw his position or his place in the scale against these defendants. He is the Attorney-General of the United States. Let him come here if he wishes and argue this case. If he wishes to close it he can do so, and of course we have no reply. If he thinks he is better capable of closing this case than the gentlemen who have tried it, let him close it and see what he can do. But if he wishes to make a speech in this case, I want him compelled to make it, if at the end, the closing speech, and not the second closing speech, or else make it somewhere where the defendants' counsel can reply to it. So I object, and I seriously object, to two opening speeches or to two closing speeches. I want this case tried exactly in accordance with the law and with the almost universal custom. I never in my life heard of such a thing as a case being opened by two attorneys or closed by two attorneys. If there can any such case be found, that might have some effect upon my judgment; but unless that case can be found, and unless it be so binding that this court will feel it obligatory as the law,

then I beg the court not to do it. So far as I am concerned I do not wish to argue a case in that way. I would rather trust my case to the justice and to the sense of the jury after having heard the evidence than to go through a form of argument, and then allow two closing speeches on the part of the prosecution. Those speeches may be a week in length each, without the defendant having the right to reply. Each defendant must sit with a sealed mouth, and no matter what the torrent of abuse and misrepresentation may be, no answer is possible. I object to such a trial, and should consider it absolutely illegal; not a prosecution but a persecution.

Mr. WILSON. May it please your honor——

The COURT. [Interposing.] Well, now, this question was discussed all day yesterday and has been discussed again this morning. I thought it was understood that the court was to announce its decision this morning.

Mr. WILSON. I am unfortunate in coming in too late.

The COURT. Although the eloquence of counsel has magnified the question very much it seems to me, I do not think it is a matter of any very great importance. But important or otherwise it is a question within the discretion of the court with this exception: In a civil case, if the court refuses the party having the affirmative the right to open and close, it is error. In a criminal case, if the court were to commit an error of a corresponding kind, that is, if it were to refuse to the Government the right to open and close, there would be no error, because the Government has no writ of error in a criminal case.

Mr. DAVIDGE. It would be error, but there would be no remedy.

The COURT. No authorities say it is error.

Mr. MERRICK. No.

The COURT. Therefore, in the absence of another decision in the case, the decision in the court below must be taken as the law. It is conceded, and whether conceded or not it is the law, and it has always been the practice that in criminal prosecutions the Government has a right to open and close, and whatever arguments are to be presented on behalf of the prosecution must be presented either at the opening or at the close. That is, if the rules of practice are to control. At the last trial by agreement of counsel those rules were departed from. On this trial there has been no agreement reached on the part of counsel, so that the question will have to be determined by the court on its view of the practice and the law. The rule in regard to the Government is that its argument must be either at the opening or at the close. Counsel say that it is clear that but one closing argument on the part of the Government is to be allowed. What is the Government to do then in a case like this? Is it to have but one counsel to open?

Mr. INGERSOLL. I think that is all it is entitled to under the law.

The COURT. If it is their liberty to have but one counsel to open and one to close, may the defense have any number of counsel?

Mr. INGERSOLL. No. Only one for each defendant.

The COURT. There are five defendants.

Mr. INGERSOLL. Only one for each defendant.

The COURT. Then you confine the Government to two arguments.

Mr. INGERSOLL. And each defendant to only one.

The COURT. Each defendant to only one, but there are five in all, and they are jointly indicted. Some of the authorities say that the clients themselves have a right to be heard as well as counsel.

Mr. DAVIDGE. If they speak their counsel cannot.

The COURT. That might or might not be. I know that some of the

judges have said so. I find a different intimation in some of the authorities that I have read.

Mr. INGERSOLL. I think that each defendant has a right to speak and has the right to have one counsel. That would make two speeches for each defendant and two against them.

The COURT. It is a joint indictment. I am not prepared to acknowledge any such rule as that without some binding authority. I have never known any authority to the point that the Government in no case can have more than two arguments, one to open with and one to close with. In the case that I referred to yesterday, O'Connell's case in 11 Clark & Finnelly, which was a criminal case taken by writ of error to the House of Lords, where the question was discussed and considered, it seemed to be conceded that on the argument of the writ of error the Government might be heard by as many counsel as chose to speak in the opening, and nothing was said as to the closing either. I believe more than one counsel was heard in that case in closing. But it is argued that that was a case on appeal heard before the House of Lords. I do not see that that makes any difference in the principle. If the Government can be heard by more counsel than one in any case, one to open and one to close, then the court must decide, if the dispute arises, whether these additional counsel are to be heard at the opening or at the close, or both, or are to be divided between both. I think myself that according to our provincial practice here—and that may be taken as some evidence of the law—that there is but one counsel to be heard in reply on the part of the Government; but I cannot concede at all that the Government is to be cut off as to the opening of the argument in summing up. I think the Government is not to be limited to two counsel. If the Government is to be allowed to have three counsel, and but one can be heard in reply, then the other two may be heard at the opening, because there is no intermediate place for them. The Government counsel must be heard either at the opening or in the reply, and I am not willing to adopt a rule which will limit the Government to two counsel simply. I do not see much sense in a rule which would limit the Government to one counsel in reply either, because what difference does it make in point of fact whether two counsel speak four hours or one counsel speaks four hours?

Mr. DAVIDGE. Two may speak eight.

The COURT. The time would be within the control of the court. But that is aside from the question. I shall hold now, and you may accept this as your notice, that the Government are permitted in the summing up to be heard by as many counsel as it chooses.

Mr. INGERSOLL. That is in what is called the opening.

The COURT. That is in the opening; but it is limited in the closing argument in reply to one counsel. I do that because I see no intermediate place for Government counsel in the argument between the one end and the other.

Mr. INGERSOLL. I have no objection to that.

The COURT. I think I ought to say a word about the Attorney-General.

Mr. MERRICK. It may be that there will be a request for two closing arguments upon that point.

The COURT. I have not seen the Attorney-General participating in the trial, and he has given no information that he desired to be heard; and although he was heard at the last trial, the court cannot presume that he will desire to be heard on this. Therefore, I pass upon this question without regard to the Attorney-General. But I wish to say

one word in regard to some observations that fell from Mr. Ingersoll yesterday as to the Attorney-General descending, as it were, upon the court-room and bringing with him all the majesty of the Government.

Mr. INGERSOLL. I did not use the word "descending."

The COURT. I know, but that was the idea.

Mr. INGERSOLL. No, sir; it was this: That when he did not know a thing about the case, to come here and put his office in the scale. That was it.

The COURT. That is it.

Mr. INGERSOLL. I did not say "descending."

The COURT. I did not take the trouble to quote you exactly, but I thought that was the idea.

Mr. INGERSOLL. Oh, no.

The COURT. That he was coming here with the authority of his great office.

Mr. INGERSOLL. Yes; with his office.

The COURT. And for the purpose of influencing the jury by that kind of personal authority.

Mr. INGERSOLL. By the position.

The COURT. By the position. I do not think there is much to be deprecated on that account. The Government itself is here. The Government is prosecuting, and if the Attorney-General should see proper to appear in court and partake in the prosecution of a Government case there would be nothing improper in it in the world. It is very often done in England; it is the practice in the States; and the reason it has fallen into desuetude in a great measure, is that the Attorneys-General have such a multiplicity of duties to attend to; they cannot even argue cases in which the United States is interested, for that reason, and they have their assistants to argue most of the cases in the Supreme Court.

Mr. INGERSOLL. I do not want to be misunderstood. It was his coming here to make a second closing speech that I objected to. I said I did not object to his coming here to make the closing speech, there being but one. But I would have no objection to his making any other speech in the case. In fact, I would contribute liberally to have him come and make a speech in the case, if we can reply to it.

The COURT. Then there is no foundation really for your remarks in regard to bringing here the authority of his office.

Mr. INGERSOLL. I say for a second closing speech.

The COURT. If he made one closing speech he would have the authority of his office here with him. But I think that is rather a wind-mill.

Mr. INGERSOLL. Well, I think he is.

The COURT. No; I meant to say that it was a wind-mill which you had built yourself.

Mr. INGERSOLL. Oh, I understand.

The COURT. Now, there is one other thing I want to say: The course of a trial in this country is different from that in England, and the description of an English trial, as given by Colonel Ingersoll, is erroneous, in my judgment. There the government evidence is produced, and they pass through the testimony on the part of the government after an opening by counsel. At the close of the government's testimony the counsel for defense has an opportunity to comment upon the evidence for the government, and to comment upon what they expect to prove. And that is the only chance which the defendant has.

Mr. MERRICK. That is all he has.

The COURT. He has nothing to say except at that place. After he

has replied to the government counsel and commented upon the government evidence, and commented also upon the evidence for the defense which he expects to introduce, that is the only speech he has to make. They proceed then to examine the witnesses for the defense, if there are any. After those witnesses have been examined, the government replies upon the whole case. The counsel for the defense have no hearing except between the evidence for the government and the evidence for the defense.

Mr. INGERSOLL. That used to be so, but it is not so now.

The COURT. It is the common-law practice, and if they have changed it there by modern statutes I do not know it. I think it was the practice in the recent trials in Dublin, and that may account, possibly, for the expedition with which those cases were tried.

Mr. INGERSOLL. No, sir. I read from Stephen's Criminal Law, recently published, in which it is distinctly stated that the defendant's counsel, if he examines any witnesses, has a right to make another speech.

The COURT. No; the point is this: If the defense calls no witnesses, then counsel for the Government have no reply.

Mr. INGERSOLL. But he has now.

The COURT. But if the defense calls witnesses, even as to character, it gives the Government the right to reply upon the whole case. And I have the authority lying open before me to that effect.

Mr. MERRICK. May it please your honor——

The COURT. [Interposing.] I will say, then——

Mr. MERRICK. [Interposing.] I thought your honor had finished.

The COURT. I will say, then, that the Government in this case will be entitled to have as many counsel speak in the opening as it chooses, but they will be limited to one reply.

Mr. MERRICK. With reference to the reply, as I said before, your honor, I shall bring that question up, should it become necessary, at the proper time, which I do not deem this to be.

I do deem it proper to make a remark or two in reply to the insinuation and sneering observations that have been thrown out in reference to the Attorney-General. The Attorney-General has not appeared in this case in court, as he did when the case was tried before, for the reason that this case has been tried during a period of greater activity in the political and executive functions of his office. This trial commenced coincident with the opening of the session of Congress, and has outlived the Congress. The other trial began in June and was continued down to the middle of September. But the Attorney-General has followed this case; and to say that he knows nothing about it is to say what is entirely erroneous, and I presume the remark was made by the counsel without any knowledge upon his part of what the Attorney-General does know. He has followed it with the record and has taken the most profound and deepest interest in the entire case, and still takes that deep interest in the entire case which a public officer seeking to accomplish the ends of justice ought to take in such a case as this. What his personal desire is in reference to participating in the argument I am not informed, for this reason: That for several days past, until yesterday, when he returned, the Attorney-General has been, I think, on the seashore, compelled to be there by reason of the condition of his health. Before he left, the question of his participation in the case was postponed to a future day, and since that time, by reason of that absence, I have had no opportunity of a further talk with him upon the subject.

The COURT. Well, Mr. Merrick, when we come to that point in the trial, if you desire the court to reconsider, you will have to make a motion to that effect.

Mr. MERRICK. Yes; certainly.

The COURT. For the present, the understanding is——

Mr. INGERSOLL. [Interposing.] I do not want to say anything about the Attorney-General, and I now admit that he knows this record by heart. I do not want any feeling in regard to it.

Mr. MERRICK. That is about as near correct as your other statement.

Mr. INGERSOLL. I have seen lights there as late as 3 or 4 o'clock in the morning, and I have no doubt he has been reading it until that time.

Mr. MERRICK. Let us go on with the case. They tried to displace one Attorney-General to get rid of the case, and they are now trying to get rid of another to carry it through.

Mr. INGERSOLL. We will see what sort of a bonfire he has built.

The COURT. Are you now ready to go to the jury, gentlemen? Judge Wilson, have you any new questions that you want the court to pass upon at this time? I regard the question that was discussed yesterday as disposed of.

Mr. DAVIDGE. We would like to except to the ruling of the court allowing two counsel for the Government to open. We understand the question is definitively settled.

Mr. MERRICK. You have just told us it was not definitely settled.

The COURT. The court has made a ruling as to the order of the arguments. Now, the court cannot make a ruling which is like the laws of the Medes and Persians, never to be revised. As long as this term lasts, any ruling of the court is subject to reconsideration.

Mr. DAVIDGE. I would suppose there might be a ruling which would not be changed, as we have to act upon it.

Mr. MERRICK. Can your honor rule until I bring forward my motion?

The COURT. The thing is settled for the present, certainly. Whether it would be opened on motion is another question; and I cannot make a ruling now that counsel shall be prohibited forever from making a motion.

Mr. DAVIDGE. I did not ask anything of the kind. I only desired to know whether the point was settled. I understand that there might be peculiar and remarkable circumstances to induce the court to modify the ruling somewhat. But I understand that ruling to be absolute, with the light now before the court.

The COURT. Oh, yes; I would not change it unless for good cause shown hereafter.

Mr. WILSON. I wish to ask if the court is not willing to make its ruling absolute now, or after counsel for the Government have made their opening? Will not the court advise them as to what the further progress of the argument is to be? Because, if your honor please——

The COURT. [Interposing.] The court would not change its ruling without ample notice.

Mr. WILSON. It seems to me that notice ought to be given before we enter upon our argument. I do not propose, if your honor please, so far as I am concerned, to enter upon the argument of this case to this jury at all leaving it in doubt as to whether or not, after Mr. Merrick gets through, the Attorney-General may come in here and make a further argument. I want to know before the beginning of the argument for the defense whether that kind of thing is to be done or not. And what

I was going to refer to when I rose a while ago, and your honor declined to hear me, grew out of a remark that was made by Mr. Merrick where he interrupted and suggested that when the time came to make an application for a further hearing that would be time enough to settle this question. I want to settle it now, because it will affect my course very much, as at present advised, if I know before the argument commences on behalf of the defense that this extraordinary practice of two closing speeches is to be permitted.

Mr. MERRICK. Before your honor makes any decision about that allow me to say that I think that the most extraordinary practice that ever has been suggested in the course of this case is now suggested by counsel upon the other side. He asks the court to make a ruling, upon which, I suppose, the court ought to give a penal bond that it will never depart from under any circumstances. He asks the court to make a ruling in anticipation of an event not yet arisen. I will give an illustration of it: When Mr. Dorsey was on the stand I examined him about certain telegrams that he sent from New York to Rerdell. I did not ask him the contents. I proposed to rebut his testimony by proving the contents by other and, in my judgment, more reliable witnesses. Suppose I had risen in my place and said to the court, "Now will your honor please tell me whether or not, in the event that, when I come to rebut, if I do not ask Dorsey now what is in those telegams, can I prove what is in them, or am I bound to ask him what is in them now?" Such questions must be decided by the court in their order as they arise; and when I bring forward a motion hereafter, should I do so, then will be the time for the final decision. I have stated my reason why I do not do so now, because I have not consulted with the Attorney-General. The motion now, which your honor has decided, is that two counsel for the Government may open. Counsel, under all circumstances, must take their choice in the trial of the case according to their judgment of what is the law and practice, and cannot require the court to anticipate conditions before conditions exist.

The COURT. It is a very common practice in courts for the court to announce before the argument opens in what order the arguments shall be received.

Mr. MERRICK. That you have done, but that does not satisfy them.

The COURT. To that extent I have gone, and I shall stand by it until good reason be shown to the contrary.

Mr. DAVIDGE. So I understand. You have ruled that under existing considerations.

The COURT. Now, Mr. Ker, I believe you have the opening.

Mr. MERRICK. Shall we proceed before recess?

The COURT. Oh, yes.

Mr. MERRICK. Counsel will have to speak with his back to the court.

The COURT. Yes. I do not expect to be addressed much by the counsel.

Opening argument of

MR. W. W. KER

to the jury on behalf of the Government.

With submission to the court, gentlemen of the jury, I have been selected to open this case on behalf of the Government. The testimony now has run through 4480 and odd pages, all recorded in these differ-

ent books that you see lying on the table, and it is my duty to take from the mass of this testimony, in a clear and concise manner, and as fully as is possible, the testimony that bears upon this case and bring it before your vision and into your recollection, so that you will know and understand that which the Government alleges and which the Government has proved, and that which has been shown contrary to the case of the Government.

Now, in the first place, let us see whom you are trying, and what the charge is. The indictment in this case is contained in this book, which I now hold in my hand, and the charges are against John W. Dorsey, John R. Miner, John M. Peck, Stephen W. Dorsey, Harvey M. Vaile, Montfort C. Rerdell, Thomas J. Brady, and William H. Turner. Some of these people are not on trial, and therefore you will have nothing to do with them, excepting as their names appear in the testimony. Now let me give you the names of those with whom you will have nothing at all to do in order that you may thoroughly understand whom you are to try. John M. Peck, you have heard incidentally, and I believe it was testified on the stand to the best of Mr. Dorsey's not very good recollection, died somewhere about September, 1881, therefore he is not in the case. Rerdell started in the case, but has pleaded guilty, and therefore you have nothing at all to do with him. Turner is not in this case; you have heard also incidentally regarding him; it is not necessary for me to repeat why he is not in the case, but it is sufficient for you to know that he is not here and not on trial. That brings the case down to the five people that you are to try, John W. Dorsey, John R. Miner, Stephen W. Dorsey, Harvey M. Vaile, and Thomas J. Brady.

The indictment in this case charges these people with conspiracy, a conspiracy to defraud the Government of the United States. I do not want to waste time or to weary you with reading the indictment, but I will state the subject of it so that you may understand the Government's allegations. The first is that there were certain contracts given to Miner, given to John W. Dorsey, and given to John M. Peck, those three men having contracts from the United States that were taken under a letting that went into effect on the 1st day of July, 1878; that after they had these contracts there was a combination, an agreement, between all these people that they were to do certain things in order to get at the public Treasury and get more money. One of the allegations is that they were to get up petitions, and that they were to get people to sign them; they were to get letters, and these letters and petitions were to have, in some cases, fictitious names upon them, as they are called, names of people that were supposed to reside upon the routes, but who really did not reside there; that those petitions were to be gotten up and were to be forwarded to the Post-Office Department, and then were to be placed among the papers there relating and pertaining to the different post routes. The object of these petitions was to deceive the Postmaster-General, so that if he looked at the cases that were made up and the orders for expedition and for increase of trips, he would suppose that a multitude of people upon those routes had demanded this increase, and therefore it became a necessity to grant the petitions.

The next thing that is alleged against them is that they were to get up false affidavits; those affidavits were to falsely state the number of men and animals then actually in use, and falsely to state the number of men and animals that would be required if the service was increased and if it was expedited; these affidavits were also to be placed upon file in the department along with the papers in the case. Those affida-

vits were to be used by Thomas J. Brady when he made the order for increase and for expedition. They were to be, as it were, the basis upon which he acted. And the falsity of them was of such a character that, the more men and animals that were sworn to, the greater the amount of money that would come out of the public Treasury.

And in addition to those false petitions and false affidavits there were to be subcontracts made, and those subcontracts were to be filed in the office of the Second Assistant Postmaster-General, and by him certified to the Auditor of the Treasury, so that the person putting in these false subcontracts or these fraudulent contracts would be enabled to draw the money. I use the term "fraudulent," because anything that is contrary to the right of any other person is a fraud. These subcontracts were to be placed in the Post-Office Department, and certified to the Auditor as a part of the fraud, against the rights of the actual subcontractors who were entitled under the law to draw their pay.

And lastly, Mr. Brady was to make the orders increasing the trips and reducing the time upon which the mail was to be carried, and to allow to the contractors large sums of money on account of the increased trips and on account of the expedition, when, in point of fact, such increase and expedition was not needed at all, and when, in point of fact, it was done for the benefit and advantage of the people who were in this combination.

Now, gentlemen, the charge is a conspiracy, and that is a matter that requires a legal definition. I have no idea of usurping the position of his honor on the bench. The law giving him the right to explain and expound to you, and to the counsel on the other side, and to me what is the law in the case, I do not propose to usurp the judge's function in that matter. But I am compelled to read the law to you. At the proper time the judge will give it the proper interpretation, and you are morally bound to take his interpretation of the law.

These men have pleaded to this indictment "Not guilty." A jury has been called and selected. The jury come from the mass of the people. In olden times when a man was arraigned he was called upon to hold up his hand, and the clerk of the court read the indictment to him, and he was asked, "How say you; are you guilty, or not guilty?" If he had nothing to say he would say, "I am guilty," or, "I will not contend."

In either case it was taken to be a plea of guilty, requiring no further testimony and no trial. But when he said "Not guilty," then the clerk said to the alleged criminal brought before the bar of the court, "How will you be tried?" And, prompted by his counsel, he would say, "By God and my country." And the clerk would repeat, "May God send you a safe deliverance." That was the old way of trying a criminal, but it has been altered somewhat, and in some respects the old formality is not gone through with. But every man who comes into this court to be tried is to be tried by God and his country, and you are the country. You have been selected from the mass of the people, as I said, to represent them, and you have been brought here, the representatives of the entire community, and you have been interrogated as to your fitness, and you have answered those interrogatories properly. You were sworn "well and truly to try this case, and a true verdict to render, according to the evidence." The obligation that you tacitly assented to was the most sacred and the most binding obligation that you could take. And you took your seats in the jury-box with your minds unbiased, prepared to hear the evidence, with manly hearts, and clear, unclouded minds, fully resolved to do your full and entire duty; and no entreaty, no sympathy, no false claim should step between you

and the duty that you so sacredly undertook. And, gentlemen, I know it will not. You will do your full and entire duty, as you were sworn to do, as his honor is sworn to do, as I am sworn to do, as we are all sworn to do in this case.

Now, here are the allegations, the preparation and the beginning of the trial.

Gentlemen, there are some things that I must weary you with a little. Congress has passed certain laws to guide the Postmaster-General in the conduct and management of the business of the Post-Office Department and these laws are of just as binding effect upon the Post-Office Department and the post-office officials and the people of the United States as a law that would be passed prohibiting one man from murdering another. It is the law of the land, and as long as it is the law of the land, every good, true, honest, law-abiding citizen must obey that law. Now, I told you that I did not want to interpret that law. Neither will I. I am going to leave that entirely to his honor. But I propose to read a few small extracts so that you will see when I come to state these facts just how the law was violated. And if I am wrong in my interpretation, I know that his honor will correct me, because the judge is here to do equal justice between both parties, and he, like yourselves, is entirely unbiased.

If the court makes a mistake in the law, then in that case it is easily remedied, because it goes to a higher court composed of gentlemen who are versed in the law, and whatever mistake the judge makes is corrected. If I make a mistake his honor corrects me. If the counsel on the other side make a mistake the court corrects them. You will be told by the counsel on the other side, no doubt—because I have not been with them for a year without knowing something about them—that you are the judges of the law and the facts. Now, that is true. You are the judges of the law and facts. When his honor says to you that such and such is the law, you take it and you apply the law to the facts. But it does not mean that you shall set yourselves up against the court, and assume to be lawyers when you are not. It means that you will take the law as the court gives it to you. And that, I say, you are morally bound to do. And if, by any mischance, gentlemen, or any misfortune, you were to make a mistake in your application of the law, if you decide wrongfully against these defendants, the remedy is in the hands of the court, and the court can do even justice by upsetting your verdict. But if you say that they are not guilty, though they may be the most guilty people who ever existed, there is no power upon earth that can right that great wrong. Now, do not forget that when you come to apply the law and the facts to the case. When the jury say that the defendants are not guilty they can never be retried. The verdict cannot be set aside. There can be nothing done but to accept that verdict, no matter how infamous it may be—just like the verdict rendered in a recent murder case in Pennsylvania, where a man shot the father of the girl whose character he had traduced. An ignorant jury rendered a verdict of not guilty, and received the anathemas of the entire country. There is no redress, none whatever. But if there is a mistake made on the other side, then it is in the hands of the court, and the court always grants a new trial where the evidence has been disregarded, or where the law has been misapplied.

In the first place, gentlemen, I would like to call your attention to one point in this case, and that is the matter of dates. They become a little important. Now, I do not think that there is anybody in the entire community or country that would suppose that twelve gentle-

men, called from their usual places of business and brought here to engage in a trial of such length and importance, would retain every particle of testimony that has been given, would remember the dates, would remember the facts, would remember the names. It is beyond the bounds of human intelligence, and beyond reasonable probability. And, therefore, I say to you, if there is anything you want to know about the case as I go along, if there is any fact you want explained, if there is any date you want, if there are any figures you want, do not hesitate to get up and ask. It is your right to do it; it is your duty to do it; because you cannot decide this case intelligently without you know every fact and circumstance. And it will be no reflection upon your intelligence if you get up and ask, because I venture to say there is not a gentleman on this jury—and I know there are some with a great deal of intelligence—who would be able to carry all the facts and dates in his head. I think it is a mark of intelligence when a man gets up and says, “I want to know this circumstance, and I want to know that.” Do not hesitate to do it, because you are the judges of the facts, and you are the ones that are to apply them.

Now, the advertisements are given out in a little book of this shape [exhibiting book], which has been offered in evidence. The routes are known by numbers. This advertisement was published on the 1st day of November, 1877, and it says here that they want bids or proposals to carry the mails in different States and Territories. It says:

Proposals will be received until 2 o'clock p. m., February 2, 1878.

Remember, they are to carry the mail four years from the 1st of July, 1878. That, of course, would be up to the 30th day of June, 1882. After these proposals were put in, in February, then decisions would be announced on or before March 30, 1878:

New contracts to be filed in the department, duly executed, on or before June 1, 1878.

In point of fact, the department got through with this business more rapidly, I suppose, than they had made any calculation for, and they awarded these contracts so that the contracts in question were given to these people on the 15th day of March, 1878, and therefore they had from that date up to the 1st of July to go around the country and try to put the service on.

There has been some testimony in this case as to the number of routes that these people got, and I think Mr. Dorsey or somebody testified that they got one hundred and thirty-four routes. Of that one hundred and thirty-four, I suppose, in the usual course of business, some were discontinued, and those are done with entirely. At all events, we know that Mr. Boone got a lot of them from John W. Dorsey, and I suppose that brought the whole thing down to somewhere in the neighborhood of one hundred routes that were held by these people. And out of these one hundred routes we have selected nineteen as specimens; as the saying is, they are “specimen bricks.” And if the others were as bad as these, they must be bad enough. But we never expected to get a jury in the wide world that would try one hundred of them, and therefore we took these specimens and give them to the jury.

Now the first of these post-office laws is that—

The Postmaster-General shall provide for carrying the mail on all post-roads established by law, as often as he, having due regard to *productiveness* and other circumstances, may think proper.

Congress says that there shall be certain post routes. The First As-

sistant Postmaster-General establishes the offices on the routes. The Second Assistant Postmaster-General provides for carrying the mail from one post-office to the other. The Third Assistant Postmaster-General pays for the service. There you get the duties of the three assistants. Congress says, for instance, there shall be a route from here to Baltimore. The First Assistant Postmaster-General says that there shall be a post-office established at a certain place, where there may be only two or three houses. He sends that to the Second Assistant Postmaster-General, and the Second Assistant Postmaster-General then provides for carrying the mail to that office, either by what is called a side supply, or altering a route so as to run to that new post-office, or in some way; and the Third Assistant Postmaster-General pays for doing all that. Now this says "the Postmaster-General shall provide." Of course he is the superior of all of them, just as the Attorney-General is our superior in this case. There is a qualification attached to that, gentlemen, that has been repeated to you so often, yet I must bring it before you again in this connection:

As often as he, having due regard to productiveness and other circumstances, may think proper.

Now he has a discretion in that matter. He may put the service on there as often as he thinks proper, with this limitation: that he must have due regard to "productiveness and other circumstances." He cannot put on a short schedule and pay \$40,000 or \$50,000 for carrying the mail to a post-office that yields only \$15 or \$20 a year in the way of revenue. Productiveness is the main thing, and "other circumstances" might be something else; for instance, a sudden outbreak, or war, or something of that sort, that would require the mail to be carried in quicker time. For instance, an office only pays \$14 a year, and \$20 is paid to carry the mail. That is another circumstance. He ought to regard that and not order six trips a week at a cost of \$120.

There is another clause, saying:

The Postmaster-General may enter into contracts for extending the line of posts to supply mails to post-offices not on any established route, and, as a compensation for carrying the mail under such contracts, may allow not exceeding two-thirds of the salary paid to the postmaster at such special post-offices.

You know he has to advertise the route so as to get the lowest bidder, and then he has to give it to the lowest bidder. Suppose there is an office established afterwards. Then this act provides that he shall enter into a contract for carrying the mail, but that that contract shall not exceed two-thirds of the salary of the postmaster. You see how Congress has taken care to prevent anything like extravagance. He shall not make a contract that shall exceed two-thirds of the salary of the postmaster. If the postmaster was to get \$20, the pay for carrying the mail from that post-office could be only two-thirds of the postmaster's salary—a little over \$13.

Another clause was enacted by Congress:

Compensation for additional service shall not be in excess of the exact proportion which the original compensation bears to the original service; and when such additional service is ordered, the sum to be allowed therefor shall be expressed in the order and entered upon the books of the department, and no compensation shall be paid for any additional regular service rendered before the issuing of such order.

That seems to be complicated, but when we read it two or three times, we get the exact meaning of it without any trouble. If the service is one trip a week, and the pay was \$300 for that trip, if he wants to make

it two trips, he has to put it at \$600, because twice three is six. If he wants to make it three trips he has to allow \$900. He shall not allow more than the price paid for trips, because for the trips he must not make an allowance different from the amount in the original contract. Now there is another law, that "whenever he makes an order for extra trips, the amount must be specified in the order," and I will show you hereafter how Mr. Brady has studiously disregarded this law. The laws were not made for Thomas J. Brady. I will show you at the proper time where he disregarded the command of Congress, that "no compensation should be allowed for any service rendered before the time the order was made." I will show you where Mr. Brady disregarded these plain commands of the law :

No extra allowance shall be made for any increase of expedition in carrying the mail unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in an original contract bears to the stock and carriers necessarily employed in its execution.

Now, gentlemen, I do not expect any one of you to comprehend this unless you fall back upon your knowledge of the rule of three; but I will try and give it to you in plain English. When Brady wanted to shorten the time that was what was called "expedition." Expedition, of course, means to hurry up. In that case he was not to allow any additional compensation unless by shortening the time it required more men and animals. Now remember, if the service was one trip a week, at \$300, and it was made two trips, the price would be \$600. The contractor is required to have all the animals necessary to make the two trips. He gets no allowance for the animals; but simply doubling the trips doubles the price. But suppose the time is fifteen hours, and it is reduced to ten hours. In that case he cannot charge for carrying the mail in ten hours unless it takes more men and animals to carry it in the quicker time. The Second Assistant can make the order to shorten the time from fifteen hours to ten, and if the contractor does not like it he can throw his contract up. No order can be made for additional pay unless it takes more men and more animals to carry the mail. Now, it is important for you to bear in mind the difference between adding trips and shortening time. Of course there might be times in which the mail would become very heavy. It is divided into different classes, first, second, third, and fourth, as I suppose most of you know, first class being letters. I do not want to specify the classes further, for I might make a mistake. I will leave that to be defined hereafter. Congress has provided by law for all that. They send boots and shoes through the mail, as they are allowed to when the weight does not exceed four pounds. Nothing weighing over four pounds can be sent. There are a great many curious things going through the mail, and in order that letters should not be detained Congress made this law :

When the amount of mail matter to be carried on any mail route is so great as to retard the progress or endanger the security of the letter mail or materially increase the cost of carriage at the ordinary rate of speed, the Postmaster-General may provide for the separate carriage of the letter mail at the usual rate of speed, and the other mail matter shall not be delayed any more than is absolutely necessary, having due regard to the cost of expedition and the means at his disposal for effecting the same.

Now, when there is a large, bulky mail like that on the Tres Alamos and Clifton route, and that on the Ojo Caliente route, where they sent boots and shoes to the soldiers and other things of that kind, the law provides that it shall not all be expedited and shall not all be carried as letters

are carried, but the Postmaster-General may make a contract for carrying the express matter, because it is no more than matter that ought to go by express. He is to make a separate contract for that and he is to have due regard for the cost of the service. He is not at liberty to make whatever arrangement he pleases, but he must make it with due regard to the cost. It so states here. Everywhere Congress says it is to be with due regard to the cost. Every act has that in it.

Now, gentlemen, it has been told to you here that in the year 1879, which was the year that Mr. Brady flourished, on the 6th of December, he sent a communication to the Postmaster-General. I do not want to wrong him. I will just read a portion of it from page 555:

DECEMBER 6, 1879.

HON. D. M. KEY, *Postmaster-General* :

SIR: I have the honor to state that the appropriation for inland mail transportation on star routes for the current fiscal year—

The current fiscal year, or current money year. The money year begins on the 1st of July. Therefore when he, in December, 1879, speaks of the current fiscal year he means the year that began on the 1st of July, 1879—

has proved insufficient to meet the wants of the rapidly-growing service.

The annual cost of the service now in operation is \$7,620,004, while the appropriation is but \$5,900,000.

When he went to Congress and asked the appropriation, it was his doing. He was the man who got up the estimate, and Congress gave him every dollar he asked for, \$5,900,000. Now, he says the amount has been brought up to \$7,620,004. From July to December he had raised the amount about two million dollars.

Not only will the present appropriation allow no increase of mail facilities during the year, but it will be necessary to curtail the existing service in order to bring its cost within the appropriation.

Believing that this cannot be done without great injury to many deserving communities, and further, that pressing necessity exists for increased service in many places, I venture to suggest a method of relief.

Now, gentlemen, just watch Mr. Brady's mode of relief:

During the four fiscal years last past—

That is, the four years from 1876 to 1879—

viz, 1876-1879, there has been covered back into the Treasury of unexpended balances of appropriations for inland mail transportation \$3,965,468.27.

Remember that, gentlemen. For four years before Brady wrote this letter the Post-Office Department had not used the money that was appropriated for it. On the contrary, out of the appropriation they had saved nearly \$4,000,000, nearly a million a year less than Congress gave them.

In view of this fact, I have the honor to request your recommendation to Congress that about one-half this amount, say \$2,000,000, be re-appropriated for mail transportation on star routes.

Now, do you see Mr. Brady's modest request; in 1879, after he had engaged in these conspiracies, and when he was making these excessive orders, he sends to Congress and asks that about one-half of the four millions that had been saved be given to him in order that he should use it in the way he was then doing.

This will enable the department to maintain the present service, and besides, afford

a margin for reasonable and necessary increase during the remaining half of the fiscal year.

During the remaining half of this year! Gentlemen, that communication was sent to the Postmaster-General, and the Postmaster-General forwarded it to Congress. The members of Congress looked at it and rubbed their eyes and appointed an investigating committee. This investigating committee met in January, 1880. Mr. Blackburn was the chairman of that committee. I do not wish you to get this committee mixed up with the other committee. You see there were two investigations. In 1878 Congress investigated these very routes, and Brady said because Congress was investigating these routes in 1878, even then it was supposed there was a fraud somewhere, and because of that investigation he did not compel them to put the service on; that they could not be before Congress and away out in the country fixing up the routes at the same time. Gentlemen, that investigation was made immediately after the contracts were awarded. It was known that there was something wrong, and Congress undertook to investigate it. Because you have not the report I will not in fairness to them say what Congress did, or what the character of the testimony was, or what the character of the report was. I wish I had the opportunity to tell you all about it.

Mr. WILSON. I will put them both in evidence if you want them.

Mr. KER. When your turn comes I will sit down and listen to you.

Mr. WILSON. You may have them both in evidence if you want them now.

Mr. DAVIDGE. He does not want them.

Mr. KER. Now, this committee of Congress met, and Brady was brought before it and Miner was brought before it and, I think, John W. Dorsey and Stephen W. Dorsey. I do not know how many were brought before it. The report was not offered in evidence, but they told you about it on the witness stand. Brady said, "I was investigated by Congress and I was vindicated." Gentlemen, he got a certificate of good character from Congress. I am going to read you that certificate. After Congress has investigated——

Mr. DAVIDGE. [Interposing.] You will not get through before recess, I presume.

Mr. KER. You can go, and I will go on until I finish reading this certificate. You know how hard it is for a man to stop when he once gets started. It is like a locomotive on a down grade.

Mr. DAVIDGE. I did not intend to interrupt you.

Mr. KER. I will read this before we take our recess. It is within ten minutes of the time anyhow. This certificate is found on page 3484. You remember Brady asked for \$2,000,000. The committee made a report to Congress after their investigation and found out what was what, and then Congress resolved——

That the sum of eleven hundred thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated, to meet the expenses of inland mail transportation on star routes for the remainder of the current fiscal year. During the remainder of the current fiscal year no further expediting of service on any postal star route shall be made. * * *

They gave him the \$1,100,000 and they told him that for the balance of the year there should be no more expedition. They set their veto upon that. But that was not the certificate of good character. Here it is:

Nothing in this act contained shall be deemed or construed to affect the validity or legality of the acts or omission of any officer of the United States, or to affect any proceeding therefor.

In the very same act they said: "Whatever you have done, whatever any of you people have done or have omitted to do, you are not absolved from by this act of Congress, but you can be punished therefor." They knew there was fraudulent work somewhere. They did not get right down to it. They had not the means, in a short investigation, of finding it all out, but they knew there was something wrong there and in this act they said "Mr. Brady, when we pass this law you are not absolved from punishment for what you have done." That was Mr. Brady's certificate of good character; an elegant one for Congress to make for a man then in the height of his power. But, again, they went a little further in that same act of Congress. (What I read will be found on page 515 of the Revised Statutes.) It is part of the same chapter, 48:

Provided, That the Postmaster-General shall not hereafter have the power to expedite the service, under any contract either now existing or hereafter given to a rate of pay exceeding 50 per cent. upon the contract as originally let.

Now, gentlemen, they say that on any contracts now in existence and on any contract that may hereafter be made the Postmaster-General shall never have the power to expedite; that is, to shorten the time and to allow for shortening the time a greater sum than 50 per cent. of the original contract price. If the original price is \$300 he cannot expedite the route for more than \$150, or one half. I want you to bear that in mind, for I will show you that the laws, as I said before, were never made for Thomas J. Brady, and that he boldly and defiantly expedited and increased in disregard of this law.

Now, if your honor will take a recess, I am ready. I can go on, but Mr. Davidge has gone away, and I think he wants to hear me.

The COURT. If you desire we will adjourn now.

Mr. KER. I will do just as your honor says. I can go on.

The COURT. Go on, then, until 1 o'clock. You must not stop when Mr. Davidge goes out.

Mr. KER. There is another clause. You know that the contractor when he enters into the mail service is bound to take an oath. No man can serve as a mail carrier without taking an oath any more than a man can serve as a Government employé without taking an oath. Everybody is bound to do that. It was found that the subcontractors were being cheated, and in order to meet this difficulty a law was passed allowing the subcontractors to file their subcontracts. Now, gentlemen, when a subcontract is filed it must be certified by a postmaster, and in addition to that it must have attached to it the oath of the subcontractor. If you take a mail route and want to have the mail carried every man who drives a team for you or handles the mail for you must take the oath. If you are contractor you must take it, and if you are subcontractor you must take it. This applies to the subcontracts of Stephen W. Dorsey, of Vaile, of Rerdell, and of all these people who filed their subcontracts which this bill of indictment says were unlawful subcontracts and a fraud. It was unlawful because Brady accepted the subcontracts without the contractor taking the oath. It was fraudulent because it was meant to cut out the subcontractors. Brady did not send those subcontracts up to the Auditor of the Treasury so that somebody else could look at them, but he kept them in his office and certified that Vaile, or Miner, or John W. Dorsey, or Stephen Dorsey had filed in his office subcontracts according to law, when in point of fact they were not filed according to law at all; but, of course the Auditor knew nothing better, and he allowed the pay to go to whoever Brady certified was to re-

ceive it. Now, gentlemen, these are statements of what the law is. There may be others that it will become necessary to refer to from time to time, but I have given you a general outline of what Congress commanded and required, and of what ought to have been Brady's guide and what he had no right to disregard. I will show you at the proper time that he willfully and without any care at all disregarded these commands in making his orders.

The COURT. Now we will take a recess.

At this point (1 p. m.) the court took its usual recess.

AFTER RECESS.

Mr. KER. Shall I go on?

The COURT. Yes.

Mr. GREEN (a juror). Might I ask a question first?

The COURT. Yes.

Mr. GREEN. I think the other jurors would like the question asked for them, too. In the evening session, from half past 1 to 4, could there not be a little intermission of five or ten minutes about half way between the time of reassembling and the adjournment? Sitting still for two and a half hours is a long stretch.

The COURT. If any of you desire to go out, and will so intimate, the court will stop for that purpose.

Mr. MERRICK. Intimate it at the time.

Mr. GREEN. It is just to make a break in a long afternoon; that is all.

Mr. KER. As I told you this morning, gentlemen, the charge is that of conspiracy. Now, a conspiracy is defined to be an agreement. It is an agreement to commit an unlawful act or a crime, or it is an agreement to do something that is lawful by the use of unlawful means. Perhaps I can bring it more clearly to your minds by the use of a few illustrations. Suppose that either of you gentlemen were keeping a store and having for sale a lot of goods, and were behind the counter, and a man entered the place and said he wanted to see some of your goods and called for a particular article. Suppose you got it down and commenced to show it to him, and while you were showing the goods to that man another man came in and said, "I am in a great hurry, and I want to get a certain article," mentioning it, and you left the first man and went off and waited upon the second man, and the first man, profiting by that opportunity, picked up a part of the goods and slipped out of the store when you were not watching. Now, those two men did not speak together in your presence. There was no conversation between them that you heard, and yet it was only a ruse on the part of one to give the other an opportunity to steal. Would not you say immediately, would not any sensible man say immediately, "Why, these people conspired together to rob me." That would be the natural conclusion, that one was aiding the other, and that there was an agreement between them. The facts and the circumstances show that there had been some preconcerted action or some agreement between them. Of course people that conspire together very seldom meet and discuss what they are going to do or how they are going to do it. As a general rule the conspiracy is shown from the circumstances of the case. It is not on every occasion that you can get a witness to say, "I went there and heard these people arrange this plan," but your knowledge of human nature and your

knowledge of how people act will dictate to you that from the circumstances of the case there was a concert of action, a combination and agreement, between them, showing that their minds were running in one channel. Suppose, for instance, that a man is going along the street, a second man comes up to him, and a third is standing close by, and nothing is said at all, but the second only makes a motion and immediately the last two close in upon the man who is passing along the street, one jostles against him and the other picks his pocket. Certainly they did not agree to do that according to the usual acceptation of the term "agreement," but there is not any sensible man who would not say that those two men conspired together to rob. Their minds ran in the same channel. Take another illustration. Suppose a man wants to cheat an insurance company, and to take out a policy of insurance upon the life of a man when he knows that the man whose life he wants to insure is about to die. He sends a blank form of policy of insurance away off to a third man who lives somewhere else, and that man makes all the answers that are required, the policy of insurance is returned and entered in the office here, and the man whose life was insured dies. Now, certainly the two men were never together anywhere to talk over a line of conspiracy, but their minds ran in the same channel, and their acts sprang up from a concert or agreement between them, although one was away from the other, by means of which the insurance company was to be defrauded according to the first man's intention. Suppose a man is engaged in business and has a book-keeper and a bank account, and he authorizes his book-keeper to sign his name to checks for money, and there is some person who is supplying the business man with goods of different kinds, and the book-keeper is authorized to draw a check for the money to pay the bills and take a receipt. Now, although the book-keeper and the man furnishing the supplies may not talk the matter over between them, yet the man who supplies the goods may furnish a bill for goods that he has never supplied at all, and may in his bill declare that he has supplied twice the quantity of goods that he did supply. If book-keeper accepts that bill, knowing it to be false, or in such a way that there would be no possible doubt that he did know it, and he took a receipt on the bill and drew a check for the money and gave it to the man and the man drew the money, when the proprietor of that business came to find out that this amount of money had been drawn and that the goods had never been furnished, would not he say at once, "Why my book-keeper and this man conspired together." The evidence shows that there was a concert of action and a combination and agreement between them. An agreement of course may be made in writing, or it may be made by word of mouth, or it may be an understood agreement without anything being said at all. These are illustrations of what a conspiracy is. I have given you the legal definition. It is to commit a crime or to do a lawful act by unlawful means. For instance, to illustrate the last portion of it: If a man came and took possession of your goods and took them to his house you would have no right under the law to go there and take him by the throat and forcibly take your goods away from him. You would violate the law. If two men agreed together to go and take the goods in that way they would agree to violate the law, and that would be a conspiracy between them. It would be proper to get the goods in a lawful way, but it would not be proper to go and assault the man and take them away in that manner.

Now, at the common law it was an offense for people to agree to commit a crime. If they never did anything else but just come to an agree-

ment, it was punishable. At common law, if I agree with somebody else to commit an offense, the very fact that we agree is an offense. I am not speaking technically now, your honor. I am trying to bring this matter clearly before the jury in a plain and homely way.

The COURT. I understand.

Mr. KER. But Congress has gone a little further than that. In New York they have the same law that we have here. Congress says:

If two or more—

Remember, it takes two to make a conspiracy; two minds to run in the same channel:

If two or more agree together to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of these persons shall commit any overt act to effect the purpose of the conspiracy, they shall all be held liable.

You see they have done away with the common-law version that the mere agreement is criminal. Congress says there must be some overt act. Now, gentlemen, let me explain to you what that means. An overt act is an open and a notorious act. Congress has taken the same view that I have been trying to impress upon you, that conspiracy is a secret act, a secret agreement; but the moment they do something that is open and notorious, something that everybody can see, that moment the conspiracy is fixed upon them. Now, if Dorsey and Brady and the others had simply agreed to defraud the United States, at common law they could be punished. Under the United States law they could not be punished. But if, after agreeing or conspiring to defraud the United States, any one of them committed any act in pursuance of that agreement, or to effect the object of the agreement, no matter which one of them did it, they are all liable for the consequence of their agreement. Therefore we are compelled to show you that there was some overt act committed.

In this indictment there are a great number of overt acts alleged. These overt acts themselves will convey to your mind the idea, irresistibly, that there must have been an agreement or concert between these people, or the acts could not have been committed. We have alleged that they got up false and fictitious letters. We have alleged that they got up false and fictitious petitions, petitions that stated that they were signed by people living upon the route and in the neighborhood of the route, when in point of fact the people did not live there at all. We have alleged that they filed fraudulent subcontracts, and we have shown you that they did so. The petitions were to deceive the Postmaster-General. They were of no earthly use, and the expedition could have been granted without them. But they were put in there in order to convey the impression either to Congress, to the Postmaster-General, or to whoever might come after Mr. Brady, that the people demanded it; as Mr. Ingersoll said, "The great people wanted it." That was the idea. The petitions were of no other use. They could have got along without them. The subcontracts were of use. They were used to enable these defendants to draw the money.

We have also alleged as overt acts, in different places, that they put in the department false oaths. I have explained to you already what these oaths were, and I will show you their object and their falsity. There were eighteen oaths put in on these nineteen routes. Out of the eighteen oaths that were put in sixteen of them were scratched, altered, and erased, or written in apparently after being signed. Of the eighteen oaths that were put in, and that were brought before you, there is

not a solitary oath that has not been contradicted. We have, by the testimony, shown the falsity of every one of these eighteen oaths, and as I go along I will point it out to you. Then, another series of overt acts is that Mr. Brady made orders granting an increase of trips and granting expedition, or shortening of time, and allowing increased pay in conformity with these oaths when the service was not needed and required, and that he certified the orders to the Auditor of the Treasury for the Post-Office Department. We will show you these oaths as we go along. We will show you the expedition and increase of trips that were granted, and call to your attention the testimony showing the wantonness and the outrageous character of the orders that were made, excluding any idea of honesty, and making it impossible for even the merest child to believe there was no fraud concerning these matters. In addition to the orders we allege that they fraudulently drew the pay for each quarter during the contract term—the expedited pay and the pay granted for trips. These are overt acts, and they are alleged in the bill of indictment. We have shown you, and I will explain as we go along, the different amounts of money that these defendants took out of the Treasury by reason of the oaths and by reason of the orders that were made by Mr. Brady.

There is one thing that you ought also to bear in mind. There is what is called the statute of limitations. The law fixes a period of time in which a man can be punished for any offense that he commits. In this case the law has said that after the lapse of three years you must not proceed against them. Of course that is not the exact language of the statute. After the expiration of three years the act that is done is cut off from punishment. The act may be shown to the jury in order that the jury may know the character of the agreement and combination, but still it cannot be found against the defendants as an overt act. This indictment was filed on the 20th of May, 1882. You must run back three years, and then you will come to the 20th day of May, 1879. We allege that they combined and agreed together on the date this indictment was brought into court, the 20th day of May. Therefore all the acts that were committed by these defendants after the 20th of May, 1879, are acts that you can find them guilty of, from the evidence. Of course if you find they committed any one act, that is sufficient. We have given you a whole lot, so that we should make no mistake in the matter. We have given you not exactly all of their overt acts, but enough of their material ones to give you a chance to find one. The date upon which the act was committed is not exactly material. It may be some other date than the date alleged in the indictment, provided it is within the three years. The act of Congress requires that all official papers upon which orders are made shall be filed, with the true date of their filing marked upon them. Now, gentlemen, here is a point that we may settle just at this stage. When were they filed? Some of these petitions were put in in 1878, and some in March, April, and May, 1879—beyond the time mentioned in this indictment. Some were put in in December, January, and February, 1879. They were put in the Post-Office Department, and left there. Now, when did they become papers belonging to the Post-Office Department? That is a question to settle by the evidence. I want to call your attention to the evidence in that respect. When a petition or oath is forwarded to the Post-Office Department the clerk makes a memorandum upon the back of it. The bill of indictment alleges that they sent or caused to be sent, transmitted, and placed among the papers belonging to these routes certain false petitions, and so forth. The date of filing is the date upon which the paper takes effect. Let me give you

the authority upon that subject. Mr. Sweeney, who was a clerk in that office, and who is a chief of division now, I believe, had charge of some of these routes and some of the business connected with them. He was familiar with the mode of doing business in the Post-Office Department. I read from his testimony on pages 501 and 502. He had spoken of making up the cases:

Q. Suppose a number of petitions were sent in from time to time, all relating to the one subject; what would be done with these petitions?—A. Well, if the case had been made up and was acted upon——

Q. [Interposing.] I am not speaking about a case of that kind, but before there is anything done?—A. It would be customary to put them all in this jacket.

Q. They would all be put in the one jacket?—A. Yes, sir.

Q. And when they were all collected the jacket would undergo the process you spoke of—the putting down of a statement of what was contained in it, and anything of that sort?—A. Yes, sir; or more might be put in after the jacket had been originally made up.

Q. After the jacket is made up, is that what you call a case?—A. Yes, sir.

Q. What is done with that case then?—A. If it were for change of service involving an expenditure of money, it would be submitted to the Second Assistant Postmaster-General or his chief clerk.

Q. Do you always submit it to the chief clerk, or only when he is acting?—A. Usually only when he is acting for the Second Assistant Postmaster-General.

Q. Suppose the petitions called for an increase of trips from one to three, what would be done with that case, as you call it, then?—A. After the Second Assistant Postmaster-General had determined what action to take upon it the corresponding clerk would——

Q. [Interposing.] Excuse me. You would first take it to the Second Assistant?—A. It is usually put on his desk.

Q. Suppose it was a petition asking for a reduction of the time, which is called increase or expedition, what would you do with that; take it to the Second Assistant?—A. Yes, sir.

Q. In either of those cases, before going to the Second Assistant, would there be anything else put upon the jacket, or ought there to be?—A. Well, only such facts as would be necessary for his consideration. Usually it would state the revenue of the offices to be supplied; generally, but not in all cases; and the cost of the desired increase, and by whom recommended.

Q. Then all that information would be laid before the Second Assistant?—A. Yes, sir.

Q. What would be done with the case after the Second Assistant had looked at it?—A. He would give directions as to what he wished done, either to grant it or to decline to do so, or perhaps to file it and take no action.

You see he says that the Postmaster-General would give directions to *file*. The filing is the important part of it. When the case is made up and put in the jacket and the brief put on the jacket and it is handed to the Second Assistant, it then becomes a case, and takes its date from that time.

Q. Suppose he ordered an increase of service?—A. If he ordered an increase of service the corresponding clerk would then make the order for the signature of the Second Assistant Postmaster-General.

Q. And the same way with expedition, I suppose?—A. Yes, sir.

Q. What becomes of the order?—A. The order would then be made out with the circulars accompanying it and sent to the contractor and to the postmaster at the termini of the route.

Q. Where would the order be made?—A. By the corresponding clerk.

Q. What paper would it be made on?—A. It would be made on the jacket or another paper similar to it and placed on the outside of it.

Q. It would be put right on the case, as you call it?—A. Yes, sir; or another jacket inclosing the brief.

Then on cross-examination, at page 510, he says:

Q. Now, if there came in fifteen or twenty petitions, letters, &c., asking for increase or expedition of service on a particular route, and they find their way into the box of the corresponding clerk of the section to which that route belongs, that corresponding clerk takes those petitions and puts all that belong to any one route together, does he?—A. Yes, sir.

Q. And he puts an envelope on them, which you call a jacket?—A. Yes, sir.

Q. And then he writes on the back of that jacket, in brief, the substance of those petitions?—A. Yes, sir.

Q. That is what you call making up a case?—A. And stating the revenue and the cost of the desired increase.

That is the testimony of Mr. Sweeney. Mr. Brady in giving his testimony upon this subject corroborates Mr. Sweeney. On page 3442 Mr. Brady says:

A. They always had these affidavits filed in the first place, and then the case was made up, as I have repeatedly said. If we could then get it for less we did so, or else we did not do it at all.

That is the statement given by General Brady as to how they managed the business. The oaths and petitions were sent into the Post-Office Department, and were collected until they got a pile of them, and whenever they got a pile they were put in an envelope or "jacket," as they call it, and a brief was put on it and it was sent to the Second Assistant Postmaster-General, and he made his orders. Now, gentlemen, that was the time that these petitions or these oaths were brought to life and to light—when they came before the Second Assistant Postmaster-General and he made his order upon them. I have no doubt that the counsel on the other side will say to you, "Oh, don't that oath show that it was filed in April." The answer to that is just this: It has a mark on it that it was received in April, but it is in a jacket dated in July. It was acted upon in July. It became a record of the Post-Office Department, and it became a part of the "case" in July or August, or whatever date it was when Brady acted upon it and made the order.

We had a number of witnesses who gave the general outline of what took place in regard to these routes and the manner in which the business was done. I want to briefly call your attention to the testimony of these witnesses, beginning with Boone. Boone says that he first met S. W. Dorsey in Mr. Brewer's room in the Post-Office Department building, in November, 1877. Mr. Brewer is a clerk there who had charge of some of these routes. He was examined on the stand. Boone says, "I went to Dorsey's house that night and had some conversation with him. Dorsey invited me to come there and showed me a letter from Peck. After some talk Dorsey agreed to give me a third interest." They agreed among themselves about the interest. Boone said, "The whole matter was to be kept a secret. I was not to tell Roots, I was not to tell Kerens, and I was not to tell Elkins. It was all to be kept secret;" although Boone says that neither Roots nor Kerens were in the city at that time, still they were not to know anything about it. Acting upon the agreement, Boone sat down and got up some letters which were addressed to the postmasters throughout the different States and Territories. I read from page 1548:

WASHINGTON, D. C., December 1, 1879.

SIR: We inclose certain interrogatories which we have the honor to request you or your deputy to answer, and forward in the inclosed stamped envelope to us at the earliest possible moment.

The COURT. You read that 1879.

Mr. KER. That is the way it was printed.

Mr. MERRICK. It is a mistake.

Mr. KER. It ought to be 1878. I remember that 1878 is the correct date.

Mr. MERRICK. Certainly.

Mr. KER. You see how well his honor understands these dates and how close a watch he keeps upon them.

The first part of that letter was all right. There was no trouble about that, except that it was a piece of impudence to write to the postmasters for that information.

By so doing you will place us under many obligations, and we will be glad to reciprocate the courtesy at any time by transacting any business you may have before the Post-Office Department, or with the Sixth Auditor, who audits your accounts.

Now, gentlemen, you see the bait that was thrown out to the postmasters. "If you will do this for us, in return we will help you in your business with the Post-Office Department, and especially with the Sixth Auditor, the man who audits your accounts." It was a sort of underhanded way of letting them know it would be beneficial to them to aid in giving this information. Boone says that Stephen Dorsey furnished him with the paper and the envelopes; Senate envelopes, you know. Probably that was an inducement to the postmasters, knowing that they came from the Senate. He sent those envelopes to give a sort of official character to the letters. Dorsey says that he bought and paid for the envelopes, but that does not do away with the use that they were put to.

Boone says that Stephen W. Dorsey drew a check for one hundred and fifty or two hundred dollars to pay for the postage-stamps and to pay for the printing. Then he says he got a lot of proposals printed. I want to call your attention, gentlemen, to these proposals. Boone went ahead in his own way, just as he had been in the habit of doing, and got a lot of proposals printed, and he says he sent a lot of them to Miner at Sandusky. You remember he had never seen Miner, and did not know him; but by Dorsey's direction he sent these blanks over to Miner at Sandusky. Then he says "I received a letter from Miner stating that he would come on to Washington, and finally Miner did come, arriving at Washington on the 5th of December." Now, a portion of these proposals that were printed Boone bundled up into packages, by Dorsey's direction, and sent them off to different postmasters. You remember the Clendenning package. To that package there was attached a letter from Stephen Dorsey asking Clendenning to get the bonds filled up. Clendenning, who was an honest man and did not fear Mr. Dorsey, chose rather to do his duty as he had sworn to do it, and returned the package to Mr. Dorsey with an indignant rejection of the offer. His letter was given in evidence and read to you. Boone says "I sent them to the postmasters at Little Rock in Arkansas, Helena in Arkansas, Fort Smith in Arkansas, Hot Springs in Arkansas, and Pine Bluff in Arkansas." He sent them to these postmasters with the direction to get somebody to put their names on them as bondsmen, and for the postmasters to give the usual certificates that they had been signed and filled up before affixing their signatures to them and that the people who signed as bondsmen were the owners of real estate such as was described in the oath that was attached to the bonds, an oath which of course Dorsey never intended anybody to take. Some of these bids were returned filled up as directed by Dorsey. Some were not filled up, as in the case of those sent to Mr. Clendenning. After these bids were returned Mr. Miner prepared what was called a bidding-book. He says it was this advertisement [exhibiting advertisement to the jury]. The figures to be bid were put opposite the route in each case. Boone did not get that up. He said he suggested a portion of the figures and the other portion was brought to him by Miner. He saw that book and says a part of the figures were

in Stephen W. Dorsey's handwriting. Stephen Dorsey helped to fill up this book. From this book they filled in the amounts in the different proposals. Rerdell was pressed into the service, and Rerdell went up to Miner's room in Dorsey's house and filled in the amounts of the bids as they were called off by Miner. Boone helped at that, and the three of them were engaged in filling up the bids. After a portion of the bids were filled up Dorsey came along and took a look at how the work was going on, and he saw that there were bids for six trips a week, and immediately gave orders to Boone that he was to destroy every bid that was over three trips a week. They were going to put in bids for four or five or six trips and Dorsey would not have it that way, but ordered the bids destroyed, and Boone says that he destroyed five hundred of those bids! Then, again, Dorsey took a look at the bidding and found that it was not exactly to suit him, and he made another order that Boone obeyed. The order was for Boone to put in a clause for expedition. Now, Boone had been a contractor for a number of years. He was the owner of eleven hundred routes. Remember, gentlemen, there were only nine thousand and some odd routes, so that Boone had one-ninth of all the star routes in the United States. Boone said, "I never heard of such a thing before. I never had a route expedited and never dreamed of it." He did not know a thing about it. Acting upon Stephen W. Dorsey's advice he put in this clause giving the subcontractors 65 per cent. of the increase. I want you to remember the 65 per cent., because I will show you some subcontracts with that amount in, but I do not want you to think for one moment that the subcontractor ever got a dollar of it. It was put in there probably as a blind to induce them to take the contracts. Boone says, "I prepared these forms under the instructions of Stephen W. Dorsey, and I furnished a bondsman at the request of Stephen W. Dorsey." That is true. He furnished Hoyt, who went on these contracts as a bondsman. Now, you will remember that on the 15th of January, 1879, there was what is called a division. There were two divisions, but this was the first. Miner and Peck were to take certain routes in certain localities, and John Dorsey and Boone were to take certain routes in certain localities. They were all in the same batch, but for convenience they were going to divide them up in that way. Boone and Dorsey went together, and, as Boone was a stranger, they wanted a contract with Boone, and Miner wrote out a contract with Boone, and signed it for John Dorsey, by which Boone and John W. Dorsey were to go together in taking their share of the routes that would come to them; for this was before there was any award at all and before they knew that they were going to get a contract at all; but it was the arrangement that was made between them. Boone went on attending to his branch of the business up to somewhere about the 7th or 8th of August, 1878. On pages 1529 and 1530, Boone, in answer to the question:

What did Miner say to you in that connection?

He, having had a conversation with Miner who was managing the business, says:

On the 8th day of August, 1878, Mr. Miner sent for me to come to the house of Stephen W. Dorsey. Dorsey was absent from the city at the time. He—

Miner—

said to me, "It is a matter of impossibility for us to raise the amount necessary to go on with the balance of this service, and it is useless for me to tell you the position we are in, you can see it yourself," and I did see it, and signed the paper going out of the concern.

Q. What did he say about Vaile?—A. He said Mr. Vaile was coming in because he had the means necessary to put the service on.

Q. Did you have any conversation with S. W. Dorsey in reference to Vaile?—A. I had a conversation about Mr. Vaile with S. W. Dorsey pending the letting or the award of the contracts.

Before they were awarded, before March, 1878, Stephen W. Dorsey had talked with Boone about Vaile. This is what he says:

Q. Did you have any conversation with Stephen W. Dorsey about Vaile's coming into the concern?—A. I never had any conversation with him about his coming into the concern. He asked me the question about Mr. Vaile's financial ability, his standing as a mail contractor, and his ability to handle mail contracts, and probably from the conversation I inferred that Mr. Vaile would be brought into the concern.

Q. At what time was that conversation; do you recollect?—A. That conversation must have occurred within thirty days after the awards were made; either in the latter part of March or the first part of April.

That was in 1878. Boone says he got out of the concern. Miner, looking out for future occurrences, drew up an agreement between Boone and John W. Dorsey, and in that agreement they gave to Boone, as a consideration for his going out of the concern, all the contracts that John W. Dorsey held in Texas, in Louisiana, and in Kansas. Now, I told you this morning that they took one hundred and thirty-four routes. Boone got a portion of these in the States that I have just named. That brought the number down, together with those that were discontinued, to something in the neighborhood of about a hundred. That is sufficient for the present as to Mr. Boone's connection with the matter.

The next man who appeared in this case was Mr. A. W. Moore. Mr. Moore was here upon the stand. You will remember that he told you he knew what they were going to do. He knew that there was going to be a fraud committed, and was willing to go in. The only trouble was that they were too smart for him, and they beat him. It was not that he was not willing enough. He was perfectly willing to go into it, and perfectly willing to cheat the Government, but they did not give him the chance. They got the best of him. Moore says, "I met Miner in the spring of 1878." You will remember that Boone and Miner had a conversation about somebody to go out and put the service on, and Boone recommended Moore. Then Moore says, "I went to Stephen W. Dorsey's house and saw Dorsey, and I afterwards saw Miner and was employed at \$150 a month and expenses." Then he says, "I went to see Dorsey and Dorsey asked my opinion of the service." Now, I want to read to you from Moore's testimony on page 1356:

Q. Was anything else said?—A. In speaking of the service I told him I did not understand why those long routes once and twice a week should be taken so low, and he said that was a service that they wished to get; that on that service there was a chance for increase and expedition, and on the daily service there was no chance for any increase.

Of course, Moore was a man who knew something about the mail business. He had routes of his own. But he could not see through it at all, or how it was that they took these routes with only three trips at such prices. How they expected to get along with them he could not imagine. Now, I read from pages 1360 and 1361. Between the time that Mr. Moore said what I have just read to you and what I am about to read there was a colloquy in which Mr. Henkle, Judge Wilson, Mr. Davidge, and Mr. Ingersoll fifteen or twenty times, and somebody else took part. They had a long discussion about it. Then:

Q. [Resuming.] Well, what did you say about the increase and expedition?—A. That that was a kind of service they wanted, from once to twice a week. It would give them a chance for increase and expedition, and on the daily service there was no chance to get it up higher.

Q. Was anything else said?—A. That there was where the money was; it was in the increase and expedition.

Q. Was anybody else present at that conversation?—A. Yes; Mr. Rerdell was present.

Q. What else was said, or what else occurred between you and Dorsey at that time?—A. He showed me a bundle of blank subcontracts, and pointed out, as I had never seen them before, where they had made arrangements for once and twice and three times a week service and daily in blank, and also for a certain per cent. for expedition—a blank per cent. for expedition. This was in the printed blank form.

He had never heard of expedition before. Nobody ever heard of it before. It was a thing that was unknown until it originated in this way, so far as these defendants were concerned. Dorsey gave the information. I do not know whether Dorsey was the author of it or not. He did not tell us; but by some means they got into this new way of managing things:

Q. [Resuming.] What did Dorsey tell you you were to do under the contract you had made with Miner?—A. He instructed me in making all subcontracts to make allowance for daily service all the way through, and also for expedition.

That was Dorsey's instruction to Moore at that time. Now, Moore says that Dorsey gave him letters to prominent men in California, and he also gave him a trip pass on the Central Pacific and one on the Union Pacific Railroad, a pass from here to Chicago and the annual pass of his brother over the Central Pacific and Union Pacific Railroads. They were doing it at a cheap rate. Dorsey gave him a trip pass, good for one trip, but he gave him John Dorsey's pass over both the Pacific railroads. Then he gave him a check payable to Miner. They tried to make it appear that Moore said the check was given to him. Moore's testimony is "It was given to me, but payable to Miner, and I went with Miner to the bank to draw it, and while we were there drawing the money we met Boone." Miner says, "No;" they did not do it; that it is a mistake; that nothing of the kind took place; but there are two men who say, "Yes." Now, there were other instructions given, and beside, a power of attorney that Miner gave. I read from page 1366:

Q. [Resuming.] What was said further than what you have already stated in reference to the matter of making contracts?—A. In making such contracts Mr. Dorsey told me that I could assure them that this service would all be increased and expedited.

Those were Dorsey's instructions, to insure the subcontractors that the service would be increased and expedited. You know that Moore followed that out, for he told Mr. McBean and all the other people up in Oregon, just as they testified word for word on the stand what Moore told them.

On page 1367 he continues:

A. Mr. Miner instructed me, when I had time, to get up petitions for increase of service, and in getting up the petitions to change the headings as much as I could; not to have too much similarity about them, and also to leave space between the heading of the petition and the names, in case the heading should want to be changed.

Did you notice that? He was to write it all on one side, so that they could tear that off and paste it on to another and use it for any petition they wanted. It didn't make any difference. A petition was a petition and a paper was a paper, and they could stick it in anyhow; nobody was going to read it.

Q. To leave space between the heading of the petition and the names?—A. Yes, sir.

Q. In case what?—A. In case they wanted to change the heading of the petition and wanted to change the petition itself.

Q. When did you say you started for the West?—A. Somewhere about the middle of April; it might have been before, and it might have been after.

Now, then, he says he started out and went to work, as these records

show, and made the subcontracts according to his instructions and got up the petitions according to his instructions. He fixed them up and changed the language a little in some and in some he did not take the trouble to change, but he fixed them all so that there was a space between the writing and the names, so that they could be cut off and pasted on to other papers. Then he says he got a note from Miner and went to Denver, and there he met Miner. At Denver he told Miner that he did not want to go on under a salary any longer; that he wanted an interest in the routes. Miner told him that he would give him a quarter interest in the routes. While they were talking there Miner said some very curious things to him. I read from page 1371:

Q. What was said by you, and what was said by him?—A. I told him if the Eastern Oregon service that was sublet to Hutchinson was carried out the contracts were in good shape; but I had my doubts in regard to that service.

Q. What then?—A. Mr. Miner asked me if I would still continue in the employ of the company. I told him no. Then he made a proposition to give me a fourth interest for four years in the service I had been handling, me giving my time gratis, and dividing the profits.

Q. What did he say to you about that contract—that he could make it, or what?—A. He said he could not make it without seeing Senator Dorsey first.

This was in April, 1878:

Q. Was anything said about increases and expedition?—A. Yes, sir; I explained to him that in the service in Eastern Oregon the more increase they had and the more expedition they had the worse off they were.

Do you understand that? If a man takes a route to run it one trip for \$300, and if by so running it he will lose \$20 or \$40 or \$50, and they make it two trips, the question is, would he not lose another \$50 if it is doubled up? The more the increase is the more he is bound to lose. There is an offset to that. He might run three or four trips at a little bit cheaper rate to the subcontractor than he would run one, but the principle was there. It was a losing contract, and the more of that kind he had the worse it was for him, especially when the expedition was put on, which Moore did not understand, where the time might be reduced and he might have to run it in less time and get no pay for it.

Q. What did he say to that?—A. He said so far as the increase of service was concerned there might be a loss, but the expedition would cover all loss and leave a profit.

Q. How was that to be done?

Mr. INGERSOLL. I would like to have him asked what he said.

Mr. MERRICK. I have asked what he said.

The COURT. I understand the question relates to what he said.

Q. Did he say anything about how that was to be done?—A. I told Mr. Miner that as I understood it the expedition would be the same as the increase, according to the rules and regulations of the department, and he could only get the proportion that it took of extra stock to run it. He said that was not the case—

Now listen, gentlemen, to what Miner said in April, 1878—

that it all depended on the affidavits of the contractors, and they were all good affidavit men, and they proposed to make a pretty good thing out of it.

I say, too, that they were all good affidavit men and they did make a pretty good thing out of it. The only drawback is that my friend Judge Wilson has tapped one of their pockets to a considerable extent, the newspapers say forty or fifty thousand dollars.

Mr. WILSON. We do not get \$100 a day from the Government and our expenses, but I am glad you opened that door.

Mr. KER. I will let you alone now. The testimony goes on:

Q. When did you leave Denver?—A. On or about the 5th of July, 1878.

Q. When did you reach Washington?—A. I believe it was on or about the 11th of July.

Q. What did you do when you got here?—A. After taking my baggage to the hotel I proceeded at once to Senator Dorsey's house.

There he had an interview with Dorsey.

Q. Did you find him there?—A. Yes, sir.

Q. What occurred between you and the ex-Senator there?—A. I told him my time was up as an agent and that I was ready for a settlement.

He was talking to Stephen W. Dorsey then.

He asked me how much was coming to me, and I told him, and he gave me a check for the amount.

Q. He settled with you?—A. Yes, sir; fairly. He asked me in regard to the service, and I told him I was satisfied with all of it except the Eastern Oregon service, and that I was in doubt about. He asked me to telegraph to the head office at Baker City and make new service to The Dalles, and find out if the service had started; that if they had started that, all the rest had been started. I did so. That was all left to the same subcontractor.

Then he telegraphed and got a reply from the postmistress at The Dalles.

Then he proposed to me to go back as an agent again, and offered me \$250 a month if I would go back as an agent.

Q. What did you say to that?—A. I refused to do it.

Q. What did you then say?—A. I told him I would go back and take one-fourth of the service for the four years and handle it myself.

Q. Where?—A. In Nevada, Northern California, Oregon, and Washington Territory. There were some few routes in Southern California that I was not to have.

Q. What did he say to that?—A. He asked if I had had any talk with Mr. Miner in regard to it. I told him I had. He wanted to know whether Mr. Miner was willing to agree to it. He said he could not make any contract, but as soon as Mr. Miner came he would have him draw up a contract to that effect, and give me one-quarter of the profits for four years in that service, me to give my time, but my expenses in traveling, and so forth, to be taken out of the general fund before there was a division of profits.

Now Moore went out again and finally returned in July. While he was here he had a conversation with John Dorsey. Before reading the conversation with John Dorsey I want to read another conversation that Moore had with Stephen W. Dorsey in relation to this contract for a quarter interest. It is on page 1373:

Q. You say when you returned here you went to Dorsey's house and had a talk with him, and in the course of that conversation, when you spoke about a contract, he asked you whether you had talked with Miner about it. You say you told him you had. What else occurred in that conversation?

* * * * *

Q. Did you have any other conversation with Dorsey after that?

Mr. DAVIDGE. After what?

Mr. MERRICK. After the first conversation when you came back from the West?

A. Yes, sir; I went there several times in reporting in regard to the service I had telegraphed about.

Q. Did you have any conversation with him about your profits, &c.?—A. Yes, sir; I made the same proposition to him that I had to Mr. Miner, or that Mr. Miner had made to me. I told him I was willing to give my time, but my expenses must be taken out of the general fund before there was a division of profits. Mr. Dorsey told me he acquiesced in that, and said I must understand another thing, that it required money to hold the influence they all had with the department, and that must be taken out of the general fund before the division of profits.

That came from Senator Dorsey. It required money to hold the influence they all had with the department at that time, and before there were any profits that money would have to come out. On page 1383 he goes on to give his conversation with John Dorsey:

I had several conversations with John W. Dorsey soon after the bids were awarded.

Q. What did he say about his having entered into this experiment or enterprise?—

A. He said his brother had him here on some business he did not know anything about and he wished he was back home.

I guess he has wished that often since.

Q. You say you settled with Miner?—A. Yes, sir.

Mr. INGERSOLL. I would like to have the date of the conversation of John W. Dorsey fixed.

Q. Fix the date of that conversation in which John W. Dorsey made the remark that his brother had him here on business he did not know anything about and he wished he was home?—A. It was some time in April, 1878; before I left.

Then I see a remark here:

Mr. INGERSOLL. [To Mr. Merrick.] Won't you state it again? I like to have the jury hear it often.

Mr. Ingersoll wanted you to hear that remark often, so he stated. I don't think he cares particularly about you hearing it now. There has been a good deal of testimony given since that time. He has the habit of making remarks of that kind. I am sorry he is not here now. That is one of those mistakes that people sometimes make, when in an off-hand way they say things they do not intend to say. I can give an illustration of that. The other day in walking up F street I came to an old bookstore called Anglim's, above Fourteenth street, and there I saw a large basket sitting out on the pavement where anybody could go and look at the books with which it was filled. I saw that there were some pamphlets in it, quite a pile of them, and I stopped to examine them, when my attention was attracted by a sign on the basket. It said:

Ingersoll, half price.

That was a mistake of the man who put it on. He did not mean it. It was a slip, a mistake, something like Mr. Ingersoll's remark that he would like to have that statement made often.

Mr. WILSON. A good many of us will not be worth 50 cents on the dollar after we see this thing through.

The COURT. I am sure you do not mean that.

Mr. WILSON. Yes, I do.

Mr. MERRICK. If Ingersoll is half price now he will be worth about 5 per cent. then.

The COURT. I hope you will all be worth more when you get through.

Mr. WILSON. I think about half of us will be dead before we get through.

Mr. KER. He is a pretty good fellow. He does not mean all he says.

Mr. KER. [Resuming.] Mr. Moore drew out of the concern and settled up. He met Vaile and Miner and asked them about the settlement, and finally they settled with them, and Vaile drew a check for the amount of money and paid Moore. Moore handed Miner back the power of attorney. When asked why he did not go on and sue, he said, "Oh, well, he told me the arrangement was with Stephen W. Dorsey, and I had no written arrangement with him, and what was the use of trying to enforce it?" So he cleared out and went home.

The next prominent person in this arrangement is S. W. Dorsey. I am giving you these general remarks so that you can see the scope of the testimony, what was testified against them and what was testified for them. S. W. Dorsey was a Senator. He represented the State of Arkansas. His Senatorial term expired on the 4th of March, 1879, at 12 o'clock noon, by limitation of law. He was a Senator at the time that this award was made and these contracts went into effect. You know there is a law that prohibits any member of Congress from being interested in any contract with the Government during his term of office. That law is so strict and positive that if a member of Congress becomes

interested in a contract or receives any money in connection with a contract, upon conviction he is turned out of office and forever afterwards disqualified from holding office. Therefore it was a very important matter that Stephen W. Dorsey should not appear as being interested in these contracts during his Senatorial term, because it would have disqualified him, upon conviction, from ever afterwards holding any office. Fortunately for him the statute of limitation has run against that part of the matter.

Now, Dorsey says that he agreed to pay Boone for his trouble. You know that there is not a person who is able to understand why he should have left out Boone in saying "It is a lie made out of whole cloth; it is false; it is untrue." But he said, "Mr. Boone is mistaken; Mr. Boone did not understand it that way; he could not have understood it." Mr. Boone was treated very gingerly and with a great deal of deference. Therefore, Senator Dorsey says that "When Mr. Boone says that I agreed to give him a one-third interest in these drafts he was mistaken. What I did say was that I would pay him for his services until he saw John Dorsey and Miner and Peck, and they would give him a one-third interest, no doubt." Very likely for a shrewd business man like Boone.

Now, Senator Dorsey says, "I never conversed with Moore." He says, "I never had a conversation of three words with him in my life."

On page 3760 he said that with the only emphasis, I think, he had put upon anything he testified to, except as to Rerdell. But if you turn to page 3918, which I will do, you will find that Dorsey upon cross-examination contradicted himself and said:

Q. You have testified, I believe, that although you took such an active interest in this business at that time in 1878, you did not ask Mr. Moore anything about it when he returned?—A. I did not say that. I said I might have asked him something about it.

Somebody is mistaken. The stenographer's minutes could have been corrected every morning. They were said to be correct. You were there. You heard it. Probably it did not impress itself upon your minds, but I say there it is in the record:

I never had a conversation with Mr. Moore of three words in the world.

He was cross-examined by Mr. Merrick, and he thought it ridiculous that he should have given Moore a check upon orders from Miner and not have said, "How do you do to-day? Where have you been? How are the routes? How are they getting along?" But he said he never opened his mouth; had no conversation with him. And finally, when he saw the absurdity of it, he said, "I did not say that." He contradicts himself plainly and flatly, and said, "What I did say was I might have asked him something about it."

Now, there is a question whether Mr. Dorsey was interested in these routes or not, and I do not know anybody who is better able to answer that than himself. On page 3895, it appears there was a power of attorney. Dorsey said, in answer to some questions as to why he did not do this, and why he did not do that "Why, I had a power of attorney from Peck, a power of attorney from John Dorsey." Well, we wanted to see that power of attorney. We wanted to have it, so that we could hand it to you gentlemen, so that you could see it. But it was like the rest of the books and papers, they would not let us have it. Here is what he said:

Q. Did you have any power of attorney prior to the 4th of March, 1879?

Prior to the day he went out of Congress?

A. I don't remember about that.

Q. Do you remember that you did not?—A. I don't remember that I did or did not.

There is his own answer to it: "I don't remember." He would not produce it to you, and answered "I don't remember." Probably he did not want to say that he hadn't it or had it. He did not know how it would affect him if he said he had it, and did not know how it would affect him if he said he hadn't it, and so he cut the matter short by saying, "I don't remember"—he, the man who voluntarily took the stand to tell the truth, the whole truth, and nothing but the truth, without any reservation to keep anything back—"I don't remember."

Then he was asked: "Did you ever sign any contracts for Peck?" You know Boone said he had. You know Rerdell said that he had signed Peck's name to contracts. In answer to that, he said: "Well, I wouldn't say, but I think not." He was not even certain of that. That was in 1877 or 1878. "I wouldn't say, but think not." Now, in that connection, on pages 3824 and 3825, it is just worth while reading. He was asked about those contracts that I have told you about, and he was asked about some testimony of Boone's:

Is that true?—A. I don't think it is, sir. I think Mr. Boone is mistaken.

Q. You think Boone is mistaken?—A. I do.

Q. Then you recollect that you did not sign it?—A. I do not recollect distinctly, as I have told you, whether I signed it or not, but my judgment is that I did not sign it or I would remember it.

Q. That is the question that I asked you once before: Whether if you did sign it you would not have remembered it. Now, you say that if you had signed it you think you would have remembered it?—A. I think so.

Q. Don't you know that you would have remembered it if you had signed it?—A. I don't know; I don't know anything.

Sworn to on the stand. "I don't know; I don't know anything."

Q. You don't know anything?—A. I believe a good many things, but I cannot positively state that I am absolutely certain about anything.

What a chaotic state of mind. He did not know anything.

Q. You are not absolutely certain then that you did not enter into a conspiracy to defraud the Government, are you?

Mr. CARPENTER. If he wants an answer give it to him.

Mr. MERRICK. I want an answer to every question I shall ask.

A. My recollection has been pretty well revived on that point, and if I was certain of anything I would be certain that was not true.

Now, there is a man who is asked directly and squarely: "Did you enter into a conspiracy to defraud the Government?" And he says: "If I were certain of anything, I would say that I did not." He was not certain, gentlemen, that he did not enter into this conspiracy. He tells you that. It is his own testimony. I advise you to believe it. He did not say that he did not do it.

Q. But you are not certain that even that is not true, are you?—A. Well, fairly so.

That is all he could tell you, that he was fairly certain of it.

Q. And you tell the jury now that Boone is mistaken when he says you signed Peck's name to those papers?—A. I think he is.

Then he was further interrogated at page 3839, about when Miner came:

Q. Was he there in the month of February?—A. I think he was.

Q. Was he there in the month of March?—A. I don't know; I think not.

Q. When did he go away?—A. I don't know that.

Q. What was he doing here?—A. He was bidding on mail contracts.

Q. Had he an office in your house?—A. Yes, sir.

Q. Whereabouts?—A. Third floor, back room.

Q. How did he come to come to Washington City on that occasion?—A. He came on the cars, I suppose.

Q. Did not walk?—A. I guess not.

Q. Did he come on his own suggestion, or on yours?—A. I think on mine.

Q. When did you make the suggestion?—A. I don't remember that.

Q. Was it in December?—A. I don't know.

Q. Was it in January?—A. I can't tell you.

Q. What is your best recollection?—A. I have no recollection.

Q. What do you think?—A. I don't think.

Q. How did you make the suggestion—by word of mouth?

The WITNESS. In what form do you mean?

Mr. MERRICK. Yes.

A. I might by letter, or verbally.

Q. You might have done either?—A. Yes, sir.

Q. Which was it?—A. I don't know.

Q. What do you think about it?—A. I don't think.

Q. Of course you don't know. Does your memory suffer only an occasional impairment, or is it permanent?—A. It is a pretty fair memory; it is very satisfactory to me.

There is his answer. His memory was satisfactory to him. I do not know how far it would satisfy you when he comes to give an explanation of his different acts.

Dorsey says that the total amount of money he put into those contracts to help these people along was \$13,300. That is the amount of money he advanced. Now, I have shown you it was an important thing for Dorsey to keep out of this thing before the 4th of March; but the 4th of March had no sooner arrived than Mr. Dorsey was on his feet and at work. The very first thing he did was to sit down and write a letter to Brady, which is found on page 3892:

WASHINGTON, D. C., *March 4, 1879.*

The very day he got out of Congress; it does not make much difference whether it was before 12 o'clock or after 12.

Hon. T. J. BRADY,

Second Assistant Postmaster-General, Washington, D. C.:

SIR: Being duly empowered to act for John M. Peck and John W. Dorsey, mail contractors, I hereby enter in their behalf my protest against the acknowledgment of any subcontracts or powers of attorney now on file in your department, or which may hereafter be filed, in the name of H. M. Vaile, or in the name of any other person.

These subcontracts or powers of attorney were made and filed without the knowledge, authority, or consent of said Peck and Dorsey, and in their behalf I demand that they be canceled on the first day of April, and that no other subcontracts to any person whatsoever shall be accepted by you upon any mail routes in the names of said Peck and Dorsey, except those in the Indian Territory, unless such subcontract shall be accompanied by a power of attorney given by said Peck and Dorsey after the date of this letter.

I am, respectfully, yours,

S. W. DORSEY,
For JOHN M. PECK,
JOHN W. DORSEY.

You remember Miner had given Vaile subcontracts. Vaile had gone into this business in 1878, and he had a lot of subcontracts that he put on file; and the moment that Dorsey's hands became loose, the moment he stepped out of the Senate, the first thing he did was to write this letter to Thomas J. Brady repudiating for John W. Dorsey and Peck these contracts of Vaile's, and stating that Vaile had no authority to make or file them, and therefore that Brady must disregard them. Dorsey was going to open his fight with Vaile, and that is the way he took to do it.

Next they had a division. This division is variously stated to have taken place in March, April, and May. At all events, they had a sort of division, and here is what Dorsey says about it, at page 3933:

Q. Your agreement to pay Peck \$10,000 and John W. Dorsey \$10,000 and to take one-third of the routes was all a part and parcel of the same general agreement, was it not?—A. Yes, sir. It is possible I am in error as to taking one-third of the routes as routes. It seems to me that they were taken and divided according to the value of them, instead of according to numbers, because I did not take one-third of them. On that point I will not be positive.

Then he says on the next page :

Q. In order to carry out this distribution of routes, what evidences of title or right passed between the respective parties to the routes?—A. Well, my belief is—of course I am not going to speak now of my knowledge—

Q. [Interposing.] I want your best recollection.—A. I will give you my best recollection. My belief is that there were subcontracts made for all the routes that Miner got that belonged to Peck and Dorsey, and all the routes that I got that belonged to Miner, he made subcontracts over to me or else to Rerdell, or somebody else. Then I think drafts were given covering each quarter during the entire contract term on each one of the routes. In some cases we did not use the subcontracts at all, but simply the drafts, filling the drafts in the Post-Office Department.

Now, gentlemen, they divided the routes. You remember that 30 per cent. went to Miner, 30 per cent. to Stephen W. Dorsey, and 40 per cent. went to Vaile. That made 100. There are the terms of the division. Dorsey says he got thirty-three of the routes as his share, and the balance went to Vaile and Miner. But the important point at this stage is this : Their counsel will claim that if they did enter into a conspiracy, they branched off and took a different road, and therefore, there were two conspiracies going along, and consequently you ought not to convict them all of one general crime. You see what Dorsey says about it: The routes that belonged to Miner that Dorsey took, Miner executed subcontracts, signed blank drafts, and gave him all the material to go ahead and run the routes. The routes that were taken by Miner and Vaile, John Dorsey and Peck, or somebody for Peck, gave them all the material to run the routes and keep them going to the end of the contract term. And I will show you by the testimony of John Dorsey and the testimony of Miner that this was the agreement at the division—that they were to furnish the others with the material to carry on the routes. And when his honor comes to charge you upon the law of the case his honor will say there could be no such division as that to exculpate these people ; that if they furnished the material, that if they had an interest in the route at all, they are still liable. Let me show you how contradictory this is : Suppose that a man sees another off in the distance, takes a gun, puts it up to his shoulder, and shoots at the man. The moment the shot is discharged from the gun he repents and says that he did not want to kill him ; what difference does it make ? The ball goes straight to its mark ; it accomplishes what it was sent for. His repentance avails him nothing ; it is too late. And when they formed a conspiracy to draw this money from quarter to quarter, and got it all right, what does the repentance amount to unless they wipe out the material for committing the crime, destroy the subcontracts, and go to the Postmaster-General and tell him of the infamous proceeding, and go on and do all in their power to efface the wrong done, and not sit quietly by and gently aid each other to steal from the Treasury ? Dorsey says, “ After I got these routes I made an effort to have them expedited.” I read from page 3934 :

Q. Did Rerdell attend to the arrangement by which you closed with Vaile and with the other parties?—A. No ; I attended to that myself. I speak now of the details of the Post-Office Department—filing these subcontracts and drafts and things of that kind.

Q. He attended to all that?—A. Yes, sir.

Q. And you attended to the details as well as to the general arrangement of the plan of separation?—A. I attended to that myself, I think.

Stephen W. Dorsey attended to dividing up the routes, and Rerdell took the drafts and subcontracts to the office.

Q. After that time did you go actively to work to get the service expedited and increased on the routes that you took?—A. I did everything that I knew how to do that was lawful and proper to have the routes that I thought ought to be increased and expedited increased and expedited.

He says: "I did everything that I knew how to get them increased and expedited." He then goes on:

If I left anything undone I do not know it.

Is not that a remarkable assertion from him?

If I left anything undone I do not know it.

I think the evidence discloses in this case that he left very little undone; that there was very little margin for any further increase or any further expedition. They made the last dollar out of the routes that they could get. Then he tells us on page 3952 as to how much he did get:

By Mr. MERRICK:

Question. In making an estimate of the amount derived from these routes, does not the amount paid by the Government, reduced by the amount paid to the subcontractors, show the profit to the contractors?

His answer to that is this:

A. Well, add to that the fines and deductions and the expenses.

You know that their agreement was that the subcontractor was to pay the fines and deductions.

Q. Fines and deductions and expenses?—A. Yes, sir.

Q. What expenses?—A. Expenses of agents and rent.

Q. Agents for what?—A. Agents to look after the routes.

Q. Rent for what?—A. Rent for an office.

Q. Anything else?—A. I do not know. Mr. Bosler's expenses in coming down here and probably other incidental expenses—telegraphing.

Q. How many agents were employed?—A. There were two all the time, Mr. Rerdell and Mr. Steele.

Q. Any others?—A. I do not know.

Q. I mean employed by you at the time you had the routes?—A. John W. Dorsey.

Q. Who else?—A. I don't remember anybody else.

The money that they got from the Government went to pay these expenses. There was office rent; there was Rerdell; there was Steele; there was John W. Dorsey. You know that Rerdell got \$3,000 a year; I suppose Steele did not get more; I do not know what John W. Dorsey got. But these were the expense, and rent and the telegraphing. Well, they did spend something for telegraphing. Then there was the expense of Bosler coming down here from Carlisle, and other things. The only other thing I can recollect in this connection is a little check for \$2,000 paid to J. B. B., charged to "mail." Then he says: "I procured passes over the railroads, and I gave them to these people who were attending to the mail business." You see, gentlemen, these expenses were being cut down. I do not know whether Bosler traveled on a free pass or not, but it was very certain that Rerdell and Steele did, and John W. Dorsey had his annual passes. Therefore travel did not amount to anything, excepting an occasional hotel bill.

For a man who had a bad memory, who did not know anything, but whose memory was satisfactory to himself, there is one point where Stephen W. Dorsey's memory is as bright as a burnished dollar, and I have not the slightest doubt that when he brightened up his memory

on that score he did it to influence some of you gentlemen of the jury. When Dorsey forgets about everything else, just mention the word "Chamberlin's" to him. If there is anything on the face of this earth that gets away with Stephen W. Dorsey it is his superabundant egotism. He forgets everything, but he says to the jury, when his attention is called to the matter of going to Chamberlin's, and the explanation is given in language that was intended to carry away some of you gentlemen, if you could be carried away. I will read it to you from page 3786:

Q. You may state whether you were there in connection with any mail business, or in connection with any one of the routes mentioned in this indictment?—A. No, sir; I was engaged in a mission entirely foreign to any mail routes. I came over here for the purpose of seeing some gentlemen that I wanted to go to Indiana with me, and for the purpose of discussing the politics of that State with men who were familiar with it. General Brady had been chairman of the State committee on our side of the house; Mr. Tyner had also been a prominent leader there, General Raum, and a great many others. I met General Brady, I think, at my room at Willard's Hotel, and we walked up to Chamberlin's to get a glass of champagne. While there Mr. Bosler came in incidentally, or accidentally, and we sat there a few minutes. And that is all there is in that. There was not a word said about mail business, or anything connected with mail routes.

Then, on cross-examination, Mr. Merrick touched him very gently upon that subject. Mr. Merrick said to him:

Q. You were then occupying Indiana?—A. I was then preparing to occupy Indiana; yes, sir.

Now, I do not want to make much comment upon that, but the fact was that Rerdell says that when they came back from Chamberlin's, Dorsey said: "You get ready a statement and make up a case so that we can get remission of the fines; it is arranged with Brady." And it was arranged up there at Chamberlin's. He went from the hotel to Chamberlin's, and in denying that, Dorsey's statement is that it was not about the affidavit, that it was not about the fines, but he went there to consult with General Brady. He left his room at Willard's Hotel, where he could have consulted in peace and quiet, and he went to Chamberlin's and took his seat in the garden and staid there half an hour drinking champagne in a public place, talking with Brady, and accidentally in walked Bosler. The only other man who is interested in fines and deductions was Mr. Bosler. He mentioned Indiana. "Then I was preparing to occupy Indiana." Well, I do not know how far he went in occupying Indiana, but I do know that if he claims that he occupied Indiana, he is stealing the credit from some better men; there is one of them up here in the Pension Office now that deserves more credit for that than Dorsey ever did.

Next he says, "I got Rerdell's affidavit to protect myself." You remember he says, "I won't say positively that I did not prepare a part of it." He came over from New York, got Rerdell to make the affidavit, directed it to the President, and he took it up there. On page 3988, is what he said about it:

Q. You considered that it did not come from a worthy source?—A. Undoubtedly I did.

Q. Did you give it credit?—A. I gave it credit from the collateral evidence I had.

Q. How did you know what had passed between him and James and MacVeagh?—A. Well, I had heard from many sources.

You know he denied that he had any conversation over in New York about that. He says he heard it from another source.

Q. You had heard?—A. Yes, sir.

Q. The affidavit accuses James and MacVeagh of having stimulated him, as he says here, to both burglary and larceny in stealing your books.—A. That is the right name for it.

Q. That is the word used in the affidavit. Did you not present that affidavit to the President of the United States, and ask his official action upon it to remove James and MacVeagh?—A. Well, I was in hopes that we would remove them.

Q. Did you not present the affidavit as a truthful representation of the misconduct of his ministers, and ask him to remove them on account of that misconduct?—A. I presented the affidavit, and General Garfield, in the presence of Governor Foster, of Ohio, and Colonel Ingersoll stated that James and MacVeagh had made almost the exact statement contained in that affidavit to him; and I considered it his duty, and he ought to have removed them right then and there.

Q. Did you not present this affidavit to him and demand their removal upon the face of that affidavit?—A. I never *demand*ed the removal of a Cabinet officer.

Q. Did you not present it to him and say to him that those men had behaved as this affidavit set forth, and they ought to be removed?—A. Well, if I did not say so, my tongue did not know its cunning.

“Well, if I did not say so, my tongue did not know its cunning.”

Q. That is what you used it for, is it not?—A. I used it to prevent what I believed to be a most vicious, unlawful, and improper act on the part of two executive officers of this Government.

Then on page 3989 :

Q. Will you please fix the time when you went to Garfield with that affidavit?—

A. I cannot do that accurately.

Q. Who went with you?—A. Colonel Ingersoll.

Q. How often did you go?—A. Oh, well, we dropped up there often.

Q. About that matter?—A. Yes, sir; about that matter. I presume I went there nearly every day.

Now, gentlemen, there is a statement of what he used the affidavit for. He came over to protect himself, and he took the affidavit up to the President of the United States, and there deliberately demanded that the President should dismiss Mr. James from the office of Postmaster-General, and Mr. MacVeagh from the office of Attorney-General, and he says, “If I did not say so, my tongue did not know its cunning.” I presume he did use every effort, and there was nobody knew better than the President of the United States, who is now dead and gone, the utter worthlessness of Stephen W. Dorsey’s claim to that which he was putting forth, and there was nobody who knew better that his duty was to stand by the faithful, the honest, the upright officers of the Government who were throttling this man who was robbing the public Treasury, and not only him alone, but the whole lot of them who were engaged in this conspiracy—Thomas J. Brady, Stephen W. Dorsey, and all the lesser lights. These faithful officers knew that even at that time they were engaged in robbing the Treasury, and Mr. James was applying the pruning-knife of reform, had Brady turned out of office, was cutting off expedition, reducing trips, and bringing it back to where it had started. And nobody knew better than Mr. Garfield the false pretenses that Stephen W. Dorsey was traveling under. Dorsey did not believe that a Cabinet officer could not be removed, and he used the “cunning” of his tongue to accomplish it.

Gentlemen, I believe in always giving the credit to those who deserve credit. I do not think there is anybody in the community that likes to see a man take that which belongs to another. I do not think there is anybody likes to see a man assume that which he did not do. People naturally are not given to talking about their own feats, and it is only once in a while we find a man like Stephen W. Dorsey that claims everything that belongs to everybody else. The men who instituted this investigation and pushed it to its present position, pushing it still, one of them chairman of the committee, who is now dead, but they all knew just where Stephen W. Dorsey stood.

On the 1st of December, 1882, Mr. Dorsey further made a defense of

himself. You gentlemen were about being called at that time. It was a good thing to publish an article in a newspaper, and thus get his defense to the jury before they were sworn. A good idea to have the jury have their minds biased. You might have read it before you came here. It might have made a big impression upon you before you were called upon to answer the inquiry of the court whether you had formed any opinion. There is a great deal of method in that sort of thing, making up what is called a newspaper opinion. So he got ready a card, and published it in the New York Herald, and sent it out over the country by means of that paper with its immense circulation, hoping that the article would be copied into all the other journals throughout the country. On page 3818 it appears. I only want to read an extract from it. It is not worth reading the whole of it. Life is too short:

Q. I have before me a copy of the New York Herald of December 2, 1882, which contains what purports to be a card signed by you, covering about two columns, and bearing date December 1, 1882, addressed to the public. I will hand it to you.—A. It is not worth while to do that. If you will read the first few lines I can tell you whether it is mine or not.

Mr. Merrick went on reading:

During a year and a half of consistent and persistent abuse of me I have carefully refrained from saying a word in my own defense. The charges made against me were of such a character that I thought best to submit each and every one of them to a judicial test, that the public might know their truth or falsity.

See, in December, when the case was fixed for trial, the judge was getting the jury together, filling up the panel, Dorsey concluded that as he had exhausted the Executive Mansion and all the Cabinet ministers that he would turn his attention to the public, and concluded that he would let the case go to a judicial test, after keeping most solemnly quiet, for the space of forty-eight hours. There was not a paper published throughout the country from the time of the first trial up to that time that had not something in it about Dorsey:

A. I think I wrote it that far, or dictated it rather.

Q. You say you cannot see it?—A. I say I cannot see it.

Q. Can you not read?—A. I have not read a line for six months; more than that; since July last. For nearly three of the six months I have been confined in a dark room.

The COURT. What page are you reading from?

Mr. KER. That is page 3819. It begins on page 3818, at the bottom:

Q. You say your vision is so much impaired that you cannot read print if you have it before you?—A. No, sir; I could not read the largest headlines.

Q. Can you see how to play a game of billiards?—A. Oh, no, sir.

Q. In that card, at the top of the second column, is the following:

"My answer to that is that Colonel Peck had been for years largely interested in mail contracts, and that at the time of the mail lettings in 1876 he was a large contractor, as the records of the Post-Office Department show."

A. Yes, sir.

Q. Is that part of it true?—A. I think it is.

Q. It is true, is it?—A. I think it is; that is, I have Peck's statement for it.

Q. What contracts was he interested in?—A. He was interested, I think, with Colonel Chidester; that is, he told me so. I have no knowledge of it myself. He came here with Chidester in 1874, for the purpose of bidding. While I think he did not bid in his own name, I think he was connected with all the bids that Chidester put in.

Q. You say here:

"Colonel Peck had been for years largely interested in mail contracts, and that at the time of the mail letting in 1876 he was a large contractor."

The WITNESS. In 1876?

Mr. MERRICK. Yes.

A. I guess not.

Mr. MERRICK. That is what it is.

The WITNESS. That is not right, then. There was no mail letting in 1876.

Mr. MERRICK. It does not say he took contracts then. It only designates a period of time. I believe there is a mail letting every year.

"That at the time of the mail letting in 1876 he was a large contractor, as the records of the Post-Office Department show."

Now, do the records of the Post-Office Department show any such thing?—A. I think so, from his statement to me.

Q. I thought you said just now he did not bid in his own name?—A. I said in 1874. You were asking about 1877.

Mr. MERRICK. No, I am not.

The WITNESS. 1876 is a mistake. It is 1877. I did not write that.

Q. It ought to be 1877, ought it?—A. Yes, sir; 1877-'78.

I will not read any further of that. It does not appear to have much bearing. But it turned out upon his cross-examination, when he was pressed home to the mark, that Mr. Peck had one contract, and that was the extent of his large mail contracts, and that was given some time between 1877 and 1878.

Now, there is just another thing. We were bothered with showing these papers to Mr. Dorsey, and he could not see them. Mr. Ingersoll got up and read them to him. He said he could not read the largest headlines. Do you remember, gentlemen, when Mr. Merrick was sitting over here and the witness was on the stand, Mr. Merrick had a paper, and the witness pointed and said, "You have it there in your hand." He could see it better than Mr. Merrick. And whenever he was asked about who read a paper, he answered, "My clerk, Colonel Love," I think he called him. "There he is, sitting over there." I do not know, but it seems to me that it takes pretty good eyes to pick another man out of a crowd. I have pretty good eyes, and I am not always able to tell a paper in Mr. Merrick's hands. I simply mention this to show you that Mr. Dorsey was not exactly always consistent in his statements. Between his want of memory upon some things and his inability to see papers, he managed to have the cross-examination and direct examination so that "I don't remember," "I don't know," "I have no recollection," "I don't think," "I cannot think," "I won't think," "My memory satisfies me," was the sum and substance of the whole. When I get down to some point in this case further on I will then point out some more of Mr. Dorsey's little eccentricities.

The next man I will take up is General Brady, Judge Wilson's client. The first point in General Brady's testimony, speaking about knowing these people and that he went up to Chamberlin's—

Mr. WILSON. [Interposing.] If your honor please, Mr. Ker is just about commencing on a new subject, which will probably take up a good deal of his time, and in view of what the jury suggested awhile ago I would suggest that it is so near the adjourning hour—

The COURT. [Interposing.] Oh, no; we will go on for ten minutes. This clock is a little too fast. It is practically only sitting two hours after the recess.

Mr. WILSON. I know, but the jury suggested that they would like to adjourn.

The COURT. Do the jury say so now?

Mr. GREEN [a juror]. No. I suggested that during the afternoon session, from half past 1 to 4 o'clock, a little intermission of five or ten minutes would rest us.

The COURT. But practically we do not meet after recess until a little before 2. We will go on until 4 o'clock.

Mr. WILSON. I made the suggestion because I thought it might be an accommodation to my brother.

Mr. MERRICK. [To the court.] Do you say that clock is not right?

The COURT. It was too fast the other day.

Mr. MERRICK. It is a little too slow now.

Mr. KER. You know General Brady—they call him general; he was Second Assistant Postmaster-General, and I suppose the “general” will stick to him all his life. General Brady said he went up to Chamberlin’s, and he gives quite a lengthy explanation why he went there, but the substance of it is that he met Dorsey at Willard’s Hotel, and as they do not keep a good bar at Willard’s (a sort of a slander) they went to Chamberlin’s, where they keep a better one. They went up and took a seat in the garden or outside place. They sat there for half an hour. Brady said that he had been chairman of the State committee in Indiana, and Senator Dorsey desired to ask him about how to run the campaign in that State. Now, gentlemen, that was in August and the election came off in October. They sat there discussing how the thing could be done in Indiana. At that time Brady was not chairman of any committee. He had nothing at all to do with it. The whole thing was got together and patched up in order that he should strengthen Dorsey’s claim, so that if there should happen to be any gentlemen on the jury who should have strong Republican proclivities they would capture them and carry them away. And therefore he introduced the Indiana business so as to tell upon that branch of the jury—that they were there for laudable purposes, because certainly it is laudable for any man to do the best he can for the aid of his political party, if it is done honestly. But I do not think they were doing anything but drinking champagne. Then he goes on to explain how it was that he managed the business of conducting the mail. He says, on page 3390 :

Q. What, if anything, do you know as to the manner in which petitions were gotten up and by whom they were gotten up?—A. I know nothing about that whatever. I regarded a petition as of value because of the indorsement given to it, as a rule, by the Member of Congress or Senator. If they indorsed them that was a guarantee to me. If they sent them up, that was a guarantee to me. The recommendation of a member of Congress was of more importance to me than the recommendation or hasty report of a special agent, or anything of that kind. I thought the member of Congress knew the needs of his people better than anybody else. At least, it was his duty to know them.

Then on page 3391 he says further :

Q. Did these gentlemen call upon you personally?—A. They called upon me personally, wrote letters, and did everything that reasonable and sometimes unreasonable men will do to get these things done.

Q. How frequently did they call upon you?—A. I do not know how often; generally every day. I usually had a matinee every morning of delegations, members of Congress and others, coming up to get increased service.

By Mr. MERRICK :

Q. On these nineteen routes?—A. That includes all the routes, the whole ten thousand. There would be a sprinkling of these nineteen routes along with them.

By Mr. WILSON :

Q. What were the considerations or grounds that moved you to make the increases and expeditions referred to in the indictment?—A. They were the considerations that I have already hinted at or suggested—the petitions that were forwarded, the desires of Members of Congress and Senators, the fact that the general policy of the department looked to the making of daily mail everywhere, if it could be possibly brought about, the generous action of Congress in supporting everything we did, the liberal appropriations they made for us, even making good the deficiency when the expenditures unfortunately exceeded the appropriations. We thought we were doing a good thing for the country. We thought so then, we think so yet. Those are the only considerations that influenced us in any way.

Then on the next page he says :

Q. What interest had you in making any of the orders set forth in the indictment, or other orders relating to the routes in question?—A. Only the interest that I had in building up the service, doing what I thought was a good thing. I was particularly

interested in the star service. The policy of the department before I came in was known as the Jewellian policy; that is, the spending of all the money appropriated for mail transportation for railroad towns and cities. I believed that country towns and people, depending upon the star service, were entitled to some consideration at the hands of the Government that monopolized the right to carry the mail and would not allow anybody else to carry it, under pains and penalties. I believe so yet.

Q. Did you have any personal interest in the matter?—A. No personal interest except that interest. And probably if I had staid in the department long enough I would have had a daily mail everywhere.

There is some truth in that, but I do not know where the Treasury would have been. Then he says further on, on the same page:

Q. In making these orders for increase and expedition referred to in this indictment, what regard had you for productiveness in connection with other circumstances; what weight did you give to that matter?—A. The other circumstances always had more influence with us than productiveness. That matter was frequently discussed by Judge Key and myself.

The "other circumstances" had always more weight, and I do not doubt but the other circumstance of 20 per cent. in the division was the moving consideration in Thomas J. Brady's mind. Then, on page 3393:

The WITNESS. This will have significance: Judge Key discussed the matter with me as to what had been done, and said to me at the conclusion that what I had done was right; and, in answer to my direct question, said I should continue that policy until he notified me to the contrary. Frequently after that, when matters would come up that I did not feel like acting upon myself, I would go to Judge Key and discuss the matter with him. And he was even more liberal than I was. And so it ran along until in 1879, when, if the hundredth part of things were done that we were asked to do, there would have possibly been an excess of expenditures over the appropriations. Then the matter was discussed in the fall of 1879, whether we should go ahead and increase and expedite service as we had been doing, and appeal to Congress to make good the probable deficiency. He authorized it and it was done. The appeal was made to Congress, and Congress sustained it. And there was nothing ever done in the Post-Office Department while I was there as Second Assistant that, to my knowledge, did not receive the consent and assent of the Postmaster-General.

The COURT. Adjourn the court.

Thereupon (at 4 o'clock p. m.) the court adjourned until to-morrow morning at 11 o'clock.

FRIDAY, APRIL 20, 1883.

The court met at 11 o'clock

Present, counsel for the Government and for the defendants.

Mr. W. W. KER resumed his argument to the jury on behalf of the prosecution, as follows:

Gentlemen, I was telling you last evening when the court adjourned what Mr. Brady testified to as his policy, and I was reading you some extracts from his testimony. I had read to you his alleged interview with Mr. Key in which Mr. Key told him that he was to go on with this policy, to go on with expedition, to go on with increasing the trips, and to do just as he had done before. Mr. Key was not here to testify. Unfortunately, I believe he is dead.

The COURT. Oh, no; Judge Key is not dead.

Mr. KER. At all events he was not here. It is Mr. Maynard of whom I was thinking. I am mistaken in the name.

Mr. DAVIDGE. Judge Key is more alive than you are.

Mr. KER. Well, he did not testify either to contradict or support Mr. Brady. Brady says that all the routes should have been made daily. I read from page 3402 of his testimony:

Q. Did you consider revenue then?—A. We did to a certain extent in the older States where things were fixed and towns were built up and fenced in, but not always in the new countries. The other circumstances would operate there much more largely.

Q. Do you mean to say you did not consider the revenue at all?—A. I mean to say just what I have said, that in the older States the question of revenue was something to be considered. In the newer countries and territories, and throughout the South largely, where the service was being built up after the war, the question of revenue figured very lightly.

Q. Did you consider it in every case?—A. I cannot say that we did.

Q. You said that you formed an opinion that every star route should be daily, I think?—A. That would have been the result of the policy of the Post-Office Department.

Further on, on the same page:

Q. And you proceeded as far as possible to carry out that policy, did you?—A. I did.

Q. Introducing daily service upon every route?—A. Not upon every route, but as rapidly as we could.

Q. You did as far as possible?—A. Yes, sir.

Q. That was what you were aiming at, was it?—A. That was the ultimate object.

Now, gentlemen, that becomes interesting as a part of Mr. Brady's policy. That was his statement to you. When you come to analyze the evidence that has been given on these routes, you will see that instead of carrying out his policy of a daily mail he was simply carrying out the policy that was found to be so beneficial to the contractors, that is, to expedite the routes and bring them up from one or two trips to three trips, and leave them there, with quicker time, allowing for that service compensation in excess of the amount that would have paid for a daily mail. When we get to that point I will show you exactly what I mean, and how far Mr. Brady carried out his alleged policy. On pages 3428 and 3429:

Q. Did you seek to make the best bargains for the Government?—A. We had a kind of general rule, you know, about expediting service. We considered that first-class fast service in that western country was worth about \$30 a mile, a little more or a little less, depending somewhat upon the condition of the country, whether it was an absolutely new service, or a service running through a country that was partially settled up where there might be ranches and so forth. As a rule we tried not to exceed \$30 per mile. These nineteen routes will show a general average of much less than \$30 a mile. A few of them are somewhat over, but most of them are a great deal under.

Q. When you say pro rata, you mean pro rata as compared with other routes and not pro rata as compared with the service existing before you made the order, do you?—A. So far as expedition is concerned, I mean by less than pro rata that taking the affidavit of the contractors and figuring as things were figured in the department it would show that they were entitled according to the affidavit to so much money pro rata, but that in almost every instance, or at least in most of them, less than that amount was allowed. On the Bismarck and Tongue River route I remember it was a great deal less.

The COURT. That was assuming that the contractor's affidavit was true.

Mr. MERRICK. Certainly.

Q. Now, as to that: did you take any means to ascertain whether the contractor's affidavits were true.

The WITNESS. What do you mean by taking means to ascertain whether a man swore to the truth or not?

Mr. BLISS. Did you assume that the facts were just as these parties stated them?—A. I assumed that the facts were as the man thought they were when he swore to them. In other words, I did not assume that he would commit perjury or anything of that kind.

Q. You assumed that he was not mistaken, and that he stated what were actually facts, did you?—A. I did not say that I assumed that he was not mistaken.

Q. What did you assume, then, in regard to those affidavits?—A. That he was swearing to what he believed to be the truth and the fact.

Q. Did you take any means to find out whether what he believed to be true was in fact true?—A. Only except by my general rule as to what I thought the service was worth in certain sections of the country. In some sections of the country it was very cheap and in others it was very dear.

Now, as I told you, Congress establishes the post routes, and the First Assistant Postmaster-General names the offices to be established on the particular routes that Congress maps out. It was Mr. Brady's duty to put service upon these routes, and wherever an office was to be supplied, to supply that office with mail. After Congress had passed the laws establishing the routes, it became, as I said, his duty to put the service on them. When he was asked upon the stand whether he had complied with the laws of Congress; whether he had established service on those routes and to the offices that had been created, his answer was that he had not. He had not obeyed the acts of Congress, he had not established the service, he had no money to do it; yet at that very time he was granting expedition, and allowing immense sums of money to the people whose names are mentioned with his in this indictment. At that time he refused to give to other post-offices and to other people in other communities any mail facilities at all, and they were compelled to do as best they could, either to carry the mail themselves on horseback or to take their letters to the nearest available point from which they could go to the point that they were designed to reach.

I have already told you that he said his reason why he did not compel these contractors to put the service on promptly was because they were then engaged in the Congressional investigation. That was the first investigation; that was started in 1878 as to these very routes. He says, that because the contractors were here attending to the Congressional investigation, they were unable to go out and put the service on, and therefore, in July and August and September, when he received notices that there was no service put on he would not enforce the law, and would not abrogate their contracts or annul them, but give them a chance to put the service on. Because they were detained here in Washington before the committee. I now read from page 3387 :

Q. Do you recollect what was done with reference to their putting on this service where there had been delay, and what you did in regard to it? And if Mr. Vaile had anything to do with it, state all that you can recollect about it.

This was his examination-in-chief:

A. Well, there was considerable delay. A great deal of the service was reported in the first days of July as not having been put on these Miner, Peck, and other routes. I got out of humor about it, and I said to these gentlemen—

By Mr. MERRICK: [Interposing.]

Q. Which gentlemen?

The WITNESS. —that I could not—

Q. [Interposing.] Which gentlemen?

The WITNESS. —give them much more time.

Mr. MERRICK. I object, your honor.

Mr. INGERSOLL. Let him state to whom he said it.

By Mr. WILSON:

Q. Do you recollect to whom you said that?—A. My impression is that I said it to Mr. Miner and Mr. Boone, but I am not certain whether I spoke to both of them, or only talked to one of them. And I am not certain but I simply said to Mr. Turner, in charge of the section, or to Mr. French, my chief clerk, "Here, give these men some little time now to put this service on, and if they don't do it by a certain time, bust them." That was my usual expression in these cases. Then it was that Mr. Vaile came in. Mr. Vaile was an old contractor, and one of the best in the department,

notoriously so for years. When he came in and assumed the responsibility I knew the thing would come around right. I gave them, I think, until some time in August.

Then he sent a telegram to Mr. Vaile. Here it is. I read from page 3389:

Dated: POST-OFFICE DEPT.,
Washington, August 20, 1878.

To H. M. VAILE,
Independence, Missouri:

What service of Miner, Peck, Dorsey, and Watts do you expect to put in operation? Postmaster at Dalles, Oregon, says routes from there not carried and mails lying in office. This cannot be permitted longer.

THOMAS J. BRADY,
2d Ass't P. M. General.

You remember that this telegram was sent on the 20th of August. You will also remember that two days afterwards Vaile telegraphed back that he would "put on all the service excepting that which belonged to Watts."

You will remember in his testimony Mr. Rerdell spoke about the second Congressional investigation. You know he was in trouble about that investigation, and he did not want to go and appear before the committee. That was in 1880. He did not want to produce the books before Congress, so he went up to Mr. Brady and had a conversation with him.

What I now read will be found on page 2268:

A. I had just been subpoenaed to appear before the subcommittee of the Committee on Appropriations of the House, which was then making an investigation into the star-route matters. That was a subpoena *duces tecum*.

Which, of course, means to produce the books and papers.

I went down to the Post-Office Department and told General Brady that I had been subpoenaed to bring all books and papers. He asked me what was the nature of the books that I had. I told him that I had some account books. He remarked that Dorsey was a damned fool for keeping books, and says, "What size are they? How much is in a book?" I said, "They are not very voluminous." (This is the purport—I am giving the general substance of the conversation, and the words, so far as I can remember.) "Well," he says, "can they be copied, or are they too long to be copied—too much to be copied?" I said, "No," I thought not. He said, "How long would it take?" I remarked, "Probably a day or two; may be longer."

Q. What else did he say then?—A. "Well," he says, "I think that will be a good idea." That ended our interview.

You will remember that Mr. Walsh was examined. Mr. Walsh was called here to testify to a conversation that he had with Brady as to some matters existing between themselves. You will remember that Mr. Walsh sat down and wrote a note to General Brady, asking him when he could see him, and telling him that there would be a fire in Sheridan's office. Brady turned the note over, and on a portion of it wrote in lead pencil "I will meet you at 12 o'clock," or half past 12. Accordingly, at the hour named, Mr. Brady went there and met Mr. Walsh. Now, gentlemen, there is no contradiction of that portion of it. General Brady did not deny that this paper was in his handwriting. He admitted that he went to Sheridan's office. He admitted that he had talks with Mr. Walsh on a great many occasions, and that they talked about a good many subjects. Of course this particular thing that I am about to read he denied, but as to all else he admitted it.

Mr. CARPENTER. If the court please, we have no objection to Mr. Ker's making any statement in this argument that he chooses, as it is not pleasant to interrupt him, provided we are to be allowed to correct his statements when we come to argue the case. I have a distinct recol-

lection before that Mr. Ker traveled over a great deal of ground to which we did not object, and that when I came to reply to it your honor said it was not in the case and that I could not reply; that I should have objected at the time. Mr. Ker has just made a statement that General Brady admitted the note to Walsh to be in his handwriting. There is no such testimony in the case.

The COURT. I was not paying very close attention, but I understood him to say to the jury that there was no evidence to the contrary in your proof.

Mr. CARPENTER. He said Brady admitted it.

Mr. KER. No.

Mr. CARPENTER. I would like to have the stenographer's notes read on that point.

The COURT. General Brady was interrogated on that point, and did not deny that that was his signature.

Mr. CARPENTER. I want to know what the stenographer has. It is not pleasant to interrupt Mr. Ker, and if we are to be allowed to reply to him I will not object to anything he says.

The COURT. Certainly, in regard to this matter you will have the full liberty of replying. I do not know that General Brady, when he was interrogated as to that note and the indorsement upon that envelope, expressly admitted it. I think it was submitted to him and he did not deny that it was his handwriting.

Mr. HENKLE. My recollection is that he did.

The COURT. Turn to it now and let us settle the matter at once.

Mr. CARPENTER. I merely interrupted Mr. Ker——

The COURT. [Interposing.] I only want to settle this point.

Mr. CARPENTER. I do not speak of this point particularly. If we are to be allowed to reply to the statements of counsel then we will never interrupt him. But if we are going to be restricted by and by, and if Mr. Merrick is——

The COURT. [Interposing.] The court is not going to give counsel any pledges at all. The court will meet points only as they arise. Mr. Ker is now commenting upon that note, and the action which took place in consequence of it. I think that is all in the case.

Mr. CARPENTER. Undoubtedly; but he must not misstate the testimony.

The COURT. If you will show how he is misstating the testimony the court will confine him to the testimony.

Mr. CARPENTER. If we cannot be permitted to reply I shall insist upon objecting.

The COURT. I suppose that when counsel arises to interrupt opposite counsel on the ground that he is making a misstatement of the testimony, he ought to be prepared to show in what the misstatement consists.

Mr. CARPENTER. I am prepared to say that General Brady did not admit any such thing. The record will not show that he did.

The COURT. Turn to the record, then.

Mr. KER. Gentlemen, I do not want——

The COURT. [Interposing.] Mr. Ker, please suspend a moment.

Mr. CARPENTER. Let him go on.

The COURT. No. He shall not go a step until this point is settled.

Mr. KER. If your honor please, on page 3381 you will find his examination-in-chief.

Mr. CARPENTER. Read it then. What is it? Read what you say he says.

The COURT. On page 3381 there is no reference to that paper.

Mr. WILSON. Your honor, probably we can abbreviate this a little.

Mr. CARPENTER. Let him go. I think your honor is thinking of the letter about the Chattanooga stock.

The COURT. No; I am thinking about the note that was addressed, or said to have been addressed, by Walsh to Brady, inviting him to an interview.

Mr. WILSON. If your honor please, I will venture this statement, although of course I do not pretend to be able to carry in my head these four volumes of testimony. In the examination-in-chief not a word was asked him about that note nor was there on the cross-examination, I feel quite sure. I am very sure about the examination-in-chief, and I am almost equally sure about the cross-examination. He was not asked a single question about it.

The COURT. Then it rests upon Walsh's testimony?

Mr. CARPENTER. Yes.

Mr. WILSON. So far as the writing of the note and the return of the note to him is concerned it rests exclusively upon Walsh's testimony.

The COURT. And that was not contradicted by Brady.

Mr. WILSON. No question was asked him about it. If you will read his whole testimony I think it will turn out just as I state. If it should be different, then of course we will admit it.

Mr. CARPENTER. Then we will admit it.

The COURT. Go on.

Mr. KER. Now, gentlemen, we will get this matter straight. On page 2206 Mr. Walsh testified as to the note that he sent. I do not want to misstate anything. I want to give you the exact truth. I do not want to enlarge it, nor do I want to detract from it, because in either case it would be an injustice to you. The note is as follows:

DECEMBER 28.

GENERAL: A fire will be made in Sheridan's office at 1 this p. m. Wish you would meet me there at that hour, or at any other time you find convenient.

Yours,

WALSH.

Send word by bearer.

That was written in ink. At the bottom, in pencil, written by General Brady, was:

Will be there at 12.30.

Now Walsh testified, beginning on page 2207, as follows:

Q. What contract was that?—A. From Albuquerque, New Mexico, to Prescott, Arizona.

Q. You held that contract?—A. Yes, sir; at that time. He informed me that he had expedited that very largely, had increased the service; the pay had been largely increased as the result, and that he did not really think that he owed me anything; that he did not see how I thought he could possibly owe me. I reminded him of the fact as I had repeatedly told him, that the contract, even viewed from that stand-point, was unremunerative; that it had been a source of no profit to me; on the contrary, a loss; that he himself was largely instrumental in my ever having entered into it, and that I felt that such increase and expedition as had been accorded me was made under the law. He smiled at that, and asked me if I had not seen cases where petitions, &c., very numerous and largely signed, had not effected any result whatever. He then referred to the fact that after he had cut my trips down from 1876, that all the petitions that had come from that country had not succeeded. He said, in brief, that the matter of petitions was simply to enable him to act within the law, and that any man might have understood that, not seeing half as much as I had. I asked him what he meant by saying what I had seen. He referred me to the Price and Peterson drafts, and said that I ought to have been able to have divined from them what was the custom. I asked him what was the custom; that I still could not understand from those drafts; all I knew was the existence of the drafts, but how they came to be made, and what they

were made for, was none of my affair and none of my business; that he had turned them over to me to his credit—

That is, that Brady had turned the drafts over to Walsh to his, Brady's, credit—

and that it was not my province as a banker to inquire into the cause of their being made. He told me that my affectation of not knowing what the terms were was rather ridiculous; that I should know. I told him that I did not. He said that the amount that he exacted as a rule was 20 per cent. of the amount of the pay that was increased [the total increase of pay over the original contract]—20 per centum of that multiplied by the term of the contract.

That was Walsh's testimony in relation to this interview with Brady, and what Brady said about the petitions and what Brady said about his custom of taking 20 per cent. of the amount that he allowed for expedition. Of course that was over and above the contract price. When Brady came to be examined in chief, (the testimony that he gave in that respect will be found on page 3381), the only time when he mentioned Mr. Walsh's name while he was being examined in chief:

Q. Do you know John A. Walsh?—A. I do.

Q. How long have you known him?—A. I first met Mr. Walsh in New Orleans in the winter of 1875-'76.

Q. Did you hold any official relation to the Government when you first met him?—A. I was supervisor of internal revenue.

Q. State whether or not it was in your official capacity that you met Mr. Walsh?—A. I met him in my official capacity. He came to my room in answer to a supervisor's subpoena.

Q. When did you next meet him after you met him in New Orleans?—A. Well, I cannot say; it was some time in the spring or summer of 1877; possibly during the Presidential contest before the commission. I am not certain, however.

Q. Did you hear his testimony given in this case?—A. I did.

Q. State to the jury whether you ever at any time had such a conversation with him as he detailed in that testimony.—A. I never had any such conversation with Mr. Walsh at any time or place in the world, or anything resembling it.

Q. Did he ever exhibit to you at any time or place any notes that you had given to him?—A. He never did.

Q. Any promissory notes, I mean?—A. Never.

Q. Did he ever hold any of your promissory notes?—A. He never held a promissory note or obligation of mine of any kind.

Q. Did you, at the time of any conversation between you and him at any place, carry away any promissory notes that he held and you had executed?—A. I did not.

Q. Did you at any time or place ever say to him that you received from contractors 20 per cent. or any other per cent.—

A. [Interrupting.] I never said anything of that kind. The whole thing is a lie made out of whole cloth. There is scarcely a word of truth in the whole statement from beginning to end.

Q. I want to ask you the question nevertheless. I want to ask you now if at any time you said to him that you received 50 per cent. or any other per cent. for the remission of fines?—A. I never said anything of that kind or anything from which it could be deduced.

There is his full and entire testimony upon that subject given in chief, and in answer to the very broad interrogatory as to the conversation or statement made by Walsh under oath. He says here:

There is scarcely a word of truth in the whole statement, from beginning to end.

“Scarcely”—he does not say “none at all,” but “scarcely a word of truth.” Then on page 3561 he was cross-examined, and I will call your attention again, gentlemen, to the fact that Brady never said that he had not written on the bottom of that note, as Mr. Walsh testified. He never denied that he had received that note:

Q. At the time testified to by him did you not have a conversation with him at the place named by him?—A. I cannot say as to the dates. I frequently had conversations with Mr. Walsh at General Sheridan's house. He was frequently there. It was one of his loafing places.

Then again, at the bottom of the page :

Q. You had several conversations, you say, with Mr. Walsh ?—A. Well, yes ; I could not say how many, but not about anything special.

On page 3581, center of the page :

Q. You spoke of this house of Sheridan's as the place where you dropped in. Who was the owner of the house ?—A. I do not know.

Q. Sheridan lived in it ?—A. Sheridan lived in it ; it was his private residence. His family was away most of the time, and it was convenient and we dropped in frequently. I think Mr. Walsh was there a great deal more than ever I was.

Now, there is the answer that Mr. Brady made to Walsh's testimony. I rather think that the counsel misunderstood what I said about the conversations that Brady had with Walsh when he met him at Sheridan's house ; and I will say again, Brady does not deny that he received the note that Mr. Walsh testified to, and which was brought here and exhibited to you, gentlemen of the jury. It is certain that they had some business relations together, because you will remember about the Chattanooga stock and that "ginger" letter which was read to you, in which Mr. Brady explained what he wanted to get from Mr. Walsh. Now, Walsh had purchased at Hatch & Foote's, in New York, three hundred shares of Chattanooga stock, at the instigation of Mr. Brady. He paid \$80 a share for this stock, which, of course, would make the purchase price \$24,000. That stock Brady asked Mr. Walsh to loan him, and sent the "ginger" letter, stating that he wanted to borrow some "ginger"—wanted to borrow this stock from Mr. Walsh, and he wanted to give Mr. Walsh, as security for the loan of this stock, his own individual promissory note. Mr. Walsh refused to do it. Brady testified that after the stock was purchased it ran down, and that Walsh told him that he (Walsh) had sold the stock out some time after he had asked him for it.

Mr. WILSON. Oh, no, Mr. Ker ; you are mistaken about that. Of course you do not intend to improperly state the evidence.

Mr. KER. Afterwards ?

Mr. WILSON. No, you are mistaken. When he asked him the loan of the stock, Walsh had already sold out.

Mr. KER. I will read it to you, so that there will be no mistake about it. It is at the bottom of page 3580 :

Q. You did not get the stock from Mr. Walsh ?—A. I did not. Mr. Walsh informed me he had sold it.

Q. You offered to give Mr. Walsh your obligation if he would loan you the stock. You say in the letter :

"I will give you my obligation."

A. I did.

Q. What do you mean by obligation—note ?—A. Anything that he would have required.

Q. Then you were seeking to borrow of Mr. Walsh what was worth about from twenty-one to twenty-four thousand dollars in the market, were you ?—A. I wanted to borrow three hundred shares of Chattanooga.

Q. It was then worth from twenty-one to twenty-four thousand dollars in the market, was it not ?—A. That is what we thought it was worth.

Q. It was then selling at that, was it not ?—A. Yes, sir ; if we could sell it. The trouble was whenever we tried to sell it it ran down.

Q. I understand you that that was the only money transaction or attempted money transaction you had with Walsh ?—A. I said so ; yes, sir.

At that time General Brady says that he, himself, held three thousand shares of this Chattanooga stock, which, at that calculation, would amount to somewhere in the neighborhood of \$240,000 worth of Chattanooga stock that Brady was then in possession of. He said he was loaded up with it, and wanted to get this stock from Walsh in order to

assist in raising the price of it in some way that I do not think General Brady could explain satisfactorily. I know he did not explain it satisfactorily, and I suppose he could not offer an explanation as to how he intended to raise the stock by borrowing Walsh's three hundred shares, when he already had three thousand of his own.

You know, after leaving the revenue service, where he had met Walsh in 1875 or 1876, according to the testimony of Mr. Brady himself, he had become Second Assistant Postmaster-General, and he held that office until April, 1881, when he left the office, during Mr. James's administration. The position in the revenue service that he held was, as you know, a comparatively small one. I do not know what the pay is, but at all events, it strikes me that a millionaire would hardly hold it. A man who was worth a quarter or half million dollars would hardly hold such a position as that. But afterwards, in 1876, he became Second Assistant Postmaster-General; he would rather, I suppose, take the position of Second Assistant Postmaster-General. But after he became Second Assistant Postmaster-General, he got into operations that involved this large amount of money, \$240,000 worth of Chattanooga stock.

And in addition to that he made some other ventures that he told you of. On page 3589 he says:

A. I learned the printing trade, or, at least, partly learned it, when I was a boy, and always had something of a hankering for newspapers. I have owned the Muncie Times for a long time. I went into the Republican originally largely as a public benefactor.

The Republican newspaper here:

I thought to make it a great deal better paper than it had ever been or that Washington had ever had. I bought it to make Mr. Kilbourn manager of it, and Mr. Gorham editor; and I think I succeeded in making it a much better paper than it had ever been before or has ever been since.

Gentlemen, this is a fine commentary upon the gentlemen who are running the paper at the present time, and it also shows you the light in which General Brady regarded himself and his ability as an editor—made it “a better paper than it ever was before or has been since.”

The COURT. Mr. Gorham is the editor.

Mr. KER. [Continuing:]

Q. You found it very profitable, did you not?—A. No; I can't say that I did. But I got out finally about what I put in. I think you had something to do with it.

Directing that remark to Colonel Bliss, who was interrogating him. Colonel Bliss replied:

I had \$1,000 to do with it.

A very small amount.

Q. Besides the Republican, you bought the Capital?—A. I loaned Mr. Buell, originally, the money to buy The Capital. He had a very grand idea about what he could do with The Capital—how profitable he could make it. Finally it did not pan out as well as he thought for, and I had to take the paper off his hands.

Q. When did you loan him this money?—A. I do not remember distinctly. It was some time early in 1880, in February, March, or April, along there some time.

Q. Pending the Congressional investigation, was it not?—A. I believe that had not yet been closed. It is possible the deficiency had been voted, though the general bill had not been passed.

Q. The investigation was still going on, was it not?—A. I think so.

Q. Then you invested also in the Critic, did you not?—A. That was in 1881.

Further down, on page 3590:

Q. The Critic still holds on, does it not?—A. The Critic is still, you might say, under my control; that is, I have a controlling amount of the stock.

Q. And have had it ever since you bought it, have you not?—A. Practically, yes. There have been some changes in the mere matter of the way the stock was held, but practically it is the same.

Q. Have you told us all your newspaper interests now?—A. So far as I now remember. I believe that covers my experience in newspapers.

There, gentlemen, he tells you that he had one paper, the Muncie Times, in Indiana; that he purchased the Capital at the time the Congressional investigation was going on; that he purchased the Republican, and that finally he purchased the Critic.

Mr. WILSON. No, Mr. Ker; you are again mistaken about the facts.

Mr. KER. How so?

Mr. WILSON. He did not say he purchased the Capital while the investigation was going on. He said that he loaned Buell the money to purchase the Capital before the investigation closed, and afterwards he had to take the Capital off Buell's hands, because Buell could not pay him the money.

Mr. KER. Here it is.

Mr. WILSON. Yes; just exactly as I say.

Mr. KER. Here it is.

Mr. WILSON. He reads it, and then misstates it. It is precisely as I say. [To Mr. Ker.] Go ahead.

Mr. KER. Let me read it again for you:

Q. Pending the Congressional investigation, was it not?—A. I believe that had not yet been closed. It is possible the deficiency had been voted, though the general bill had not been passed.

Q. The investigation was still going on, was it not?—A. I think so.

Any doubt about that?

Mr. WILSON. Not the slightest doubt about it. But he commences after the material matter has been testified to by him. What was done now?

The COURT. He says he loaned the money to Buell.

Mr. WILSON. Certainly; that is what I say, that he loaned the money to Buell to buy the paper; then further along he says that Buell not being able to pay him he had to take the paper off his hands. The time Mr. Ker has been reading about is before this investigation closed, that is, since he made the loan, but he acquired the Capital afterwards in satisfaction of the debt. There is no use in misstating his testimony.

The COURT. He does not say when he acquired the Capital. He says:

Q. When did you loan him this money?—A. I do not remember distinctly. It was some time early in 1880, in February, March, or April, along there some time.

Mr. WILSON. And afterwards he states——

The COURT. [Interposing.] He afterwards said he had to take the paper off his hands.

Mr. WILSON. Exactly.

The COURT. But he does not say when he took the paper off his hands.

Mr. WILSON. Very well. Mr. Ker said that he had bought the Capital pending that investigation. I say he said no such thing.

The COURT. He did not exactly say that. Go on, Mr. Ker.

Mr. KER. Well, he had the Muncie Times. Is there any doubt about that?

Mr. WILSON. Not the slightest.

Mr. KER. He had the Republican; any doubt about that?

Mr. WILSON. Not the slightest.

Mr. KER. He loaned Buell the money. Any doubt about that?

Mr. WILSON. Not the slightest.

Mr. KER. Does anybody know who Buell is? Everybody knows him. Brady did not take him for a millionaire. The money was loaned to Buell, Brady says. The Capital was purchased during the pendency of the investigation in Congress. Buell had not the means to pay Brady, and Brady took it off his hands after the investigation closed, if you please. It does not make any difference to me; any way at all that will suit you. He took it off Buell's hands. Buell had not the money to pay for it. But at all events it was purchased at that time, and immediately afterwards, when Brady was turned out of office, along came the Capital to be put alongside of the Republican, the Capital being a Sunday paper, so that Brady could, every day of the week, make a defense of his case. Gentlemen, there was not a second-hand newspaper anywhere in this city that was for sale that Brady did not buy. There were some of them that were not for sale, and some were not worth buying, and those he rented. They were not the only papers that he had control of. Every paper throughout the country that he could rent he rented. And in addition to that there was not a newspaper correspondent who was impecunious and without character that he did not buy up also. Everything to manufacture newspaper capital for Brady, who was pursuing the same course with the general public that his colleague, Senator Dorsey, was pursuing when he went on his impudent mission to the White House.

Mr. WILSON. Now, if your honor please, I simply want to know whether Mr. Ker is to be permitted to state things entirely outside of the testimony in this case. As to what he has just said, I undertake to say there is not one syllable of testimony in this case—not a syllable. If Mr. Ker is going to testify, let him be put on the stand and sworn. I shall have no objection to his swearing if we can cross-examine him.

The COURT. You say there is not a syllable of that in the testimony?

Mr. WILSON. Not as to what he has just said. He has said that he bought up the newspaper correspondents; who has testified about that? He has said that he bought up every second-hand paper in this town that was for sale; who has testified to that? He has said that he has bought up the newspapers throughout the country; who has testified to that?

Mr. KER. Rented them, I said.

Mr. WILSON. Rented them; who has testified to that? It is simply a question, if your honor please, whether the counsel for the Government is to stand here and state to the jury that as to which the court must know there has not been a syllable of testimony.

The COURT. Yes, the court knows that there has not been any evidence of that kind.

Mr. WILSON. Very well.

The COURT. Counsel will confine himself to the evidence in the case in regard to the newspapers.

Mr. MERRICK. I have just come in, having been at the office of the Attorney-General this morning, but I see the scope of the discussion. The evidence is that Brady himself purchased Buell and purchased the Capital and Critic.

The COURT. Yes.

Mr. WILSON. There is no controversy about that.

The COURT. Mr. Ker expatiated rather widely after that for a time about other newspapers in the country, and about impecunious correspondents that had been bought up. There is no evidence upon that. It is a flight of imagination, not founded upon the evidence in the case.

Mr. WILSON. I say it is not a flight of imagination, if your honor please. It is a misrepresentation of the evidence in this case, and that is why I protest against it. I have no objection to his rhetoric. But I shall not interrupt him further. He may make what misstatements he chooses.

Mr. MERRICK. I am very glad to hear counsel object, but I am sorry to hear him put it in the shape in which he does. I am glad to hear the objection, because we will now understand, from this objection, that in the course of the discussion counsel must be limited strictly to the testimony in the case. And I hope my brother who has just spoken with so much vehemence will recollect the rule, the enforcement of which he has asked, and which on all occasions has not been observed by him, though I do not believe he ever wantonly failed to observe it.

Mr. WILSON. The counsel need not read me a lecture. If I ever transgress the rule of court and the proprieties of this place by stating anything to the jury that is not a fact proven in the case, or which I have a right reasonably to argue is a fact proven in the case, I hope the court will at once reprove me for doing that. No counsel has a right to do it, and I do not think that I am amenable to any criticism of that kind.

Mr. MERRICK. At the last trial, during my absence, my brother criticised very severely the circumstance of the relation of counsel to a certain paper in this city, about which there was not one word of testimony.

Mr. WILSON. You are mistaken.

The COURT. Mr. Merrick, we have nothing to do with that. Mr. Ker, you will clip the wings of your imagination a little, and confine yourself strictly to the evidence in the case.

Mr. KER. I am very sorry that my temper is not so even as your honor's. I have been receiving from these papers their evident attentions. I know your honor has also, but your honor bears it better than I do.

The COURT. Those newspapers have not done anybody any harm except their owners, I guess.

Mr. MERRICK. I think it is turning out to be the case now. One of them is moribund at present.

Mr. KER. I do not want to indulge in flights of imagination, as his honor says. But I want to say this to my friend, Judge Wilson. I am sorry that I annoyed him at all, very sorry indeed, because there is no gentleman here whom I esteem more than I do him.

Mr. WILSON. Thank you.

Mr. KER. I entertain the highest esteem for him, and if it were ever my misfortune to get into trouble, I do not know of any gentleman whom I would sooner have to represent me than Judge Wilson; he is honest, manly, and able.

Mr. WILSON. Now, your honor, I must take back everything I have said.

Mr. MERRICK. It is the first time the judge has ever heard that about himself; he did not know it before.

Mr. WILSON. I am very much like Mr. Lincoln was at one time when having a discussion with Mr. Douglas. Mr. Douglas told the people he wanted them to listen to Mr. Lincoln, because he was a kind, amiable, intelligent, and able gentleman. Mr. Lincoln immediately replied that he was very thankful for that. Said he: "I like Hoosier gingerbread; I like it better and get less of it than any man I know of." [Laughter.]

Mr. KER. [Resuming.] The next one I will take up is John W. Dorsey. Mr. Dorsey in some things takes a prominent part, and in others a minor part in this transaction. I will give you his general testimony.

He says that he kept store at Benson, Vermont, a sort of hardware store, and then he traveled for some company; that he came to Washington in 1878. That was the first time he came here about mail contracts. You know the advertisement was in 1877, and they were getting everything ready at the time. In January, 1878, John W. Dorsey came over to Washington. He told you also that immediately after they had received these contracts Congress investigated the matter, in 1878. In this connection I want to read what Mr. Boone says, at page 1530:

Q. What did John W. Dorsey say to you at that time?—A. He said he wished he was out of the business and at home.

Now, gentlemen, remember that he said pretty near the same thing to Moore. When it came to his examination, he denied that he had ever said anything of that kind to Moore. But when it comes to Boone, who testifies to a somewhat similar conversation, Mr. John W. Dorsey does not deny it. On page 1531 Mr. Boone says:

A. Pending that investigation in Congress, I did say to Stephen W. Dorsey to keep John W. Dorsey and John R. Miner away; that I would attend to the business; that they knew nothing about it.

At that time, of course, Boone was in the concern, and his advice to Stephen W. Dorsey, who was then a Senator, was to keep those two men away (Miner and Dorsey) and he, Boone, would attend to the business. John W. Dorsey testifies that he started West in April, 1878. He also gave you some general testimony as to the different amounts of money he had, some \$500 or \$800, and he says:

I gave the money to Stephen W. Dorsey.

Upon being pressed to know why he gave it to Dorsey, and not to his partner with whom he had a written contract—not to Miner or anybody that was connected with him in the mail business—he said that he gave it to his brother; that “there was a private understanding” between them. He never put a dollar into the concern, so far as the testimony goes, and he never paid it out, like some others, for postage-stamps or printing, but he handed it over to Stephen W. Dorsey. Before he went out West he had made an arrangement with his brother. He says: “I gave my brother directions to sell out my interests for \$10,000.” Before he started West, before there was any service put on, and with these contracts were taken at such low figures, John W. Dorsey had raised his interest up to \$10,000, and that is the price he wanted to get for it.

He says, also, that he had a conversation with Vaile, and in that conversation he told Vaile that he was willing to sell out, and Vaile said to him, “How much will you take? How will \$10,000 do?” John W. Dorsey replied that he “would think about it.” That is on page 4102. At that early stage he had it pretty well fixed in his mind that \$10,000 was the extent of his interest and he wanted that sum for his interest in the business. I forget exactly how much he put in; \$2,700 or \$3,000 I think was the amount he put in the business.

Then, gentlemen, after Stephen W. Dorsey had bought John Dorsey out, had given him \$10,000, and made the arrangement with Vaile and Miner by which the interests were to be divided—I want to read you what John W. Dorsey says upon this subject, because it becomes a matter that is of interest to you, and I know it will be, for when his honor comes to instruct you I am sure he will tell you, as I said yesterday, that they could not divide up the routes among them, and have an agreement to supply all the ammunition to enable others to defraud the

Government, and then make a claim that they had no interest in it. At that very time they each was furnishing the other with the papers and other means by which the fraud was kept going along. They were still in the conspiracy, and they were still participating in it. Here is what he said, at page 4105:

Q. At the time you sold out, was there any understanding about your making papers?—A. That was a part of the agreement. I was to sign all the necessary papers to carry on the business.

Then, at page 4124:

By the COURT:

Q. You agreed to sign what?—A. All the necessary papers to carry on the business.

His honor saw the point at once and asked him about it to get a full and clear explanation, and he gave it to his honor just as clear as I have read it—that he was to sign “all the necessary papers to carry on the business,” and we will show you that he did sign all the necessary papers to carry on the business, and when he did not do it somebody else did it for him.

By Mr. MERRICK:

Q. Any papers that the parties having the routes might ask you to sign you agreed to sign?—A. All the necessary papers, and they claimed that these affidavits were necessary papers.

Q. Was that your agreement, or was it the agreement of all the parties that were engaged in that settlement?—A. I had nothing to do with that. I sold out for so much money, and that ended my connection with it.

Q. You sold out for so much money?—A. Yes, sir.

Q. In consideration of so much money you transferred all your interest in these contracts, and further agreed to execute any necessary papers in the course of carrying out those contracts?—A. Yes, sir; that was the agreement as I understood it.

So much for John W. Dorsey.

The next one whose general acts will be investigated is John R. Miner, (I do not see General Henkle here.) I suppose, gentlemen, you have a sort of recollection of John R. Miner. He was on the stand, and showed that he was a man of some intelligence, quick and nervous; he could neither sit nor stand, and when he got into any sort of a tight place, or when he said anything that he thought was peculiarly smart, he would shut his mouth and eject some spittle through his teeth. I often wondered how his ho'r stood it, because I saw him moving his feet away to keep from being hit. Miner went on and gave his testimony. In some respects it was very unique testimony, and will make very interesting reading. You know he says he used to come to Washington every winter; that he used to come here to get away from the air of the lakes; that he came here for “fun and recreation.” He had been in a manufacturing business, he said; he does not tell us what he was manufacturing; I think he said something, though, about wagons-pokes. He was in the manufacturing business in Sandusky, Ohio, and was the figure-head in a corporation to which Stephen W. Dorsey belonged. He said he was a director, a mere nominal thing, and, therefore, I suppose he was a figure-head, just as in some of these corporations, run by one man with the names of half a dozen attached. He had no interest in it, was only a director. He had formed the acquaintance of Stephen W. Dorsey. I do not know at what period of time it was that he formed the little acquaintance he had with the United States officials. You see he had branched out. He was a man that liked to make money; a man of energy and ambition. He had dropped the spoke business, had gone into the whisky business, and

while he was in the whisky business the United States paid its respects to him in the shape of a bill of indictment. Of course he says he was not near the place when the thing was done. Well, I suppose that is likely. It does not require a man to be near the place when he sends somebody else to do it. But he was brought up before the United States court while he was in Sandusky, a little irregularity in whisky—a conspiracy, I suppose, it would be called. I do not know what he would call it. At all events, when the time came he paid \$1,800 to the Government rather than be dragged through a trial. A very sensible thing for him to do. He paid the \$1,800, and there was a *nol. pros.* entered in that case.

Well, this was the man that came on to visit Stephen W. Dorsey. Mr. Dorsey at that time was a United States Senator, was a man of consequence in the community, a man who lived well, had a nice house, a fine establishment, and moved in good society. However that did not affect Mr. Miner at all, because when Miner came to Washington he hunted up Mr. Dorsey and always put up at Dorsey's house. Now, I do not know what claim Miner had upon Dorsey, but he must have had some claim that brought them together, because I do not think that Stephen W. Dorsey, bad as he is, is the kind of a man to associate with and bring into his family a man like Miner. However, Miner put up there, and he must have had some hold upon Dorsey, because, when the time came, Dorsey selected Miner as the man who was to go into these contracts.

Miner says that he knew Peck, that he talked to him in the spring of 1877 about going into the mail business. You remember the way he expressed himself—"Yes; I had a talk with Peck about it in the spring of 1877, and we concluded to take a fly at it." He did not explain what he meant by "fly." I suppose he meant to take it as a matter of course, one of those little things that a man sometimes takes in as a matter of business. A half a million or so did not amount to anything—take a fly at it. He came to Washington the 1st of November, 1877, and commenced to help Boone with the bids. You know he says he came here upon a letter from Stephen W. Dorsey. My recollection of the testimony is that Boone sent him out a lot of those blank proposals to fill up and a letter; that he answered the letter to Boone, and came on immediately after the letter, arriving here about November 1, 1877. There was an arrangement by which bondsmen were to be obtained. I told you, yesterday, that Boone said he was to furnish one bondsman, and did it. But Miner was also to furnish a bondsman. That becomes interesting when you remember the testimony of Stephen W. Dorsey, that Peck was a man who could have given bonds to the extent of a million dollars in Arkansas. But still they had to fall back upon Boone for one, and wanted Miner to furnish the other.

[At this point Mr. Henkle came into the court-room.]

Now, on page 4159, I want to read to you what Miner said in that connection:

Q. And you were to furnish your own bondsmen?—A. I intended to and endeavored to, but did not succeed, however.

Q. Why did you not succeed in procuring bondsmen?—A. Well, my acquaintances did not understand the business, and thought they were going to put a mortgage on their houses and lots when they went on bidding-bonds for mail contracts, and I did not press them particularly hard.

There is the estimate which his friends, neighbors, and acquaintances placed upon John R. Miner. [To Mr. Henkle.] General, you are here.

Mr. HENKLE. Yes, I am here to hear what you have to say.

Mr. KER. They thought they were going to put a mortgage on their houses; they did not understand the mail-contract business; but they did understand John R. Miner, and he could not get a solitary one to go on his bond. But, of course, after trying them all, he "did not press them particularly hard."

Then he says that he met Rerdell in 1877. He says that he came on here to Washington, went to Dorsey's house, and met Rerdell "hanging around Dorsey's house with some of these Arkansas fellows"—hanging on to Dorsey.

Another thing he says is that he sent Moore out to put on service. Well, that part of it is true, with the exception that Stephen W. Dorsey gave him some instructions, and Miner gave him some more, particularly about getting up petitions and fixing them so that some of the signatures could be torn off and pasted on to others. You saw some of those in evidence, and I will take pleasure in showing them to you again. Then he goes on to contradict Moore *seriatim*. I want to do him the justice to say that he stood up like a man, and said that what Moore said was not true; that there was "not any truth in it at all;" "none whatever," he says. On page 2223 is what Mr. Rerdell said:

Q. State all that conversation between you and Miner, what he said and what you said.—A. He stated that the service was in a bad condition; that in some cases they had failed to make subcontracts, and in other places they had not prepared for stocking it; that they could not do anything as long as Mr. Boone remained in; that General Brady was very hostile to Mr. Boone; that Boone talked too much, and that they would not be able to do anything until they got him out; that Mr. Vaile was coming in in place of Boone; that Mr. Vaile was an old contractor, and had plenty of money. He asked my opinion about taking in Mr. Vaile, and what I thought about how Mr. Dorsey would approve of his coming in.

Q. Did he say anything of Vaile's relations to Brady?—A. He did.

Mr. WILSON and Mr. HENKLE. I object to that.

The COURT. The objection is overruled.

Q. What did he say?—A. He stated that Mr. Vaile was very close to General Brady.

Of course Miner contradicts that, and says it is not so. But it bears out what was testified to by Boone, and the general arrangement as testified to by all the others. Brady was hostile to Boone, and the best evidence of Brady's hostility to Boone was that Boone had been a contractor for years, held eleven hundred post routes, and never had one expedited from the time he began to the present day. Eleven hundred—one-ninth of the whole star postal service of the United States, and not one route ever expedited. Dorsey held thirty-three, and there was not one of them, I suppose, that was not expedited to the fullest extent.

Mr. CARPENTER. That is not so, either.

Mr. KER. He says he met Vaile in 1878. On page 4162 is where he testifies:

Q. When did you first make the acquaintance of Mr. Vaile, and where?—A. I probably met Mr. Vaile in the spring of 1878, though the acquaintance was merely casual, and made no great impression on my mind. I next met him about the 20th of July, when I returned from Denver; the 23d or 24th probably, according to some checks that are in evidence.

Here, you see, he was in Denver, the very place where Moore says he met him, and where he had the conversation in which he said, "They are all good affidavit men, and they propose to make a pretty good thing out of it."

Q. Did you consult him with regard to your business?—A. I did.

Q. Here?—A. Here.

Q. Why did you consult him?—A. Well, I was ready to consult anybody that would help me out of the difficulty I was in.

Q. What was your difficulty?

This was his examination-in-chief.

A. I had a large amount of service that had not been started, and I was threatened with being declared a failing contractor, and was without the available means to put the service in operation, and was trying to give it away to anybody that would take it as a holy gift. Among others, I offered to give it to him. He declined to take it.

He was then being examined in chief, and he says that he offered to give it to Vaile "as a holy gift." I do not know what he means by a holy gift, but when you come to see what he did do, I think it amounted to a "wholly cut out" for Stephen W. and John W. Dorsey; and if it had not been that the Senatorial term expired, and that Stephen W. Dorsey was not the kind of a man to suffer himself to be cut out, I think it would have been a gift that would have wholly left them all out. On page 4166 he says, speaking about Boone going out:

A. He went out for the purpose of making a place for whomever had means to carry on the service. Vaile and Boone were not friendly, and had not been for some years. I could not mix them.

You see how he stuck to his old whisky business—"I could not mix them." He had been used to mixing whisky, but Vaile and Boone were too much for him. [Laughter.]

Q. Did you inform Mr. Vaile at that time that Mr. Boone had had any interest in these contracts?—A. I did not. I did not inform him of anything that I thought would keep him out.

Q. Why did you not tell him the fact about Boone?—A. I was afraid it might keep him out, and I was very anxious to get him in.

A friend of Stephen W. Dorsey's, who used to come to his house and stop for fun and recreation, was anxious to get Vaile in. Then, he says that he met Brady—I am giving you this as it comes along, according to the dates. At the bottom of page 4170:

Q. When did you first make the acquaintance of General Brady, and how?—A. As to acquaintance, I was in General Brady's office in the summer of 1877 with regard to a patent mail-fastener—

He had been in the patent business, too—

and saw him perhaps three or four minutes, and was referred to the head of the division that had charge of that matter. The next time I saw him was in July, 1878, when I went in to see him to try and explain why the service had not been begun, and got bluffed near out of my boots—

He went first to see about the mail-fastener, and Brady took no stock in it, but handed him over to the chief of the division. The second time when he went to see him, I suppose they had a little game of skin euchre, and Brady "bluffed him out of his boots"—

and I never spoke to him again, I think, until the spring of 1881, when I went to see him about a box at the theater.

I suppose he wanted a dead-head pass to the theater, and went to Brady about it, as he was a newspaper man. On page 4164 is a short paragraph which I will read to you, to show how Mr. Miner testified:

Q. Did you consult Mr. Dorsey and Mr. Peck about making that contract?

That is, the contract with Vaile:

A. I wrote to them immediately after Mr. Vaile gave me these propositions to put in, asking their assent to such an arrangement if I could effect it, and they responded favorably.

On page 4225—you see a little time had elapsed, and it was not quite such plain sailing in the cross-examination as it had been when he had General Henkle to talk to him in his mild and persuasive way—here is what he says in regard to that:

Q. Did John W. Dorsey and Peck know anything about the execution of those subcontracts, or did you do it in fraud of their interest?—A. I do not remember whether they knew anything of it or not. I did it by virtue of the power of attorney which they had given to me for the purpose of protecting Mr. Vaile's interests.

Now, there is his testimony. In one place he says he did notify them and they agreed, and in the other place, on cross-examination, he says he did not notify them. He had forgotten what he had testified to before, so he answered the last question in that way.

In the last part of April, 1878, there was a quarrel because of Vaile's coming in and filing the subcontracts. I read from page 4168 :

We had filed the subcontracts of the carriers on other routes, thereby cutting out the drafts to the bank and allowing the notes to go to protest. Mr. Dorsey was very angry that that had been done, and his credit impaired. They were both of them very obstinate men, and the fire flew pretty lively. I was sort of between them. Dorsey was angry at me because I staid with Vaile, and there was a grand row.

The fire flew and there was a grand row. Then, on page 4225 :

Q. That quarrel was going on all through the winter of 1878-'79, was it?—A. That quarrel was hot during December. During January and February, so far as I now remember, there was no meeting between the parties at all. They kept apart from each other so far as I know. I know I did not see Senator Dorsey during January and February. I say I know it. It is my best recollection that I did not see him, and so far as I know Mr. Vaile did not see him.

On page 4169 he gives us the terms of the division :

A. We took a list of the routes, and estimated their value or non-value (plus or minus). We then drew straws or cuts for choice, and each selected in turn a route. When we had gotten through we charged each party where routes were of any value, and gave them credit where they were a loss. Mr. Vaile had 40 per cent., Dorsey 30, and myself 30. This occurred some time in March, 1879, previous to the 29th, as I know by some memoranda. Then, after the quarter was ended, and the expenses of the routes that we were running upon had been approximately ascertained, together with the fines, deductions, &c., we apportioned the debts in the same way each agreeing to pay the same percentage of the debts. And finally, on the 5th of May, as I see by some papers that are in evidence, the actual, final separation was completed.

Again he says that after that they signed the papers On page 4184 :

Q. After the separation did you write any letters to the department on business pertaining to either of your routes, and sign the name of Peck or John W. Dorsey?—

A. After the separation on routes that belonged to Vaile and myself, if Peck or Dorsey were the contractors, I signed their names, as I was empowered to do, by power of attorney. I wrote no letters to the department upon routes that belonged to Dorsey after the separation.

Q. Do you know whether anybody took the same liberty with your name upon routes upon which you had been contractor, and which passed in the division to Dorsey?—A. It was so testified in this case, and it is correct. Mr. Dorsey's agent, whoever he might be, was authorized to sign my name in correspondence on any route upon which I was the original contractor, but which now belonged to Dorsey.

Q. Did you authorize him to use your name in that way?—A. I did.

Q. And you were authorized by power of attorney to sign the name of these other gentlemen?—A. I was.

Q. Did you use the names of either Peck or Dorsey for any other than these formal purposes?—A. I never used it except in letters—correspondence.

Q. Did you write their names?—A. I never wrote their names to any paper other than letters which I was authorized to write.

He says that he put in \$800 or \$1,000, and at the division he got 30 per cent. He having put in \$1,000, the contracts only having been awarded at that time, no service having been put on, and nothing at all having been done by him except probably to sign his name, no bondsmen furnished, or anything of that kind, he was asked how it came that he got 30 per cent. of the routes. He said, "Well, I probably made a pretty good bargain." He had no other explanation to make. John W. Dorsey put in \$3,000, according to his story, and there was Peck's

interest. Miner got 30 per cent. of the routes and Vaile got 40 per cent., and only 30 per cent. of the routes went to Stephen W. Dorsey. You will remember, gentlemen, that in this division Vaile said to Miner that Miner could go with Stephen W. Dorsey, or he could go with him, Vaile. Miner said, "We took our routes, Vaile's 40 per cent. and my 30 per cent., and we put them together." That was the way that Miner took to recompense the man whose bread and butter he had eaten free. When the time came in which they were hostile to each other, when they came to have the division, when they were quarreling, when they were fighting, then Miner took sides with the wealthy Vaile and deserted his old-time friend Stephen W. Dorsey. He left Dorsey and went with Vaile. He said near the close of his cross examination, when he was cornered so very tightly about Captain Jackson going up and talking to him, "Why, he came and wanted me to plead guilty." I think, gentlemen, if the Government had been disposed to give him a show at all, he would have deserted Vaile and the whole crowd, and turned on them.

I want to show you another characteristic of Mr. Miner. He had lived in the house with Dorsey and Rerdell, and finally Rerdell and Miner went to live together. I read from page 4182:

Q. What were your relations with Rerdell in the spring of 1879?—A. I had a quarrel with Mr. Rerdell in the spring of 1879, and I did not speak to him at all from that time until after the finding of the indictment.

Q. What time in the spring was that?—A. Well, the quarrel with Mr. Vaile began on the 8th of May, as I find from reference to letters. It was about that time. I remarked to him on Pennsylvania avenue one day that if he ever spoke to me again I would mash the nose all over his face. He obeyed me, and did not speak to me after that.

There is the man that Brady "nearly bluffed out of his boots." When he met Rerdell on the avenue, if you will believe what he says here, he told him he "would mash the nose all over his face;" and exhibiting something of the egotism that belongs to the whole crowd, he says:

He obeyed me, and did not speak to me after that.

The next man to take up is Mr. Vaile himself. Mr. Vaile had been a lawyer. He lived in Independence, Missouri. That is the place where the James boys came from, and where they steal horses. Vaile says he went into the mail business in 1861. At that time he put in his bids in the name of a relative, a man named Sprague. Vaile went on the bonds. Sprague was what they call a "dummy." He allowed his name to be used, for a judgment obtained against him would not amount to anything. Vaile says, "I never saw Peck at all. I never have met Peck." Remember, Peck did not come to Washington, and after 1876 never was near here. He says, "I did not see Peck at all." He also says "At the time I went into this business, or was talking about going into it, I did not know the condition of these routes. I did not know the condition of these routes when they offered the contracts to me." He says that he got a telegram from Brady on the 20th of August, 1878, and that three days after that he telegraphed back to Brady that he would take all the routes of Dorsey, Miner, and Peck, but not of Watts. Watts had originally started in the thing, but, like Boone, they shook him off and got rid of him, boiling the combination down to active business men who had a good pull with Thomas J. Brady. There was a partnership agreement entered into. It will be found on page 4013. It is dated the 16th of August, but it was really made in October. It was written out by John R. Miner:

This agreement, dated the 16th of August, 1878, by and between H. M. Vaile, of Independence, Missouri; John R. Miner, of Sandusky, Ohio; John M. Peck, of Col-

tax County, New Mexico; and John W. Dorsey, of Middlebury, Vermont, witnesseth as follows:

I do not want to read it all to you. I will only read a part.

3d. Said J. R. Miner is hereby made secretary of the said copartnership, and shall keep an accurate record of the receipts and expenses of the company, and of correspondence with subcontractors and others.

It appears to me that was a direction for him to keep what they have not produced, what counsel say they will not give you, and what some of them have denied—books. There were no books produced, but in this very agreement Miner was to keep the books:

6th. The subcontracts heretofore made between John R. Miner and H. M. Vaile on routes 32020 and 32021 are *bona fide*, and this copartnership have no interest in said routes.

Now, gentlemen, what does that mean? We are at liberty to interpret this agreement. He goes in with the other parties in August or October, 1878, as to the routes specified, and there is to be ostensibly, a partnership between these people. Now, mark you, it was really a partnership with Stephen W. Dorsey, and Vaile knew that when the time came there would have to be a division in which Stephen W. Dorsey would get his share. To provide for that he says that the routes given by Miner to him, Vaile, mentioning them, are *bona fide*, which in plain English means that those two routes were given in good faith, and also some two or three others specified, but all the rest were held by the terms of that agreement, and by another agreement that was not reduced to writing. Is it not the plain meaning of this agreement, or who would doubt that there was an understanding between them, and they were providing for the contingency that would arise on the 4th of March, 1879, when Stephen W. Dorsey was to go out of the Senate; and when that time arrived the routes that Vaile then held were to be given up, excepting the ones that this agreement states he held in good faith. The rest were not held in good faith. Then he says he had a quarrel with Dorsey, and that there was a division of the routes. I want to read to you what he says about it on page 4017. I will not read the question. I will start with the answer:

A. I met Senator Dorsey here early in December, and the question of cutting out the drafts given to the bank came up. I believe he was indorser on notes there.

Q. Upon which these drafts were collateral?—A. Upon which these drafts were used for collateral; and he thought I had—

Q. [Interposing.] What did he do, Mr. Vaile?—A. He accused me of taking the advantage. I considered it was a proper thing for me to do, as there was some \$11,000 to \$13,000 only in money, and I think some \$30,000 of these drafts pledged.

On page 4118 he says further:

Q. Now, can you recall when you had the next meeting with reference to an adjustment of the differences between you?—A. I have no recollection of meeting him again until about the 5th or 6th of March; it is possible I may have met him during the winter, but I have no recollection of it.

Then, at the bottom of that page:

By the COURT:

Q. What time was this, did you say?—A. About the 6th of March, immediately after Mr. Dorsey went out of the Senate; I think it was on the 6th of March. I know I intended to reach here immediately after the 4th and get it fixed in some way.

By Mr. HENKLE:

Q. I want to know, from the state of feeling between you and Senator Dorsey, whether you had determined that you would not go on in business with him or not?—

A. I had; nothing on earth could have made me go on with him.

Now, gentlemen, what did he mean by that? If he had not been

going on with Dorsey what did he mean by saying that nothing on earth would make him go on with him?

Q. Then you were determined to have a separation?—A. That was my determination.

Q. And you say it was with that view that you called upon him at his house?—A. It was.

Q. And you made him a proposition which he accepted?—A. He at first refused, but subsequently accepted it.

Q. Who were present when this final settlement and division was made?—A. Mr. Miner, S. W. Dorsey, and myself.

Those three. No John W. Dorsey and no Peck—only those three.

Q. Anybody else?—A. Nobody else that I recollect of. I don't think there was.

Q. When did you next see Mr. Dorsey?—A. We divided the routes in March, and it was then agreed that I should collect the money on all of them for the quarter ending 31st of March and liquidate the debts so far as that would go, and then the final separation should be made perfect. I may have seen him about the 4th or 5th of May. The collections were made the last days of April, or the first days of May. As soon as they were made we knew, as we supposed, our status, and the separation was made final, and I never saw him after that until June, I think, 1881, and then only for a moment.

I call your honor's attention to the date he mentions as when it was finally accomplished, in May, after the amendment to section 5440 had been made:

Q. How did you say the debts of the concern were divided?—A. In the same ratio of the routes.

Q. I want to know whether you took certain indebtedness, and Mr. Dorsey took certain indebtedness?—A. We did.

Q. You apportioned the indebtedness in that way?—A. We did. I, of course, was to pay myself, and Dorsey was to pay himself, and he was to pay John W. Dorsey and Peck. I was to pay the bank and did. There may have been something else. I do not recollect now.

Now, if your honor please, may we take our recess?

At this point (1 o'clock and 3 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. KER. Gentlemen, the next point in Mr. Vaile's career is his general explanation as to how he came to go into this matter, under what terms he took the routes, and his motives in general for coming in to assist in contracts that at that time were in very bad shape. The best way to show you how he came in is to read to you what he says himself, and then I will make no mistake, and not misquote him. I read from page 4047:

Q. Why did you except Watts from the number of those inquired about by Brady, whose contracts you declined to take up?—A. I hardly know what kind of an answer you want.

Mr. BLISS. Give us the truth.

Mr. MERRICK. Tell us the fact.

A. But the fact is that I had become, by reason of the calamity that was resting upon Miner's head, a good deal interested in him, and he seemed to be in charge here of the Miner, Peck, and Dorsey contracts. I knew nothing of Watts whatever. And again, I thought that was just as big a load probably as I could stand, although large and strong myself.

Q. And as you have said you could not say that you knew how many or what routes Watts had, why did you except him on the ground of not wanting to take too much load?—A. I did not know whether it was many or few that he had; but this obligation that I had taken upon myself for these three parties was quite enough for a man of my status and caliber.

Q. You assumed that liability simply from the sympathy that Mr. Miner had excited in your breast, you stated on your direct examination?—A. Yes.

Then, again, on page 4053 :

Q. If you were in that position in which you could have let them fail by declining to take up the service in August, and could have had the contracts with all the profits to yourself, why did you go on and take up the service without allowing them to fail, and with an obligation to divide the profits?—A. Well, Mr. Miner offered me all those contracts. I could have had them absolutely by a subcontract, without anybody else having any interest in them whatever, and I did not want to cut him out. I knew that other parties had advanced the money, or I supposed they had, and I thought to myself, not being over selfish, if I could do this and not lose any money I would be willing. I was not ambitious to lose any money, but if I could do it and save myself I was willing to do it.

Q. But would you not have been more likely to save yourself if you had taken all the profits than by taking only 40 per cent.?—A. Oh, yes; I could have made a great deal more if I had just let them fail and picked them up again. I could have made a great deal more if I had gone into a conspiracy with some of the other contractors who were here. There were very few who were able to put on the service. If I had gone into the conspiracy with them and parceled the contracts out and run them up to a very high figure for the basis, saying, for instance, to Salisbury, "You take these routes in Oregon," and to somebody else, "You take the routes in Arizona," and others to others, by that kind of a conspiracy I could have made very large money, but I did not see fit to do it.

Q. You did not go into that because of your sympathy for Miner?—A. Oh, well, I never brought any scandal into any business that I was engaged in. This irregular way of doing things has never pleased me.

Q. Your sympathy for Miner led you to take these contracts up, did it?—A. That was the beginning, and I could mention other things.

Q. What other things?—A. Well, now, a man gets no credit for that which I should mention, because here in Washington City it is very hard to believe. I did not want to take any advantage of the Government in any way. I knew that if these contracts failed the Second Assistant would necessarily have to run up the line—"offer them up," as we call it—and as it was late in the fall no one would take them without perhaps three, four, five, six, or may be ten times the price of these bids; and then they were of such a character that they must necessarily be expedited and increased, and instead of having the sums which we have now in this case it would have amounted probably to very large sums, and as this has made a scandal I do not know what on earth that would have made.

Q. Were you under any more obligations than any other citizen to save the Government from loss in that way?—A. Not a particle.

There, gentlemen, there is the secret of the whole matter. Mr. Vaile said that he gave Miner an offer before he went home, so that if they were declared failing contractors on these routes Miner could put in the offer of Vaile to carry the mail. They were not declared failing contractors. Vaile was willing to go into it because of his great affection for Miner. But he tells you, also, the true reason. He says, "These routes were of such a character that I knew they must necessarily be expedited and increased." How he got that knowledge, how he knew that they must be expedited and increased immediately after they were let, is a question that I will leave to you to solve. I have my own idea about it. Mr. Vaile never heard of expedition before. Nobody ever heard of expedition on a route before, and yet, right after the service should have been put upon the routes, Vaile said "I knew they were of such a character that they must necessarily be expedited and increased." I think, as far as that goes, that Mr. Vaile was testifying to the truth, because he knew from Mr. Miner, he knew from Mr. Dorsey, and he knew from Brady and the people who were engaged in it, that the arrangement was that the routes were to be increased and expedited. John Dorsey has given the explanation that the routes were taken low so as to cut out other people, but that they knew they were to be expedited and they knew they were to be increased.

Now, I have given you this general outline of what has been testified

to by the different people who were engaged in this conspiracy, so as to bring your attention down to the facts that will be offered as I go along, and so that you can apply what I have refreshed your memory with, and see how well, how concisely, and how ingeniously it fits into the different acts that were performed by the different parties. I will go over these routes in a short way, and explain to you again the orders and the circumstances attending them. I know that you could never arrange in your mind, nor could any of the counsel engaged in this case, no matter what his ability may be, all the mass of testimony that has been offered to you, and all the facts and circumstances attending each particular order on each particular route. I will endeavor to trace them up and bring them back to your recollection, and refresh your memory about them, putting the acts in consecutive order according to dates, so that you can see how it was all managed. I know, when the facts are brought to your attention, there can be but one conclusion in your mind, and that will be the conclusion the Government officers arrived at long before I came into this case, and long before my colleague, Mr. Merrick, came into the case, that the Government has a good case against these people, and that they are all guilty of the acts that are alleged against them.

Route 34149, from Kearney to Kent. Nebraska.

This is a route that was taken by Vaile and Miner in the division. It was one hundred and twenty-five miles long, one trip a week, and the time was sixty hours. John M. Peck was the contractor, and the pay was \$868.

March 4, 1878, there was a letter from Peck to Brady to send the contracts to lock-box 714, Washington. May 3, 1878, Brady ordered:

From July 1, 1878, embrace Fitzalon next after Sweetwater.

June 5, 1878, a subcontract was made with C. H. French. September 24, 1878, Brady ordered:

Allow contractor \$112.24 per annum additional pay for fifteen miles increase for Fitzalon from July 1, 1878, being pro rata.

February 1, 1879, Peck's oath was made. February 2, 1879, there was an offer from Peck to carry the mail on a reduced schedule of thirteen hours. March 8, 1879, Vaile's subcontract was filed. April 3, 1879, the oath was put in the office. July 10, 1879, Brady made an order increasing the service from Kearney to Loup City, seventy-five miles, and expediting the schedule to thirteen hours. February 7, 1882, Vaile sent a letter to the office about the subcontract of French. These are the official dates. I do not know whether you have your maps or not, but I would like to have you take these maps and look at that route, so that you can understand what I am telling you about.

The FOREMAN [Mr. Crane]. It is as well photographed on my mind as if I had the map.

[The maps of this route were then distributed to the jury.]

Mr. KER. This route was one trip, sixty hours, and was one hundred and twenty-five miles long. On March 4, 1878, there was a letter from Peck to Brady to send the contracts to lock-box 714. Mr. Boone wrote the body of that letter and Stephen W. Dorsey signed Peck's name to it.

On the 3d of May, 1878, Brady made an order to embrace Fitzalon next after Sweetwater from July 1, 1878. You see Fitzalon was already on the route. It was an office that had not been mentioned when the contract was given out, but it was already on the route. There was no

order made for any pay at that time, but just simply to embrace it upon the route.

On the 5th of May, 1878, John W. Dorsey wrote the following letter to French, which is marked 14 A on page 611 :

[John W. Dorsey & Co., mail contractors.]

BRANCH OFFICE,
Kansas City, Mo., 5, 6, 1878.

DEAR SIR: Your favor of the 1st is received, and we would say that as others have bid lower, we could not accept yours. The first man who will bid \$700 for one round trip per week, \$1,300 for two trips, \$1,800 for three trips, and \$3,300 for six trips per week, if the service is increased, and if the time is expedited, we to pay him 65 per cent. of the increased pay, can have the contract. Hoping we shall hear from you again soon, and that you may be the lucky man,

We remain yours, truly,

J. W. DORSEY & CO.

This letter he wrote to French on the 5th of May, 1878. On the 5th of June, 1878, one month afterwards, there was a subcontract made with C. H. French. That was one of the subcontracts into which Mr. Boone said he put the expedition clause that Stephen W. Dorsey told him to put in. It provided, in case of expedition, that 65 per cent. should go to French. John W. Dorsey signed the contract as the attorney for Peck. At the same time that he was there making the contract he also had a conversation with French. This was the 5th of June, 1878.

I read from page 697 :

Q. [Resuming.] Did you ever have any such conversation with him?—A. Yes, sir.

Q. When was it?—A. On the night I made the contract with him.

Q. What was that conversation? Give it to us as near as you can.—A. In talking to him and trying to get a larger price for carrying the mails, and making my statement plain now why I wanted him to do this, I told him of my having to supply Cedarville before always by side supply, and we wanted he should do all he could to get this office from this next route. He said he would, but he would not promise to do it, but if I could make arrangements with the postmaster at Cedarville, they would never object to my supplying it by side supply.

This is a conversation that John W. Dorsey does not deny, and therefore it stands as an undisputed fact. He told French that if he could arrange with the postmaster to supply Cedarville by side supply, as there were no mail bills coming from there, and as there was no means of knowing whether or not——

Mr. HENKLE. [Interposing.] I desire to call the attention of the court to the fact that my recollection is that his honor ruled that conversation out.

Mr. MERRICK. Where?

Mr. KER. Let us have it. Find it.

Mr. HENKLE. I will try to find it. I want to call attention to it now. If I do not find it, very well.

Mr. KER. I will go along, and if you find it just let me know.

Mr. HENKLE. Go on.

Mr. KER. Now, after having put Fitzalon on the route, on the 24th of September, 1878, Brady ordered, on page 589, 11 A.

Allow contractor \$112.24 per annum additional pay for fifteen miles increase for Fitzalon, from July 1, 1878, being pro rata.

You know that Fitzalon was already there, and there was no occasion for making an allowance of fifteen miles for the service that they were already performing. The subcontractor testified that he always went by way of Fitzalon; he always passed through there, and it had al-

ways been on the route. Still there were fifteen miles added and an additional allowance of \$112.24 for dropping the mail at a place where he had always dropped it.

The next was on the 22d of October, 1878. There was a letter from Peck to French. It is marked "34 A," and found on page 668:

WASHINGTON, October 22, 1878.

C. H. FRENCH, *Loup City, Nebr.*:

DEAR SIR: Every office on the route must be supplied or a reduction will be made, *provided* the fact that the office has not been supplied is reported. The only way to manage such difficulties as you have is through the local postmasters. You can supply an office once a week by a side supply, provided the postmaster at that office is satisfied and don't kick. The department will not authorize it, but they will not find any fault unless reported. It is better to send petition for increase to your Senator, but notify us when you have done so, that we may help it.

Truly, yours,

JOHN M. PECK, *Contractor.*

Now, you see the statement there made. Cedarville ought to have had as many mails as the other points between, according to the order, but they were going to supply it only once a week "if the postmaster did not kick," and the proper way, of course, to prevent the postmaster from kicking was to make it an object to him not to kick. That letter is signed John M. Peck.

The COURT. Who signed the name?

Mr. KER. I am coming to that point. Miner wrote and signed that letter.

The next in order is dated January 28, 1879. It is marked "21 A," and is found on page 613. I will read it to you:

LOCK-BOX 714, WASHINGTON, D. C., *January 28, 1879.*

C. H. FRENCH, *Loup City, Nebr.*:

DEAR SIR: Yours of the 23d received. There is little probability of increase in service until after first of July, as the appropriation is nearly or quite exhausted for this fiscal year. I will do what I can to have Cedarville put on another route. Cannot promise that it will be done by any means, and in any event it is likely to take some time.

Yours, truly,

JOHN M. PECK.

Gentlemen, that letter was written by John R. Miner. The next is dated February 1, 1879, and is the oath 3 A on page 571. I will leave the heading off in reading it, but it may be put in the record.

CHICO SPRINGS, N. MEX., *February 1, 1879.*

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General:

SIR: The number of men and animals necessary to carry the mail on route No. 34149, from Kearney to Loup City, three times a week on the present schedule, is two men and four animals. The number necessary to carry the mails on that part of said route, on a schedule of thirteen hours three times a week, is six men and fourteen animals.

Very respectfully,

JOHN M. PECK.

TERRITORY OF NEW MEXICO,

County of Colfax, ss:

On this first day of February, 1879, personally appeared before me John M. Peck, and, being duly sworn, deposes and says that the above statement is true, as he verily believes.

Witness my hand and seal.

J. S. TAYLOR,
Notary Public.

Now, you know the increase was made from Kearney to Loup City—about half the distance. It was not made all the way up to Kent, but only on that part of the route. Here is a statement of the number of men and animals then used and the number of men and animals that would be required to carry it in thirteen hours. The body of this oath was written by Miner. Miner gives his explanation of how it was done, on pages 4228 and 4231:

Q. I do not know whether this affidavit, 3 A, has been handed to you or not. I think it has.—A. It has.

Q. It will do no harm to have you repeat. Tell me in whose handwriting that affidavit is?—A. That affidavit is entirely in my handwriting, except the signatures, which are not in my handwriting.

Q. Entirely in yours?—A. Entirely.

Q. Was that affidavit all written at the same time?—A. So far as I remember it was, about the same time.

Q. Do you see anything in the paper to refresh your recollection?—A. I say *about* the same time. It evidently was not written continuously.

Q. It evidently was not written exactly at the same time?—A. Not exactly at the same time.

Q. It was written, you say, at two periods, whether remote or near you cannot tell. What part of it was written at the same time?

Mr. HENKLE. Let him answer the first part of your question.

A. I have already answered that the appearance of the paper would indicate that it was not written at identically the same time.

Q. Tell me what words in that affidavit were written at one time and what at another.—A. The body of the affidavit was evidently written at one time, and the words "two," "four," and "six" were apparently written at another time, judging from the space there is between those words and the next.

The numbers "two," "four," and "six" were the numbers of the men and animals.

The COURT. Does he say anything about filling up the "fourteen?"

Mr. KER. In that affidavit?

The COURT. Yes. Does Miner say that the word "fourteen" was filled up afterwards?

Mr. KER. No, sir; he speaks only of the two, four, and six.

The COURT. Fourteen is there also.

Mr. MERRICK. They were all filled up afterward.

Mr. KER. I read now from page 4239:

Q. Now, I will ask you about another affidavit. I show you the paper marked 9 A; probably that will refresh your apparently failing recollection. What is that paper?—A. It is a proposal to carry the mail on route 34149.

Q. Is that the same route mentioned in the affidavit?—A. The same route.

Q. What day does it bear date?—A. The 2d of February, 1879.

Q. What is the date of the file marked on the back?—A. April 3, 1879.

Q. The same date as the affidavit?—A. Yes, sir; they were filed at the same time.

Q. In whose handwriting is the second paper?—A. It is mine.

Q. Is it all yours?—A. All mine.

Q. Do you not recollect sending that affidavit?—A. I do not.

Q. Does not that paper refresh your memory at all?—A. It does not. If you want me to tell what I believe about it I can do so.

Here is his explanation about the affidavit, admitting that those words in the affidavit were filled in at different times. The affidavit is headed Chico Springs, New Mexico, February 1, 1879. On the 2d of February, 1879, is the offer of Peck to carry the mail on a reduced schedule of thirteen hours. It is marked 9 A, and will be found on page 582:

WASHINGTON, D. C., February 2, 1879.

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General:

SIR: I hereby offer to carry the mail on route 34149, from Kearney to Loup City, three times a week, and once a week the residue, at pro rata, and on a reduced sched-

ule from Kearney to Loup City of thirteen hours for an additional compensation of \$2,200 per annum for the expedition, being less than pro rata.

Respectfully,

JOHN M. PECK.

Gentlemen, this letter of John M. Peck's was written and signed by John R. Miner. The oath was dated February 1; this letter was dated February 2. If you will believe what Miner told you, he had to send the oath of February 1 to Chico Springs to be there sworn to, yet it must have been brought back from Chico Springs to Washington so as to reach here the next day, in order that Miner might write the offer that he tells you he wrote.

Mr. HENKLE. Excuse me for a moment. I desire to call the attention of the court to page 614, referring to Cedarville:

By Mr. BLISS:

Q. You did supply it in some way, did you not?—A. I supplied it from Loup City.

Q. Did he tell you not to supply the office at all?—A. He told me I could supply it by side supply if I could make the arrangement. I had been carrying that mail for ten months, and always made a side supply.

Q. Mr. Dorsey told you then you would have to supply it direct?—A. If I could not make the arrangement.

Mr. INGERSOLL. I object to that way of examination.

The COURT. I shall sustain your objection.

Now, passing along;

Q. Just what did Mr. Dorsey say to you in connection with that matter?—A. He said that I would have to make arrangements with the postmaster, or supply it going and coming both ways.

By Mr. HENKLE:

Q. With whom do you mean?—A. With the postmaster at Cedarville. I was talking with him in regard to supplying it with a side supply.

Q. You said you could not do that unless he arranged with the postmaster?—A. Yes, sir.

The COURT. I do not perceive the relevancy of this.

Mr. DAVIDGE. [Facetiously.] It may be connected hereafter.

Mr. BLISS. That is true. Mr. Davidge is right for once.

Mr. HENKLE. Then we object to it.

Mr. BLISS. If he is right, do you object to it?

Mr. HENKLE. His honor says he does not see the relevancy of it.

Mr. DAVIDGE. I have been in that frame of mind for some time.

Mr. BLISS. It is not important, any way.

Mr. HENKLE. There is a great deal to follow that has no more connection with the case than this. Is that ruled out, your honor?

Mr. BLISS. We do not care for it. Let it be stricken out.

The COURT. Then all that may go out.

The COURT. Was that the conversation between French and the postmaster?

Mr. HENKLE. Between French and the postmaster. Now, further along, on page 616:

Mr. WILSON. Now, Cedarville was on the line of this route. What they are trying to prove before this jury is a higgling between Mr. French and John W. Dorsey, in which John W. Dorsey insisted upon his carrying the mail by Cedarville, according to the contract. But Mr. French said the road was too rough, and he could not go that way, and he wanted to give it a side supply. That is the sum and substance of it. Dorsey was insisting upon his complying with the contract as it had been advertised and let. How that can be relevant to this case I am unable to conceive. The Post-Office Department had fixed the lines. I cannot for the life of me see any relevancy in it.

The COURT. I cannot see any relevancy in it either.

Mr. BLISS. It is not a matter of any great importance.

The COURT. It may be stricken out.

Mr. DAVIDGE. All about Cedarville?

The COURT. Yes; and the conversation between him and the postmaster.

Mr. BLISS. Between him and Dorsey about Cedarville?

The COURT. Yes.

Mr. MERRICK. This was a conversation with Dorsey and not with the postmaster. Subsequently the same thing was established by a letter of Miner's to supply Cedarville three times a week, or see that the postmaster sent no more registers.

The COURT. That is not the question.

Mr. HENKLE. That is not the question. His honor ordered the conversation between the postmaster and French to be stricken out, and afterwards this conversation with Dorsey.

Mr. MERRICK. Now look at page 697:

Q. [Resuming.] Did you ever have any such conversation with him?—A. Yes, sir.

Q. When was it?—A. On the night I made the contract with him.

Q. What was that conversation? Give it to us as near as you can.—A. In talking to him and trying to get a larger price for carrying the mails, and making my statement plain now why I wanted him to do this, I told him of my having to supply Cedarville before always by side supply, and we wanted he should do all he could to get this office from this next route. He said he would, but he would not promise to do it, but if I could make arrangements with the postmaster at Cedarville, they would never object to my supplying it by side supply.

Q. Did you arrange with the postmaster?—A. I did, and I always carried it that way, too.

Q. Both before your contract was made with Dorsey and afterwards?—A. Yes, sir; I was a carrier before.

Mr. INGERSOLL. I withdraw my objection to that question.

The COURT. [Facetiously.] You had better insist upon your exception.

Mr. HENKLE. I want to call your honor's attention to what was said by the court on page 654.

Mr. MERRICK. What is the question before the court first?

Mr. HENKLE. I am presenting a question to the court now. Mr. French was on the stand and was asked:

Then, after reading something:

I desire to move, your honor, to strike from the record those remarks. I think they ought not to have been made.

The COURT. There is no part of it that I like better.

Mr. HENKLE. I make the motion to strike it from the record, and upon your honor declining I take an exception.

The COURT. You cannot strike from the record what the court says. You can take an exception to it.

So it was in the record and not struck out; it was in, in the most emphatic shape, when it came in the second time.

Mr. HENKLE. The court did strike it out.

Mr. MERRICK. The court did not, the last time. It is all in.

Mr. HENKLE. I simply want to call attention to it now. I will present the matter again hereafter.

Mr. KER. I was giving Miner's explanation about the oath of Peck, dated the 1st of February, 1879, and sworn to at Chico Springs, New Mexico, and the offer to carry the mail, signed on the next day by John R. Miner. I want to read to you now from page 4231 in continuation:

Q. Did you read the paper?—A. I did sufficiently to know what it is.

Q. Let me read it to you and call your attention to it a little:

“WASHINGTON, D. C., February 2, 1879.

“Hon. THOMAS J. BRADY,

“Second Assistant Postmaster-General:

“SIR: I hereby offer to carry the mail on route 34149, from Kearney to Loup City, three times a week, and once a week the residue, at pro rata, and on a reduced schedule from Kearney to Loup City of thirteen hours for an additional compensation of \$2,200 per annum for the expedition, being less than pro rata.

“Respectfully,

“JOHN M. PECK.”

You inclosed the affidavit in this paper, did you?—A. There is nothing there to show that I did, and I have no recollection that I did.

Q. This letter was filed April 3 and the affidavit was filed April 3. Does that refresh your recollection?—A. It does not.

Q. Did you file any other affidavit at that time on this route?—A. Not that I know of.

Q. You have no recollection whatever of these papers?—A. I have not.

Q. Don't you recollect that this affidavit being in your possession immediately after the division that you spoke of, you antedated your letter to February 2 to bear date along with the affidavit, and sent this affidavit in your letter to the Post-Office Department?—A. I do not.

Next, on the 4th of March, 1879, Stephen W. Dorsey wrote to Brady, notifying him that all the subcontracts given by Miner were to be disregarded. This was the day that Dorsey went out of the Senate, the day his time expired. I have read that letter to you before. I only want to call your attention to it now in this connection, because on the 8th of March, 1879, Vaile filed a subcontract, and that subcontract was dated April 1, 1878. Miner signed as attorney for Peck, and Rerdell signed as a witness. On the 3d of April, 1879, the oath and the proposal to carry the mail were both sent to the office together. On the 10th of July, 1879, Brady made an order. The oath was made on the 1st of February, 1879; the proposition on the 2d, and on the 10th of July Brady made the order which is marked 1 A, and found on page 567 :

From August 1, 1879, increase service Kearney to Loup City, seventy-five miles, to three trips a week, and allow contractor and subcontractor \$1,122.41 per annum additional, being pro rata. Expedite schedule between the points named to thirteen hours, and allow the contractor and subcontractor \$2,200 per annum additional, being less than pro rata, as agreed.

The distance from Kearney to Loup City is given as seventy-five miles in the order. The real distance, gentlemen, was only forty-eight miles. He had put on Fitzalon, and given them fifteen miles for Fitzalon, and then added the fifteen miles to the real distance, forty-eight, and not being particular in the addition, he made it seventy-five miles. In truth, it was only forty-eight miles, but he counted the alleged fifteen that was added. Brady put on two more trips and reduced the time to thirteen hours. Now, gentlemen, do you not remember that Mr. French was on the stand, and do you not remember that French said, "Why, I always carried the mail from Kearney to Loup City in twelve hours." He actually carried the mail in one hour less time than Brady ordered it to be expedited to, and carried that way before the order was made and after the order was made. Mr. French also says, "I never heard of the expedition. Nobody ever told me anything about it." The first thing he knew about it was when he came here to Washington. He was going ahead and carrying the mail in twelve hours, as he had always done, and, unknown to him, Brady had brought it down to thirteen hours, and allowed \$2,200 for bringing it down, besides adding \$1,122.41 for two extra trips. Mr. Brady gives an explanation on page 3550 :

Q. Was your attention attracted by the fact that the oath in that case appears to have been made by John M. Peck at Chico, New Mexico, on the 1st of February, 1879; that it was filed in the department April 3, 1879, at the same time with the offer of the contractor, which offer is dated in Washington on the 2d of February, 1879?—A. It was not, that I remember; and I do not know that it would have made any difference if it had been.

Away back in February they were preparing for expedition that was granted in July, and Brady said that, although the letter was written in Washington and the oath in New Mexico, it would have made no difference to him if his attention had been called to it.

Gentlemen, this expedition and this increase of service was all made upon one petition—only one. The “great people” between Kearney and Loup City, “the people whose wants ought to be respected,” combine their wants into one petition, and acting upon that one petition Brady generously made the order. Let us analyze this petition. It is the petition 2 A. You remember, gentlemen, that the words “schedule thirteen hours” were written into that petition. [Exhibiting petition to the jury.] That one petition is what did the work. John R. Miner wrote those words in that petition. Mr. Nightingale said, “I circulated the petition. I got the names signed to it. I mailed it, directed to lock-box 714 (Miner’s box), Washington, D. C. Those words were not there when I sent it on.” Two men say Miner wrote that petition. Mr. Miner says he does not think he did; he is not satisfied that he did.

Mr. HENKLE. He says he did not write those words.

Mr. KER. Oh, well, gentlemen, of course he says so.

Mr. HENKLE. Nobody says he did but Rerdell.

Mr. KER. Two witnesses say he did write them.

Mr. HENKLE. No, they do not; I beg your pardon; nobody but Rerdell.

Mr. KER. If nobody but Rerdell said it, when you come to argue it show it.

Mr. HENKLE. I will.

Mr. KER. Mr. Boone says “I think it is Miner’s handwriting.” When questioned about it he said “I put the other circumstances with it and that is what makes me think so.”

Mr. HENKLE. Independently of the circumstances he did not know about it.

Mr. MERRICK. Boone says it was written by Miner.

Mr. HENKLE. Turn to what he says.

Mr. MERRICK. That is what he said.

Mr. HENKLE. What is the page?

Mr. MERRICK. I will find it directly.

Mr. KER. On page 699 Mr. Nightingale says, “I circulated the petition. I mailed it. I sent it to Miner, Peck & Co., lock-box 714, Washington, D. C. Those words were not in the petition when I mailed it.” Box 714 was Miner’s box? He had the key of it, and he so testified. John R. Miner forwarded the petition to the department.

Mr. WILSON. There is no proof of that either. On the contrary, the proof is right the other way.

Mr. MERRICK. No, sir.

Mr. WILSON. Well, go ahead.

Mr. MERRICK. On page 2684:

Q. [Submitting paper.] Please look at the paper now shown to you, which is 2 A, and tell me in whose handwriting the words “Schedule 13 hours” are?—A. I should say that was in the handwriting of John R. Miner.

Mr. HENKLE. Now, go to the cross-examination.

Mr. MERRICK. That is enough. You cannot analyze a man’s testimony in that way. Take it up when you come to it. That is what he swears to.

Mr. WILSON. That is not all he says.

Mr. MERRICK. That is no justification for an interruption. Mr. Ker has quoted his testimony just as it is, that Boone thinks the paper is in Miner’s handwriting.

The COURT. Proceed, Mr. Ker, in your own way.

Mr. KER. Now, gentlemen, I told you yesterday that we were required to prove, in addition to the conspiracy, some overt act. One overt act

that we allege is, that this oath was placed in the department as the basis for Thomas J. Brady to make the order.

Mr. HENKLE. Will your honor allow me to call attention to what Mr. Boone said on cross-examination?

The COURT. It makes no difference about the cross-examination. If he testified even indistinctly, counsel have a right to comment on it to the jury and you will have the like privilege when your time comes.

Mr. MERRICK. Certainly. You cannot interrupt counsel in that way.

Mr. KER. [Exhibiting paper to the jury.] There it is, gentlemen. The jacket is dated the 10th of July, 1879. There is no mistake about it. That is alleged in the indictment as the date upon which he made his order. Right in that jacket was this oath. [Exhibiting oath.] There it is

Mr. WILSON. One moment. As this petition, 2 A, has been shown to the jury in the progress of the argument, and as it has been pasted on to a piece of linen, I desire that the jury may also notice what has been covered up by what is pasted upon the paper.

Mr. KER. Oh, yes. There is an indorsement there by Senator Saunders, and it was sent to lock-box 714.

Mr. MERRICK. It was pasted together because it was coming apart.

The COURT. The court requested that that should be done.

Mr. MERRICK. The court ordered it to be done.

Mr. WILSON. I am not contending about that.

Mr. MERRICK. That has nothing to do with the line of argument now being pursued.

Mr. KER. Gentlemen, right in that jacket, dated the 10th of July, was this oath upon which Brady made this order and which he says was less than pro rata. Right in that jacket was this false petition, this fraudulent and altered petition, this petition that was altered after it had been signed by the people. Right in that jacket are those two papers. They are alleged as overt acts, and I submit to you, can there be any doubt about the truth of the allegation?

And right in this connection, on the 13th of October, 1879, there was a claim for the third quarter ending September 30, 1879. Your honor will remember the allegation of the claim for pay based upon these fraudulent orders. The claim for pay was a fraudulent claim against the United States, and that also is alleged in the indictment, and it has been proved—the day, the date, and the amount. No doubt about it.

Next, on the 10th of January, 1880, Miner wrote to C. H. French, 35 A, page 668:

WASHINGTON, D. C., *January 10, 1880.*

C. H. FRENCH, *Kearney, Nebr. :*

Yours of 29th received. I have never heard of Alexander Baillie, much less thought of employing him on route 34149.

Yours, truly,

JNO. R. MINER, *Agent.*

P. S.—The postmaster at Cedarville has sent a register which shows only two mails a week. No register is required from Cedarville, as that is not a schedule point. Either furnish that office three mails per week, or see that the postmaster sends no more registers.

You remember that John Dorsey told him if he could arrange with the postmaster he could supply it by a side supply once a week, and there would be nothing said; and Miner comes in and reiterates the thing in the letter. The postmaster has foolishly sent on a mail bill, or register, which showed that they were neglecting the business, and Miner wrote, You must either supply the three mails, or get the postmaster to stop

informing the Department about it. It would not do to have that on record. There was Miner's *honest* advice given to the subcontractor.

On the 20th of February, 1880, 38 A, page 669, is another letter:

WASHINGTON, D. C., *February 20, 1880.*

DEAR SIR: By a general order of the Postmaster-General issued to-day all mail service, except railway and steamboat, will be reduced to one trip per week, commencing March 1, 1880. You will take notice thereof, and from that date make only one trip per week on route No. 34149, from Kearney to Kent.

This reduction is in consequence of the failure of Congress to appropriate a sufficient sum to pay for service on any greater basis for the remainder of the year ending June 30, 1880.

It will be well for the people of your section to send to the member of Congress from your district such petitions as will express their opinions on the subject of this reduction.

Truly, yours,

JNO. R. MINER, *Ag't.*

Did I not point out to you that Congress had investigated this matter, beginning in January, 1880? This letter was sent out by Miner to the subcontractors to get them to send petitions to warn members of Congress that they must stand up for expedition, and must stand up for increased trips, to influence the members of Congress. This is dated February 20, 1880, just at the time Congress was examining into the matter; and when it became a little doubtful whether they were going to appropriate the \$2,000,000 extra that Brady called for these letters were sent broadcast throughout the country. This is a specimen of them. I do not want to read all of them. They were sent to every subcontractor to get up petitions to influence members of Congress. And finally by act of Congress, on the 7th of April, 1880, they gave Brady \$1,100,000—cut off \$900,000 from what he asked. The service was not cut off. It still went on. They appropriated that amount for the fiscal year ending June 30, 1880, and they informed Mr. Brady in the same act that he should never afterwards expedite a route at a greater expense than 50 per cent. of the original contract price. These letters were intended to influence Congress.

On the 7th of February, 1882, there is a letter from Mr. Vaile, marked 98 A, found at page 751:

NATIONAL HOTEL, F. TENNEY & Co.,
Washington, D. C., February 7, 1882.

R. S. ELMER, Esq.,
Second Ass. P. M. Gen'l:

SIR: Yours of 4th inst. at hand concerning a subcontract of one C. H. French, an alleged subcontractor.

I know nothing about this alleged subcontract and I believe there must be some mistake in regard to it. My subcontract, now on file, was executed by J. M. Peck in person and received by me in good faith. Mr. French's subcontract purports to be executed by J. W. Dorsey's attorney, John Peck. I doubt Mr. Dorsey's authority to execute such a contract. J. R. Miner has had all the correspondence with Mr. French and may know something of this alleged subcontract. He is now absent, but will be in the city again in a short time, and I would like to have the matter rest until I can confer with him. Mr. French is our carrier, and has been paid, according to agreement, promptly.

Yours, very truly,

H. M. VAILE.

Gentlemen, that letter is dated February 7, 1882. You remember that Dorsey made a subcontract with French, and that subcontract called for 65 per cent. of the increased pay for expedition. They were to give that to French. Mr. Vaile came along and filed his subcontract on the 8th of March, 1879. Now, you know that when Vaile's subcontract was on file, nobody else could receive any recognition. Mr.

French was doing the work. He was carrying the mail under a legitimate contract made with John W. Dorsey, acting on behalf of Peck. But French says, "Why, they never told me about expedition; they did not give me the 65 per cent." When this investigation began, and French heard about the subcontract of Vaile being on file, and heard that he was entitled to 65 per cent. of the amount of money that they were receiving for expedition, naturally French wanted some of it, but when he applied to the department there was Vaile's subcontract in the office staring him in the face, and Mr. Elmer wrote to Vaile about it, and Vaile said, "My subcontract was signed by John M. Peck in person." Gentlemen, did he not tell you on the stand that he never saw Peck? And yet he deliberately writes to the Assistant Postmaster-General that it was "signed by Peck in person," and "I doubt the authority of John W. Dorsey to make such a subcontract." This was to deceive and cheat the poor subcontractor. His pay was arranged by a schedule of prices that John W. Dorsey had fixed. They allowed him an increase, pro rata, for the number of trips, but not the 65 per cent for expedition, and there is where all this trouble came in.

The pay on this route was drawn by Vaile upon drafts signed by Peck. He drew, I believe, the entire amount of the pay, and Miner signed the receipts.

I want to read you again some extracts from Mr. French's testimony:

I carried the mail from Kearney to Loup City from 1878, and always carried it inside of twelve hours, which was less than the time to which it was expedited. I did not hear of the expedited schedule. I never received any pay for expedition. I did not know that Vaile's subcontract was on file. My letters were addressed to Vaile, Miner & Co. Miner sent me this petition to circulate, and I had it circulated by Mr. Nightingale, and Mr. Nightingale mailed it on to Washington, and those words were not in that petition when it was sent. The mail never averaged over twenty pounds.

Now, gentlemen, let us analyze the oath. Peck's oath, written by Miner, says: "On the present schedule two men and four animals are used from Kearney to Loup City." Two and four make six. "On the proposed schedule it will require six men and fourteen animals." That is twenty. What Mr. Miner, acting for Mr. Peck, or Mr. Vaile, who had taken this route, was to receive, would be the difference between six and twenty, which would be fourteen; and multiplied by fourteen it would bring the expedition up to something like \$2,400 or \$2,500. But, generously, they agreed to carry it for \$2,200 for expedition alone. This is what Mr. French says:

On the then schedule I used two men and five animals.

That was seven, making one more than Dorsey said. Dorsey brought it below the estimate:

On the increased schedule I used three men and ten animals.

That is thirteen. That is seven less than Dorsey said it would require.

But then I was carrying the mail to Cedarville, and I counted that in. But when I did not carry the mail to Cedarville then it required three men and seven animals.

Ten. Just one-half of what was in the oath written by Miner. Three men and seven animals—one-half of what Miner's oath said it would take. And, acting upon the basis of that oath, Brady gave them the expedition at the rate of \$2,200. I pointed out to you the law, that he could not allow for shorter time, or expedition, unless by carrying it in that short time it required more men and more animals; and I have shown

you that they were carrying it in less time than was required in the order Brady made. And I have shown you that it took no more men or no more animals to carry it. This oath was written out by John R. Miner, and admitted by him to have been altered, and you can see that it was altered, because it is interlined in red ink. And it is a proper explanation of the intention of these people, because I go back and bring to your recollection the old saying that Miner said to Moore: "They are all good affidavit men."

The original pay was \$868. It was increased to \$4,302.65. The subcontractor's pay—French's pay—you know I told you they allowed him for the trips but not for expedition—the subcontractor's pay was \$1,587.40. Subtract that from \$4,302.65 and you have a nice, clean, and clear profit coming to them of \$2,715.25 each year. And, as Miner said to Moore, "They proposed to make a pretty good thing out of it;" \$2,715.25 clean and clear into the pockets of these people in Washington who were doing nothing.

Now, gentlemen, you know the law says that the Postmaster-General must have "due regard for productiveness." That is one of the main elements to be considered in making an order. Let me show you what the productiveness was from a little statement I have here:

The revenue for the year ending June 30, 1879, including all offices, Kearney (on the railroad) to Kent, \$2,348.32. Exclude Kearney, that was supplied by the railroad, and whose revenues, of course, ought not to go into the statement of the route, and the revenue was \$227.48.

In 1880 the total revenue was \$2,785.96. Throwing off Kearney, it was \$401.51.

In 1881, including all offices, \$2,874.55; but throwing off Kearney, it was \$513.84.

Right on the jacket where Brady made his order is a statement of the revenues of those offices. The order was made in July, 1879, when it was shown that the entire revenue that the Government derived from every office on this route was \$2,348.32, and throwing off Kearney left the miserable sum of \$227.48. That was right on the jacket before him; and notwithstanding that fact, he allowed \$2,200 for shortening the time alone. Remember, he did not make it a daily mail. His policy was, he said, "to make a daily mail;" but he only made it three trips. He was interrogated concerning that, and I think it is due to him that I should put in his explanation about it. It is given on page 3404:

Q. It appears from the papers in evidence here that on the route from Kearney to Kent the annual pay was by the contract, \$868 over the whole route—

Not from Kearney to Loup City, but over the whole route—

and that over seventy-five miles of the route, from Kearney to Loup City, it was \$561.20.

That was the price paid from Kearney to Loup City.

If \$561.20 be taken as the pay for a single trip from Kearney to Loup City, why did you not increase the trips from Kearney to Loup City to six, instead of expediting the service and using the money in that way?—A. Will you let me see the papers in that case? [Papers submitted and examined.] It seems that the petition demands or asks that this service, which at that time was once a week, should be increased to three times a week, and the running time reduced to thirteen hours. I presume that is the reason it was done.

Q. You made the order because that was what the petition asked?—A. It is frequently of as much importance to a people to have a fast service as it is to have a frequent service. This was done in accordance with the petition and the recommendation of Senator Saunders and Mr. Valentine, I believe.

Yes, Senator Saunder's name is on that petition, put there after it left Loup City and went into Miner's office. But there is no petition from Mr. Valentine, not one. The whole expedition was granted on that one petition:

Q. Did it occur to you when you added \$4,302.65 for one trip and expedition that you might have made the service six trips a week at the old rate of speed, and it would have cost the Government \$935.42 less than you paid for two trips on an increased speed?

You see, he could have given him six trips a week and saved \$935.42 over the price paid for the three trips.

A. I do not know that that occurred to me at that time. Probably this occurred to me: That a fast service with three trips a week might be better than a slow service six times a week.

Do you understand that, gentlemen? If you are corresponding with a man in Georgetown in regard to business, receiving letters from him and sending letters to him, which would you sooner have, which would be the greater benefit, for you to write a letter and keep it in your pocket two days before putting it in the post-office, and then have a man ride with the mail over to Georgetown fast enough to almost break his neck, or have the mail carried every day at a lower rate of speed? It seems to me that Mr. Brady's reason is very narrow:

Q. Did it at that time occur to you that when you were expediting this money for a fast service you were expediting the mails so that you gained nothing in the connections at either end of the route?—A. I do not know that that was brought to my attention at all. I cannot remember concerning it.

You remember it. It was testified that the mail missed connection. The thirteen hours made no difference, the carrier always carried it in twelve hours, but there was no connection. It was a mere matter of accommodation to the carrier. He did not want to loiter on the road, and he carried it in twelve hours—four miles an hour; four twelves are forty-eight:

Q. You do not remember whether you considered that?—A. I do not.

Q. In making that increase and expedition, did you examine into the revenues of the offices on the route?—A. I believe the revenues are given on the jacket here.

Q. You examined into them, did you?—A. I presume I looked at them on the jacket. The revenues of offices like Kearney and Kent and upon routes of that description were a very poor criterion of the value of the service. The revenues, you understand, only show what stamps are sold at the office. The revenues do not show anything of the mail that comes into the office.

Q. I understand precisely what the revenues show. Did you consider the fact that excluding the terminal offices the entire revenues of all the other offices upon that route were, at the time of the increase and expedition, only \$227.48?—A. I do not know that I did. The probability is that the principal consideration acting upon my mind in that matter was the fact that it was a new country, and Senator Saunders and Mr. Valentine wanted it done very badly.

Q. Is it not stated upon the jacket what the revenue of each one of the offices upon that route was?—A. I believe so. I said so a moment ago.

Q. You said the revenue was there, but you did not say it was in detail by offices. Do you know whether you considered that fact of the small revenues of the intermediate offices?—A. I have answered already that I do not know that I took it into consideration at all.

Q. You considered, then, as I understand you, the wishes of Senator Saunders?—A. And the representations made by him.

Q. And by Mr. Valentine?—A. Yes, sir.

Further down, on the same page:

Q. On that route what weight did you give to the petitions in deciding to make increases and expeditions?—A. I stated a moment ago that in all probability, according to my recollection, the personal recommendations and importunity of Senator Saunders and Mr. Valentine had more to do with it than anything else. The exact weight I may have given to the petitions I cannot say.

Q. That being so, should a Senator or Representative ask an increase of you, say, upon this route, which you did not grant, what would govern you with reference to it?—A. Possibly he might not have been sufficiently earnest in the matter, or possibly he might have wanted too much done. We might have done some things he wanted done and not others. We could not give every man all he asked. We had to distribute these little things.

Q. You had to distribute the plums. Therefore, when Senator Saunders came in and apparently sought an increase to six trips on this route, can you tell us why it was not granted?—A. I cannot. Possibly we were not in an increasing mood that day.

Q. Then you governed your increases by the moods that you were in on given days, did you?—A. Well, I am somewhat given to moods, and some days might be more liberal than other days.

Q. You think that may have been the reason why you did not make that increase?—A. I say it may have been. I do not know anything about it. I do not remember anything about it.

Q. If Senator Saunders made more than one application for that increase and did not get it, do you mean to say that it was because you remained in the same mood all the time?—A. I say I do not remember anything about it.

Q. But you know that at times you were governed by your mood?—A. Sometimes; yes, sir.

Q. It was principally the imperative mood, was it not?—A. Well, I was rather imperative, I confess, in a good many things.

Gentlemen, let me explain that to you. As we went along we found that there was another jacket. You know he ordered three trips and short time. This other jacket had petitions in it asking for six trips from Kearney to Loup City. It was indorsed by Mr. Saunders; it was indorsed by Mr. Valentine. It is there. It was not acted upon. There were a number of petitions asking for six trips a week. And Brady gives his answer as I have read it to you. When the people wanted six trips that he could have given and saved \$935.42 over the amount he allowed for reducing time, he said, "I was not in the mood." That is his answer. He was not in the mood to gratify the people and give them six trips, but he was in the "imperative mood," to allow \$2,200 to carry that mail in thirteen hours, when it was already being carried in twelve hours. There is Brady's answer, his own testimony, as to why he did it. He said he would have made it all daily mail, and if he had gone on and acted he would have been in the mood to double the price up and give them twice the four thousand and odd dollars that he had already put on this route. It is a fine answer for an editor, a man who made a newspaper better than it had ever been before or ever has been since; a better editor than Mr. Hatton, or anybody else who runs a newspaper; a man who knew the law, because there is scarcely a respectable editor in the country who is not well versed in the law; a man who had bought out three newspapers. And yet he says, when he is brought upon the witness-stand and interrogated as to his official acts, and where petitions are shown him asking for six trips, "I was not in the mood." Does he pretend to say, or will his counsel pretend to say, that the Second Assistant Postmaster-General of the United States is the dictator to the people; that the Second Assistant Postmaster-General of the United States is the lord of the Treasury, and at his own sweet will and pleasure he can donate \$2,200 to his fellow-conspirators and refuse the reasonable request to put on three more trips? Did it all lie in his hand? Was he the man that exercised the discretion? Was he to be the judge? Or was the law to be disregarded openly, plainly, and flagrantly, as I have pointed it out to you? He could have increased the trips, he could have increased the service only with due regard to productiveness. The poor, miserable little sum of \$227.48 came into the Treasury, and the large sum of \$4,302.65 was paid out for carrying the mail on this route.

Gentlemen, I will go right along, without any loss of time, so as to get through as fast as possible.

38135, SAINT CHARLES TO GREENHORN, COLORADO.

The next route is 38135, Saint Charles to Greenhorn, Colorado. This route was taken by Dorsey in the division. It was thirty-five miles in length. It was advertised as thirty-two, but really it was thirty-five. There were two trips in twelve and one-half hours. This is the water-tank route. [Handing maps to the jury.] Look at the map again. Keep it fresh in your memory, gentlemen. There is nothing like seeing what you are doing.

In advertising this route they advertised it as from Saint Charles down to Greenhorn. It ought really to have been advertised from Pueblo to Greenhorn. The correct distance was given, but there was a mistake made in the place of beginning or the place of ending. Saint Charles was a water-tank station. They had a little post-office there, where the mail was thrown off the train, and it was distributed to the surrounding farmers, including, I believe, Agate.

John R. Miner was contractor on this route. The pay originally was \$548. John W. Dorsey witnessed the contract in this case, and the proposal that was originally put in was partly written by Boone and partly by Miner, and the amounts filled in by Rerdell. I will read you a memorandum of the official papers that we have.

July 18, 1878, Postmaster Ingersoll, of Pueblo, informed the department of a mistake in advertising the route.

August 15, 1878, Postmaster Fairhurst, at Saint Charles, called Brady's attention to the mistake.

August 30, 1878, the route was extended to Pueblo.

October 1, 1878, there was a subcontract of E. M. Ames filed.

April 16, 1879, there was a letter from Miner to Brady, transmitting proposal for carrying the mail on expedited schedule.

April 17, 1879, there was an oath made and signed.

April 22, 1879, there was a letter of Mr. Chaffee, of New York, filed.

May 5, 1879, request for communications to be addressed to Rerdell.

May 8, 1879, the oath was put in the post-office. On the same day there was a letter sent accompanying the oath.

June 26, 1879, Brady made an order of increase and reducing the time.

July 31, 1879, there was a change of schedule.

November 11, 1879, S. W. Dorsey filed his subcontract.

July 23, 1880, Brady ordered another change of schedule.

October 13, 1880, Postmaster Piper wrote that mail once a week to Agate would be sufficient.

November 10, 1880, Brady made an order to embrace Agate on the route.

December 14, 1880, Brady ordered Agate omitted.

December 7, 1880, Stephen W. Dorsey withdrew his subcontract.

Gentlemen, those are the official papers that were put in. There are other papers that were proved by the witnesses, and I will read them in their proper places.

July 18, 1878, Postmaster Ingersoll, of Pueblo, wrote to the department stating that there was a mistake made in advertising the route. You know the mail began on the 1st; this was on the 18th.

On the 15th of August Postmaster Fairhurst, of Saint Charles, again wrote to the department calling attention to the mistake.

On the 30th of August, 1878, the route was extended to Pueblo, increasing the distance twelve miles, and the contractor was allowed \$328.80 per annum. You know the miles were given correctly, but the order said to increase it twelve miles. Now, it was advertised at thirty-five. Add thirty-five to twelve and you will understand the subsequent orders that were made giving the distance. Whenever they made such an addition to the distance they always took care never to reduce it again. On page 3413 Mr. Brady testified as to why he made this order:

Q. Suppose the contract was made before the error was discovered, how could it be remedied?—A. By not letting it and readvertising it.

Q. Suppose it to be discovered after the contract was made; what mode was there of remedying it?—A. The same thing could have been done if it was discovered in time—before the advertisement was gotten up—by paying the contractor one month's extra pay after he had entered into the contract.

Q. Suppose the error was discovered, say the middle of July, 1878, how could it have been corrected?—A. My impression is that the miscellaneous advertisement would be in the hands of the printer by that time, and the contract would be made.

That is, the middle of July.

Q. Suppose the contract to have been made and the service to have been entered upon by the contractor from Saint Charles to Greenhorn, and then the error discovered, how could it be corrected?—A. The service could have been discontinued, allowing the contractor a month's extra pay, and temporary service could have been gotten up from Pueblo and the route readvertised.

That is the law. Brady made no mistake about that. If there was a mistake in the advertised points he could have given the contractor a month's extra pay, readvertised the route, and relet it to somebody else. I ask you to bear this in mind, because you know if you rely on the petitions it will appear that it was afterward necessary to increase the trips and reduce the time.

On the 1st of October, 1878, Miner wrote and signed the name of E. M. Ames to a subcontract. He says that Ames was a young man, was a relative of his, and of course it did not make any difference to Miner; he was in the signing business anyhow, and he just simply sat down and signed the name of E. M. Ames to the subcontract, and put that subcontract in the office. It was necessary to do that. He might as well use Ames as anybody else when he wanted to get the best of the man who was doing the work. It did not make any difference whether it was Vaile or Ames who signed the subcontract; so Miner signed the subcontract and put it in the office.

Now, on the 14th of April, 1879, S. W. Dorsey begins. He writes a letter to J. L. Routt, which is marked 33 X, and it is found at page 2275:

WASHINGTON, April 14, 1879.

Hon. J. L. ROUTT, *Denver*:

MY DEAR GOVERNOR: I wish to introduce my friend, Mr. M. C. Reddell. You will find him a thorough-going Republican and an upright man, in whom you can confide. He has, together with Colonel Peck, a great many mail routes in your State, and if you can aid him in any way I shall be very thankful to you.

Sincerely yours,

S. W. DORSEY.

You see he was getting ready to send Rerdell out to attend to the business, and here is one certificate of good character that he gives Rerdell: "He is an upright man and a thorough-going Republican."

On the 16th of April, 1879, Miner wrote a letter to Brady, transmitting a proposal for carrying mail on an expedited schedule; or rather Miner did not write the letter; Rerdell wrote it for him, and it is just one day ahead of the time when the oath was taken, if it was taken at all on the day that it specifies. The oath was not made at that time,

but Rerdell says: "Dorsey told me to write that letter, and I wrote it, but it was written before the oath was made." On the 16th, the same day, S. W. Dorsey wrote another letter, 34 X, page 2276:

WASHINGTON, April 16, 1879.

The other was the 14th.

Captain M. S. PADDOCK, *Denver*:

DEAR MART: This will introduce M. C. Reddell, a friend of mine, who has large interests in Colorado, and whom I trust you will find it convenient as well as pleasant to serve. He is a gentleman of the highest character and first-rate ability.

Anything you do for him you do for me.

Yours, truly,

S. W. DORSEY.

This is in April, 1879, and in December, when Miner reached Dorsey's house, he says, "I found him hanging around Dorsey's house with some of these Arkansas fellows."

On the 17th day of April—and I want you to be particular about these dates, gentlemen; I would like you to remember them as near as possible—Rerdell started for the West to make subcontracts; and on page 2232, I will read you what he says he was to do:

Q. Did you have any arrangement to take charge of mail matter for S. W. Dorsey in April of 1879?—A. I did; I had an arrangement with him.

Further down on the page:

Q. What time did you leave?—A. I left here either on the 17th or 18th of April; the 18th, I think.

Then, at the bottom of the page:

Q. Under whose instructions did you go West on that occasion?—A. Under instructions of S. W. Dorsey.

Q. What were those instructions?—A. Those instructions were to go to certain named routes, to make new subcontracts, and at each place to get up petitions and letters asking for an increase of service and expedition, and to stop in Denver and to get as many letters written for increase and expedition as I could, from the governor and the other State officers.

Q. What new subcontracts did you make in the course of your visit to the West; on what routes, if you can name them?

The WITNESS. Shall I state all the routes?

Mr. MERRICK. Yes, as far as you can recollect them; I mean those that are in this indictment; you know what the indictment contains.

A. I made one on 38135, and another on 38134.

38134 is on your map, gentlemen, Pueblo to Rosita. It runs up at an angle from Greenhorn, and then across.

Q. What are the termini of those routes?—A. One of them is Pueblo to Greenhorn, and the other is Pueblo to Rosita.

Q. What other routes in this indictment?—A. I do not think I made any subcontracts at that time on any other routes in this indictment.

Q. Were those subcontracts filed?—A. I think not. No, sir.

Q. Did you give any directions as to their being filed?—A. Yes, sir.

Q. What instructions did you give?—A. My instructions were to prevent their being filed if possible.

Q. From whom did you get those instructions?—A. From Mr. Dorsey.

Q. Which Dorsey?—A. S. W. Dorsey.

Q. Did S. W. Dorsey explain to you the reason for his making any change from the original form of the subcontract?—A. Yes, sir.

Q. What explanation did he give you of the new covenant in the new subcontracts which was to be substituted for the old?—A. He said that very few of these men who were subcontractors knew anything about expedition, and for me to be sure and not tell them where they did not know anything about it—to make the subcontracts without any reference to any expedition with subcontractors.

Q. Where they did not know anything about it, not to tell them anything about it?—A. Yes, sir; and where they did, I was to make the best terms I could.

Q. What excuse were you to give these people for wanting a change of subcontracts?

Mr. INGERSOLL. Is that the proper way to examine the witness?

The COURT. That is rather leading, perhaps.

Q. What instructions, if any, did he give you as to what you were to say to the subcontractors in negotiating for a change from the old form?—A. That the old firm had dissolved and he now had these routes and would guarantee the payment; he was to guarantee the payment providing they did not put the subcontracts on file.

Q. When did you return from that visit?—A. I returned about the 5th of May.

Well, that is sufficient about that. Then, on the 17th day of April, Miner wrote and signed an oath. It is 5 B, and is found on page 778:

Mr. MERRICK. What year?

Mr. KER. 1879.

WASHINGTON, D. C., 17th April, 1879.

Hon. THOS. J. BRADY,

Second Assistant Postmaster-General:

The number of men and animals necessary to carry the mails on route No. 38135, three times a week, on the present schedule, is one man and one animal. The number necessary to carry the mails three times a week on a reduced schedule of seven hours is two men and four animals.

Respectfully,

JNO. R. MINER.

DISTRICT OF COLUMBIA,

County of Washington:

Personally appeared before me the above John R. Miner, and made oath to the above statement this 17th day of April, 1879.

W. F. KELLOGG,
Notary Public.

W. F. Kellogg was the private secretary of Stephen W. Dorsey—the man that Dorsey kept in his house to do the swearing for these people, or, rather, to affix his signature when they did it before him. It was handy to have a notary public in the house, for they were doing considerable of it. Gentlemen, just take the oath and look at it. [Handing the original paper to the jury.] I will tell you what Miner says about it. He knows more about it than any of us, or ought to. At page 4184 he says:

Look at that paper, 5 B.—A. That is all my handwriting except the signature of the notary.

Q. What is the date of that paper?—A. The 17th of April, 1879.

Q. That Saint Charles and Greenhorn route was not one of the routes that you and Mr. Vaile took in the division, I believe?—A. It was not; but this affidavit was dated eighteen days before the final consummation of the separation.

Q. That is what I wanted to ask you to explain. How came you to make that affidavit after the separation?—A. I never touched pen to paper for them after the separation was complete in any shape or form.

Q. When did you say that was completed?—A. The 5th of May, 1879. If you will look at 16 B you will find out from that.

Q. Do I understand you to say that was the only affidavit you made on any Dorsey routes after the separation?—A. That was the only affidavit I ever made on Dorsey's routes at any time, and that was eighteen days before the separation was finally consummated.

Q. What affidavits did either Peck or John W. Dorsey make on any of your or Vaile's routes after the separation?—A. They made none.

On the 22d of April, 1879, there was a letter from Mr. Chaffee. This letter was written from New York, and it is dated April 23, 1879. It is marked 8 B, and it is found on page 784. Now, gentlemen, I would like to know how a letter written on the 23d of April, in New York, could be put on file in the Post-Office Department in Washington, on the 22d of April. That is one of the things that I

cannot find out. You know we had another man in this indictment, Mr. Turner, but as he is not in the indictment now, I do not want to mention what he did. It is not worth while to trouble your minds with that. He was there. He is not here now. But I just call to your attention this little eccentricity, as it shows that the dates did not amount to anything; had nothing at all to do with it. But when my friends come to argue they will say, "Oh, this was done on such a day." Yes; so it appears by the writing. But the truth is that it was not. As Rerdell said in his testimony: "Why, I altered that after it was put into the post-office." This letter of Chaffee's is put in here asking for an increase upon this route and is dated on the 23d of April, in New York, and it was written by John S. Sibbald, another one of Dorsey's clerks or secretaries, who is in one of the departments here to-day. Sibbald wrote the letter, and Chaffee signed it, and it is dated the 23d of April, and it got into the post-office on the 22d. May be they had an expedited mail from New York that we did not know anything about.

On May 5, 1879, Miner asks to have all communications addressed to Rerdell, box 706. His own box was 714. He says, "I fix the 5th of May, 1879, as the date when we separated, because these letters were all sent on that day, and therefore we divided up on that day." I am exceedingly obliged to him for fixing it in that way. It might have led to a little trouble, but as he fixes it we will take it as he says.

On the 8th of May, if we believe the writing on the back of it, the oath was left in the Post-Office Department. And on the 8th of May Rerdell wrote and signed Miner's name to a letter to Brady transmitting oath and accompanying petition. They were 7 B, 11 B, and 12 B.

Your honor, shall I keep on?

The COURT. No; I think you may suspend. We will adjourn now.

Mr. KER. I am not particular. This clock is five minutes too fast. I am starting out to explain something.

The COURT. If you have reached a stopping-point, we will adjourn. [To the crier.] Adjourn the court until Monday morning.

Thereupon (at 4 o'clock and 5 minutes p. m.) the further hearing of this case was adjourned until Monday morning, April 23, at 11 o'clock.

MONDAY, APRIL 23, 1883.

The court met at 11 o'clock:

Present: counsel for the Government and for the defendants.

Mr. KER. Gentlemen, we were examining into the record on the Saint Charles and Greenhorn route, or Pueblo to Greenhorn, as it ought to have been. I will just run over the facts again, without making any comments, so that you will remember them. The postmaster at Pueblo informed the department that there was a mistake in the route, that it ought to have gone to Pueblo. The postmaster at Saint Charles sent the same notice. The route was then extended up to Pueblo. Then Miner put in a contract in the name of Ames, he signing it himself. I told you about the letter of S. W. Dorsey to Governor Routt, introducing Rerdell. Then there was a letter of Miner to Brady, transmitting a proposal for carrying the mail on the expedited schedule. Rerdell

wrote that letter by direction of Stephen W. Dorsey. At that time the oath was not made. I then read to you the different letters that Stephen W. Dorsey gave to Rerdell to take out West.

Finally, on the 17th of April, 1879, Rerdell started West. Then the oath was made by Miner. This was one of Miner's routes. Then Miner gave his explanation as to how it was that he came to make the oath. Then there was a letter of Mr. Chaffee, written from New York on the 23d of April, and put in the Post-Office Department on the 22d, which I showed to you in order to convince you that the dates written on the backs of these papers do not amount to much. On the 5th of May, 1879, Miner asked to have all communications sent to box 706. That was Rerdell's box. On the 8th of May, 1879, Miner's oath was received in the Post-Office Department. On the same day that the oath was received Rerdell wrote and signed Miner's name to a letter transmitting a number of petitions. The petitions are marked 7 B, 11 B, and 12 B. This is the letter that accompanied these petitions [exhibiting letter]. 7 B had the words "and faster time" written in it. Here it is [exhibiting paper]. It simply asked for an increase, but the words "and faster time" were written. On 11 B the words "and a faster schedule" were written. You have had all these before. On 12 B the words "on quicker time" were written. These three petitions were inclosed in this letter by Mr. Rerdell. Rerdell says, "I wrote those words in those petitions. I did it by direction of Stephen W. Dorsey." That was the testimony given by Rerdell. Mr. Dorsey makes his answer to that on page 3770:

Q. Do you recollect about his going West some time in April, 1879?—A. I think he did.

Q. Do you know for what purpose he went?—A. He went there to re-sublet the contracts and see that the service was put on in good shape; that is, the service in which I was interested.

Q. Did you give him any instructions as to petitions or letters or anything of that character with regard to increase and expedition of service?—A. I presume I did. I have always supposed we had a right to petition in this country.

Then, again, he says further, on page 3935:

A. I did everything that I knew how to do that was lawful and proper to have the routes that I thought ought to be increased and expedited increased and expedited. If I left anything undone I do not know it.

Next, on the 26th of June, 1879, Brady made an order. It is marked 4 B, and found on page 778:

First, increase service one trip a week from July 14, 1879, and allow contractor \$438.80 per annum additional pay, being pro rata.

Second, reduce running time from sixteen hours to seven hours from July 14, 1879, and allow contractor \$2,630.40 per annum additional pay, being pro rata.

At the time that this order was made, and on the very jacket upon which the order was made, the revenue was given, the amount being stated to be \$513. With those figures before Mr. Brady, he made an order which for expedition alone took from the Government \$2,630.40. Let us see what his explanation is. It is found on page 3412:

Q. Do you remember anything about the increase of trips on the route from Saint Charles to Greenhorn?—A. I remember very little about it.

Q. Do you remember ordering an increase of trips and a reduction of time?—A. I think there was such an increase and expedition ordered. Let me see the papers, and I can tell more about it.

Mr. BLISS. I want to get your memory, Mr. Brady.

Q. Now, it appearing that by the contract there were to be two trips a week at an annual expense of \$548, which, applying pro rata, would make \$1,644 for six trips a week, why, when you were doing something for that route, instead of giving them six trips at an expense of \$1,644, did you add one trip and reduce the time at an ex-

pense of \$1,345.60, thus paying \$2,301.60 more for service than would have been paid had you given the people there six trips a week?

Do you understand that question, gentlemen? It is, why he allowed expedition and only three trips a week, when if he had given them six trips a week without the expedition he would have saved to the Government \$2,301.60; in other words, why he paid \$2,301.60 more for three trips on short time than he could have given them six trips a week for?

The WITNESS. Let me see the paper.

Q. Do you remember why you did that?—A. I do not. [Witness examines the papers which had been handed to him.] I did it for the reasons, I believe, stated on this jacket.

Mr. BLISS. That jacket is marked 4 B.

Q. Do you remember how you arrived at the time to which service should be reduced, as reducing it from sixteen hours to seven hours?—A. I do not.

Q. Do you know whether you evolved that from your inner consciousness or whether you got it from the papers?—A. I could not say that without looking at the papers.

Q. You do not remember independently of them?—A. I do not.

Q. [Submitting papers.] Please look at the papers and see if you find any paper which asks for seven hours' schedule?—A. I find in this first petition, indorsed by Senators Teller and Hill, a request for an additional trip and faster time.

Mr. BLISS. Here is a letter of Senator Chaffee asking for daily mail service. There is a petition, marked 10 B, to which I call your attention, asking for eight hours, and another one, marked 11 B, asking for the same.

The WITNESS. For eight hours?

Mr. BLISS. For eight hours; you will find it at the end.

The WITNESS. I could not say how we arrived at the seven hours. But if they asked for eight we may have concluded that we preferred seven. That would make a little over four miles an hour, and that is about as slow as an expedited route ought to be.

Q. Then you do not know how you arrived at the time, seven hours, upon that route?—A. I do not, except that seven hours is better than eight hours.

Gentlemen, there were two petitions that mention eight hours. I have shown you the petitions in this case, excepting one that asked for eight hours, which is 10 B. I call your attention to the fact that these petitions were put in on the 8th of May, 1879, and I also call your attention to the fact that only two petitions mention eight hours. Mr. Brady reduced the time to seven hours. Now let us go back. On the 17th of April, as I told you, before these petitions were brought in, and before anything had been done at all, Miner made his oath for seven hours. I ask you to remember that away back in April Miner was getting up an oath for seven hours, and that finally Mr. Brady accommodated him by making the time seven hours, one hour less than the petitions asked for, and I think you will say the proper explanation of the case is that it had been talked over among these defendants, and as the petitions asked for eight hours, they concluded to make it seven in order to make it appear that there was something in the expedition, and that really the Government had got a bargain in running the mail in seven hours.

The next thing was an order to change the schedule, made by Mr. Brady. Then on the 11th of November, 1879, Stephen W. Dorsey filed his subcontract dated the 1st of April, 1879, to carry the mail from the 1st of July. This was one of the routes taken by Dorsey. Rerdell witnessed this subcontract, and it was signed by Miner.

On the 23d of July, 1880, Brady made another change of schedule. On the 13th of October, 1880, Postmaster Piper wrote that a "mail to Agate once a week would be sufficient." His letter is 22 B, and on page 790:

If we could have service on this route at this office once a week each way, say from

the Saint Charles office on Saturdays to this office, and thence to the Greenhorn, returning on Monday via this office and the Saint Charles, it would be satisfactory.

Very respectfully, yours,

J. S. PIPER,
Postmaster.

On November 10, 1880, Brady ordered :

From December 1, 1880, embrace Agate in this route next after Saint Charles, increasing the distance three miles, and allowing the contractor and subcontractor \$369.90 per annum additional pay, being pro rata.

That is 20 B, on page 789. The postmaster said that one trip would do, and Brady ordered the office put on the route, which, of course, meant three trips. This order was to take effect on the 1st day of December. On the 14th of December, 1880, Brady made another order :

Omit Agate and allow one month's extra pay.

That is 23 B, and found on page 791. At the bottom of page 790 he gives his reasons for omitting Agate :

An order issued November 10, 1880, to embrace Agate on this route, increasing the distance three miles and the contractor's pay \$369.90 per annum. It now appears that the distance should have been increased eight miles. The importance of the office will not justify the expenditure.

Agate should be made special.

Then he goes on and gives his order :

From January 1, 1881, omit Agate from this route, decreasing the distance three miles, and deduct from contractor's and subcontractor's pay \$369.90, being pro rata.

Allow contractor and subcontractor one month's extra pay on service dispensed with.

Now, gentlemen, Mr. Piper, the postmaster, was on the stand in the other court-house. You remember that he testified that he never received a letter. On one occasion the carrier came around that road, but did not leave him a letter, and went on down to Greenhorn. We put in the returns of the postmaster. He did not take in one single penny for a single postage-stamp in that office. Nothing was taken in, good, bad, or indifferent. We asked him what he received for his salary, and he said "Nothing at all;" he had not received a cent. Here are his returns in this record ; not a penny received in the office and not a letter ever carried. Yet with this fact staring Brady in the face, after making the order to put Agate on the route for three times a week, fourteen days after the service should have been put on Brady made the other order to omit Agate from January 1, 1881, and allow the contractor a month's extra pay. Remember, he did not cut it right off, but allowed it to run. The contractors had never carried a letter, and they were not entitled to a month's extra pay ; but in this way they secured two months' pay for the unperformed service to Agate. We asked Mr. Brady why it was that he made such an order as that, and why he did not cut off the service and allow them nothing : "Why," he said, "under the law I was bound to allow them one month's extra pay when I cut off the service." You know that is not so, because he could not put an office on a route at a greater expense than two-thirds of the pay of the postmaster ; and two-thirds of Mr. Piper's pay would have been two-thirds of nothing. Then he said, "I think it was a just order." That was all the explanation he had to make—"I think it was a just order." It is a very small thing. I do not want to dwell too much upon it, but it was in perfect harmony with Mr. Brady's orders all the way through.

On the 7th of December, 1880, S. W. Dorsey withdrew his subcontract.

On this route first Vaile drew the pay, and next Stephen W. Dorsey drew the pay; that is, by taking the warrants. I want to read to you some extracts from what the witnesses said. You remember, gentlemen, that the order was made to increase one trip on the 26th of June, 1879, and to reduce the time from sixteen hours to seven hours. The route was started at twelve and a half hours, and I told you they made an addition, because they said twelve miles was added from Saint Charles to Pueblo, and in order to compensate for that supposed twelve miles the time was made sixteen hours, while in reality the carrier had always been going over the whole of the route from Greenhorn right up to Pueblo. If Brady had left the time at the old figure, twelve and a half hours, it would have been well enough, but he raised it up to sixteen, and came from sixteen down to seven. Mr. Farrish, who was the subcontractor, says, "I always carried the mail in from six to ten hours before expedition. I carried the mail from Greenhorn up to Pueblo. I did not stop at Saint Charles." There he was carrying the mail in from six to ten hours when Brady allowed sixteen hours to do it in, and finally brought it down to seven, when, if we believe the two petitions that were put in, eight hours was the shortest time asked for. Mr. Sears, the postmaster at Greenhorn, testified to the same thing. Mr. Marks, the clerk at Pueblo, says: "The mail left Pueblo for all points at 1 o'clock p. m. Under the expedited schedule the mail arrived at 2 p. m., one hour after the time for connection." When Brady brought the time down to seven hours, and the mail arrived from Greenhorn at 2 o'clock, that was one hour after the mail had left Pueblo for all points. Pueblo is on a railroad, and the train had left when the mail arrived. What difference did it make whether that mail reached Pueblo at 2 o'clock in the afternoon, or at 5 or 6 o'clock in the afternoon, when it could not leave the place till next day at 1 o'clock in the afternoon.

Now let us analyze the oath upon which all this was done. I want to read to you what Mr. Miner says, on page 4242, because he is entitled to his explanation as to why he made this oath. There is the oath, gentlemen [exhibiting oath to jury], which he says was all written within a few hours of the same time. You see there is a space between where the figures are written in and the rest of the writing:

Q. When you made that affidavit did you consider that you had any interest in that route?—A. I did not consider that I had any interest, pecuniarily, after the first of the pay after the 1st of April, 1879.

Q. Then why did you make the affidavit of the 17th of April, 1879?—A. Probably because I was asked to make it, and because it was more convenient that I should make it than that the subcontractor should make it.

Q. That is the only reason you can give for it?—A. I know of no other reason.

Q. You did make it on the day it bears date?—A. I have no reason to suppose that I did not, and I haven't any reason particularly to suppose that I did.

Q. It was filed on the 18th?—A. It was undoubtedly made on the day it purports to have been made, though I don't remember.

Q. I do not recollect now—for these intervening discussions have blurred my memory a little—whether you said it was all written at the same time or not?—A. It has the appearance of not having been written all at the same time, but it must have been written within a few hours of the same time.

Q. Why do you say it must have been written within a few hours of the same time?—A. Because it was dated on the 17th and filed on 18th.

Q. Have you any recollection about it?—A. None.

Q. No more than you have about the other?—A. No, sir. I simply know that I would not make an affidavit in blank myself and fill it up myself; that would be stupid, and I am not charged with that.

Q. That is the only reason, because you would not make the affidavit in blank and fill it up yourself?—A. That is the main reason.

Mr. INGERSOLL. That is enough.

Q. But you would make an affidavit in blank for somebody else to fill up, would you not?—A. I never did, although I was requested to do so by your assistant counsel.

Mr. MERRICK. Oh, I thank you for that suggestion, but I am not defending the man that you refer to. You were all mixed up in the same transaction, but if you suppose that I am defending him you are mistaken. [Handing the paper to the jury.] Look at that affidavit, gentlemen.

Q. You were making an affidavit at his request, were you?—A. I made the affidavit at his request, and made it truthfully, as I believed.

Q. What did you know about the number of men and horses necessary on that route?

The WITNESS. What did I know?

Mr. MERRICK. Yes.

The WITNESS. Do you mean to ask if I had been on the route?

Q. Had you been on the route?—A. I had not.

Q. What did you know about it?—A. I suppose I knew that to carry the mail thirty-five miles in sixteen hours one man and one horse would do it.

Q. Whether over a mountain or not?—A. I had looked at the map of the country and I knew that it was not over a mountain.

Q. You knew it was a straight road?—A. I knew it was out on the plains.

Q. How many men and horses did you provide for carrying the mail on the lowest time?—A. I provided two men and four horses.

Q. Does that affidavit (5 B) provide that?—A. It does.

Q. How much is the time reduced?—A. Sixteen hours.

Q. Do you not know that there never was any increase in the number of men or the number of horses on that route at all from the original schedule?—A. I have been directed by his honor not to retestify to the testimony given in this case. At that time I did not know it.

There is his statement of the affidavit that he made. He had not been on the route. He made it, he says, at the request of Rerdell. He did not know how many men and animals were required. He said that on the present schedule one man and one horse were required, and on the proposed schedule of seven hours two men and four horses would be used. It was the difference between one man and one horse, two, and two men and four horses, six. Two from six would leave four. Four was the figure he made his proportion on. On that point Farrish, Higgason, and McDaniel all testified to the same thing. On the old schedule they used one man and two horses. When the time was expedited to seven hours they made no change, but used one man and two animals all the time. There was no change at all. The law says there shall be no pay unless more men and animals are required. By this oath of Miner they took out of the Treasury \$2,630.40 by means of the falsity of that very oath. There were \$47.60 on fines on this route. Mr. Brady very promptly remitted them and paid them back. Before speaking of the pay I want to call your attention to 7 B. Here it is. [Exhibiting it.] It is indorsed by Belford, Teller, and Hill. Mr. Rerdell testified that he wrote in that petition the words "and faster time." That only goes to show that a member of Congress will put his name to anything, and send it along as a matter of course. I will show you a lot of cases of that kind as we go along.

The original pay for two trips was \$548. The route was increased to \$3,945.60. The mail was carried for \$840, which was the pay that was given to the subcontractor. Subtract that from the amount that Brady allowed for this service, and you will find the contractor's profit to be on this route alone, \$3,105.60; a clean and clear profit over and above everything that was paid to the subcontractors, with the subcontractors to pay all the fines and deductions. The amount of money that they put in their pockets over and above all the expense was \$3,105.60, all through Mr. Miner's affidavit. That will remind you again of what Miner said to Moore: "We are all good affidavit men, and we propose to make a pretty good thing out of it." I have shown you the productiveness of this route. It is there on the jacket. Five hundred and thirteen dollars was the amount of money that was received into the public Treasury for \$3,945.60 paid out.

Now, gentlemen, there is one thing I want to call your attention to in this connection, because it will answer for all the routes in this case.

There is one other thing I want to call your attention to. The overt acts you have to find. [Handing paper to jury. [There is the oath, dated June 26, 1879, the very day Mr. Brady made his order. Gentlemen, I hand it to you because I do not want any of the gentlemen on the other side to say these dates are wrong. June, 1879, is the date of Mr. Brady's order. In that jacket was this oath. It is marked here 1879, April 18, yet it was used on the same day that the order was made upon which that calculation was based. False petitions, altered petitions, changed petitions—there they are. Rerdell says "I wrote those words in"—the words put in there. They are not the petitions that the people sent; they are changed, altered, fraudulent petitions. Vaile got the money. Miner made the oath. Stephen W. Dorsey drew the money on his subcontract that was put in. Rerdell assisted. They were all in this thing excepting John W. Dorsey; he is the only man whose hand has not appeared in this route at all.

No. 38134, PUEBLO TO ROSITA, COLORADO.

This is the route that runs by way of Greenwood over to Rosita, and this route was taken by Dorsey in the division. The foreman says these things are photographed in his mind, and I do not doubt but they are, but there is one point I want to call your attention to. [Handing maps to jury.] I just show you the maps and, as I go along, you will see the necessity for it. Here is the railroad running up here. [Pointing.] You know the route does not run by the railroad; it runs across.

This route was forty-nine miles; there was one trip a week, time fifteen hours. John R. Miner was contractor, and the pay was \$388. John W. Dorsey commenced by witnessing the contract. I told you in the other route that John W. Dorsey had nothing to do with it. I find he had; he assisted in the proposal. I will read you the official orders:

August 30, 1878, letter from M. N. Megure to Brady.

March 17, 1879, letter from Postmaster Monroe, at Greenwood.

April 21, 1879, John W. Dorsey made oath.

April 22, 1879, petitions filed.

April 25, 1879, letter from Governor Pitkin filed.

April 26, 1879, letter signed by Chief-Justice Thatcher.

May 5, 1879, order to change address.

May 5, 1879, letter from John W. Dorsey.

May 6, 1879, oath of Dorsey filed.

May 8, 1879, John W. Dorsey asked to withdraw his oath.

May 8, 1879, second oath of Dorsey filed.

July 8, 1879, Brady made an order for increase and expedition.

October 17, 1879, change of schedule ordered.

October 22, 1879, subcontract of Eli Hanson filed.

May 8, 1880, letter from postmaster at Greenwood.

July 31, 1881, route discontinued.

Let me go back. Frank Tuttle was the contractor upon this route. He made a contract with Miner to carry the mail at \$700 a year. Remember that. They were getting \$388. Tuttle says, "I made a contract with him to carry it at \$700 a year, and I made him put up the cash in the bank." He was on the stand in the other court-room. You may remember him—a tall, thin man, who said he was running the route up the other way. On the 19th of August, 1878, there was a letter sent to Tuttle. It is 14 C, page 885:

[Branch office, Kansas City, Mo., John W. Dorsey & Co., mail contractors.]

WASHINGTON, D. C., August 19, 1878.

FRANK A. TUTTLE, Box 44, Pueblo, Colo. :

DEAR SIR: Yours 14th received. We accept your proposition, *provided* (so that there shall be no conflict) that a friend of ours, who has recently gone to Colorado, has not made different arrangements before we can get him word.

The petition for expedition should be separate from the petition for increase of number of trips. We make no boast of being *solid* with anybody, but can get what is reasonable.

Yours, truly,

MINER, PECK & CO.

Gentlemen, that letter was written and signed by John R. Miner. He was beginning to get the thing under way, and wrote to Tuttle to make the petitions for increase separate from the petition for expedition, and he says:

We make no boast of being *solid* with anybody, but can get what is reasonable.

And, for fear that Tuttle might mistake it, he underscored the word "*solid*." That was on the 19th of August, 1878.

On the 30th of August, 1878, Mr. Megrue wrote to Brady about this route. It is 1 C, and is found at page 865:

COLORADO STATE PENITENTIARY,
WARDEN'S OFFICE,
Cañon City, August 30, 1878.

SECOND ASSISTANT POSTMASTER-GENERAL,
Post-Office Department, Washington, D. C. :

SIR: I understand that there is a petition in circulation to have the schedule changed on the route from Pueblo to Rosita from once a week, as it now is, to three times a week. You are aware there is now a daily mail from Pueblo to Rosita, by way of Cañon City—

That is not the route from Canyon City to Camp McDermitt. Do not get the places mixed in your minds—

and all the mail for Rosita goes and comes by way of Cañon City, and would continue to do so if there was a daily mail from Pueblo to Rosita by way of Greenwood. The object in having the service increased is not to better accommodate the people, but for the increased pay.

Yours, truly,

M. N. MEGRUE,
Contractor, Route No. 38132.

Megrue, you know, was a man who was running another route, but he notified Brady that no matter whether he made daily mail or not, of course it would go along the railroad.

September 3, 1878, there was another letter to Tuttle. It is 15 C, and is found on page 886:

WASHINGTON, D. C., September 3, 1878.

FRANK A. TUTTLE:

DEAR SIR: Yours 23d received. We have been looking into the chances of having route 38134 increased to three trips a week, and they do not look promising. The only office supplied by the route is Greenwood, according to the rule of the department, as Rosita has mail six times a week from route 38132, and Pueblo is on R. R. We will, however, do what we can to accomplish it. If we fail we have an offer to carry the mail once a week at a reasonable price.

Truly, yours,

MINER, PECK & CO.

Miner wrote and signed that letter. You remember that Tuttle said he did not want to carry the mail on this route; that he took it at this big price simply because he said he just wanted to accommodate them,

but he made them put the money into the bank. He did not care about carrying it. They were asking him about the increase and about getting up petitions, and they said, "If it cannot be increased, then we will get somebody who will take it at a less rate" than they were paying him! You know they were losing. They were paying him nearly double what they got for it. They got \$388, and they paid him \$700.

On the 17th of March, 1879, there was a letter from Postmaster Monroe, at Greenwood. That is 8 C, and is found at page 869:

GREENWOOD, COLO., *March 17, 1879.*

Mr. JAMES H. TYNER,

First Assistant Postmaster-General:

My duty to the department requires that I should suggest the discontinuance of the present mail service [weekly] from Pueblo to Rosita, as we now have a tri-weekly from Florence to Greenhorn, by which we receive all our mail at present, and while we should much prefer the route from Pueblo to Rosita, yet so long as we have the mail promptly by the other route the service from Pueblo to Rosita is superfluous and a needless expense to the Government. I do not make this suggestion at the instance of any interested parties, but simply as a saving to the department.

I am, dear sir, yours, very respectfully,

A. Q. MONROE, *Postmaster.*

Indorsed:

P. M., Greenwood, suggests discontinuance of service.

I have shown you that in April, 1879, S. W. Dorsey wrote letters and gave them to Rerdell, and on the 17th of April, 1879, Rerdell started out West. Stephen W. Dorsey testifies to the same thing.

On the 21st of April, 1879, John W. Dorsey made an oath. Gentlemen, this route was Miner's. J. W. Dorsey made an oath as subcontractor. Here it is, 4 C, for increase to seven trips, ten hours, and he says it takes seven men and thirty-eight animals. Kellogg, who was Stephen W. Dorsey's secretary, and who testified here on the stand, wrote the body of this oath. Rerdell filled in the figures. John W. Dorsey signed the oath.

There were petitions filed on the 22d of April for a daily mail from Pueblo to Rosita; not one of these petitions specified which route it was, whether along the railroad, or across the other way by the stage line.

On the 25th of April, 1879, there was a letter of Governor Pitkin's filed, indorsed by J. B. Belford. Gentlemen, Rerdell wrote that letter and Pitkin signed it. Rerdell had letters from Stephen W. Dorsey to different people out there, and he wrote that letter and Governor Pitkin signed it.

On the 26th of April, 1879, there is a letter signed by Chief-Justice Thatcher and Associate-Justice Stone, both of the supreme court of Colorado. Rerdell wrote that letter and those gentlemen signed it, because Rerdell's letters of introduction called for some courtesy, as coming from Stephen W. Dorsey. Rerdell put the letters in his pocket and brought them home. Stephen W. Dorsey says, at page 3770:

Q. Do you remember giving him any instructions in reference to getting letters from prominent men, governors or judges, or officers of any kind?—A. That is possible.

He does not deny that he did it. He says: "That is possible."

Then came the letters to change the address to care of Rerdell. May 5, 1879, John Dorsey's oath, that is, 4 C, was transmitted to the department. Rerdell wrote the letter of transmittal. You remember that Rerdell testified: "I got back on the 5th of May, and when I got back I found a lot of blank affidavits. Stephen W. Dorsey told me to fill them up, and I filled them up." He says on the 5th of May he got back,

and on that day he wrote the letter transmitting this oath of John W. Dorsey's to the department.

On the 8th of May, 1879, John W. Dorsey wrote a letter asking leave to withdraw this oath, and making the statement that there was an error in it as the reason why he wanted it withdrawn. The oath was not taken from the files but was left there. He simply wrote a letter stating that he wanted it withdrawn.

On the same day, the 8th of May, the second oath of Dorsey was filed, and this oath is dated 26th of April, 1879. Both oaths are dated the same day. Rerdell says: "I wrote the body of that oath, filled it in, and John W. Dorsey signed it." Now, we questioned John W. Dorsey as to why it was that he came to put in these two oaths calling for a different number of men and animals. He says, in 4 C:

The number of men and animals necessary to carry the mail on route No. 38134, on the present schedule, is three men and twelve animals.

In this other affidavit he says:

The number of men and animals necessary to carry the mail on route No. 38134, on the present schedule, is two men and six animals.

There is a vast difference between those two statements, and we wanted to know how it was that he came to make those two statements. On page 4134 he says:

Q. Did you know anything about the number of men and animals necessary to carry the mail on that route at the time you affixed your jurat to those affidavits?—A. I don't suppose I did practically. I don't think I did.

Q. Don't you know you did not?—A. Yes, sir; I know I did not.

Q. What did you swear to it for?—A. I swore to what my belief was.

Q. How did you found that belief?—A. As I stated this morning, I pretended to no experience in the business, but I relied upon another man, and swore to what I believed at the time to be true.

Q. Who was the other man?—A. Mr. Rerdell.

Q. What did he know about it?—A. He claimed to know about it.

Q. Did you not know that he knew as little about it as you did?—A. No; I think he knew a good deal more.

Q. Why did you not make Rerdell swear to it?—A. He could not legally, I suppose.

Then, again, on page 4136, he says:

The WITNESS. I know what he wrote me well enough.

Q. I don't care about it. How do you know what he wrote you; do you recollect it?—A. I don't recollect it particularly, but every time he sent me something to sign he would write me in regard to it—

Q. [Interposing.] Then, you don't recollect?

Mr. DAVIDGE. Let him go on.

A. [Continuing.] I never wrote that word "subcontractor" in there.

Q. You say every time he sent you anything to sign he wrote you about it?—A. Yes, sir.

Q. But you have no recollection of what he said to you when he sent you these affidavits, have you?—A. No, sir; nothing particularly.

Q. No independent recollection?—A. He wrote that word subcontractor in there. That is one of his tricks.

Q. How do you recollect it?—A. It is his handwriting.

Q. He wrote that in there for you to swear to, and you swore to it like a man?—A. He wrote it in there after I swore to it. I never swore to any "subcontractor."

Then, on the next page, at the bottom:

Q. On the same day you swore that the number of men and animals necessary to carry the mail on that same route was two men and six animals. Both of those statements could not be true. Which was a lie? [After a pause.] Which was the lie and which was the truth? Take the papers and look at them and tell the jury.—A. [After examining the papers.] If I made a mistake I probably corrected it, as far as that is concerned.

Q. You did not say you corrected it. Both were made on the same day, and both could not be true. Take your choice and tell us which is the truth.—A. I had not

observed before that these were both on the same route. I would like to make an explanation.

Mr. MERRICK. Certainly, sir; you are entitled to make any you can.

Then there was some conversation between counsel and the court.

Mr. MERRICK. I do not want any information except what took place then. You swore to them up in Vermont.

The WITNESS. Yes, sir.

Q. Was Rerdell there?—A. No, sir. One came in the early morning mail at 3 o'clock, and I went out and acknowledged that one and put it in the next mail, as he wanted it right off.

Q. Do you recollect that?—A. Yes, sir.

Then on the next page, near the top :

The WITNESS. I will tell you. My memory was refreshed when you called my attention to the fact that they were both on the same route. I went up and had one acknowledged, which came in the morning mail, because he said he wanted it immediately, and I mailed it in the 11 o'clock mail. In the afternoon at 2.40 another one came, saying that there was an error, and he wanted to have me acknowledge that, and he would destroy the other one, and so I went up and acknowledged that and sent it on the next mail. It came on the night mail.

Q. Do you recollect that fact?—A. I recollect it from my memory being refreshed.

Q. Refreshed or unrefreshed, do you recollect that fact?—A. Yes, sir; I think I do very thoroughly.

Then at the bottom :

Q. Did it suggest itself to you, when you got the second letter on that day to swear to the second affidavit, that you had been led into making an affidavit that was incorrect?—A. I do not know. I do not recollect.

Q. It did not make any difference to you, did it?

By the COURT:

Q. You say the letter was from Rerdell?—A. Yes, sir.

Gentlemen, those two affidavits were made on the 21st of April, 1879. When we found that John W. Dorsey was swearing that way there was a telegram sent from the Department of Justice to the West, and, with the aid of postmasters out there, it was soon ascertained where Rerdell was upon that date. We brought Mr. Rumsey from Sidney, Nebraska. He kept the Sidney Hotel, and he brought his book, showing that on the 21st of April, 1879, M. C. Rerdell was registered at Sidney, Nebraska. Then the book from Greeley, Colorado, showed that Rerdell was registered at that hotel for dinner on the 24th of April, 1879. On the same day (24th of April, 1879) Mr. Hinman, of Denver, says that Mr. Rerdell was registered at his house, the Grand Central, and he staid there until next morning. Now, gentlemen, how could Rerdell write and send those letters when he was away out West at that time? And in addition to that, John W. Dorsey swore to those two affidavits on that day, so he says, "not in blank," and he remembers it because "one came in the morning, and another came in the afternoon, because he got the letter from Rerdell——"

Mr. MERRICK. [Interposing.] He says the letter came from Washington.

Mr. KER. Came from Washington; yes, that is right; "that they were sent by Rerdell, and that Rerdell told him he was going to destroy one and use the other." Gentlemen, he fixes the fact, and says that he is positive of it. I will show you right here, by this package of papers, that there were four affidavits on that one day—not two, but four, on three different routes: two on this one, one on another, and one on a third. There is Mr. Dorsey's explanation. When I come to the others I will call your attention back to them. We will see who was telling the truth.

On the 8th of July, 1879, Brady made an order, marked 2 C, page 866:

1st. Increase service to six trips per week from July 14, 1879, and allow contractor \$2,328 per annum additional pay, being pro rata.

2d. Reduce running time from fifteen hours to ten hours from July 14, 1879, and allow contractor \$5,432 per annum additional pay, being pro rata.

BRADY.

Now, gentlemen, in this jacket, upon which Brady made this order, is found a letter from Mr. Monroe, the postmaster at Greenwood, telling him that the route ought to be discontinued. Inside the jacket upon which he made this very order is another jacket, saying that this route ought to be discontinued, and right across that jacket where the clerk has marked down what the contents were: "Letter requesting it to be discontinued," he wrote: "Do this.—Brady." There it is, in blue pencil—"Do this.—Brady." We did not know which he meant by "Do this.—Brady," for he seemed to indorse what the postmaster said—to discontinue the route. He afterwards made an order granting them over \$5,000 for expedition alone. One jacket was inside the other, and they were all together to make up the case. Brady has given us a short statement as to why he did it, on page 3432:

Q. In that case, there being two affidavits on file stating a different number of men and animals as then actually in use, do you know whether you still accepted as conclusive one or the other of those affidavits?—A. I believe those affidavits bring out the same proportion by the rule of three.

Q. But if one affidavit states that two men and six animals were then in use, and the other states that three men and twelve animals were then in use, did you assume that one or the other of those affidavits correctly stated the number of men and animals in use?—A. I do not remember anything about those affidavits; that was a small thing, but I think it has been shown that the proportion comes out just the same, whichever affidavit you take.

Then, on page 3433, near the bottom:

Mr. BLISS. My question is whether you took any means to ascertain whether John W. Dorsey was the subcontractor on that route?

A [After looking at jacket.] I do not remember that I did.

Q. Miner appears as the contractor?—A. Yes.

Q. If Dorsey had been subcontractor would it not have been stated on the jacket, under the practice of the department?

Mr. INGERSOLL. I object to that. I have no objection if he asks, ought it not.

Mr. BLISS. Would it not?

The COURT. You can ask that question.

The WITNESS. It ought to have been stated; yes. It may have been a pure omission though; probably was.

Q. Were you in the habit of examining the affidavits for expedition?—A. Well, when those cases came up in these jackets I usually cursorily looked over the papers, and sometimes attempted to figure on the affidavits. I do not know that I did it uniformly though.

On page 3586:

Mr. BLISS. What were you going to say, Mr. Brady?—A. I was going to say that this seems to have been a jacket made up for the reduction or the discontinuance, I do not know which, of this route, and that it has been indorsed by me: "Do this.—Brady."

Q. But the order was not carried out, apparently; there is no evidence of it?—A. No; and why it was not carried out I cannot remember now.

Q. This letter having been received at the department on March 21, 1879, and you having, on the 8th of July, 1879, instead of discontinuing the route, made an order increasing it to six trips and expediting it to ten hours at an additional expense of \$7,760 a year, does not that show why it was not carried out?—A. All the papers that were filed in the case will probably explain why it was not carried out. This is simply the jacket that contains the order, without the memorandum jacket.

Q. But 7 C has indorsed upon it the language of the letter from the postmaster, and across it are indorsed your words: "Do this.—Brady."—A. Yes, sir.

Q. After that have you any question that you saw that letter?—A. It would appear that I had seen that, but I say I have now no recollection of having seen it.

The question was whether he had seen the letter of the postmaster calling his attention to the fact that the route ought to be discontinued, and he admitted, from the papers before him, that he must have seen that letter.

You know, gentlemen, that John W. Dorsey had no more to do with this route than you or I had; that he was not interested in it at all; he was not contractor; he was not subcontractor. He had nothing at all to do with the route, if you take his statement. But he says, "It would not have been right for Rerdell to swear to it;" "he sent it to me and I swore to it;" and he did swear to it, and his affidavit was put in and used, and here both of them are.

The next was a change of schedule.

On the 22d of October, 1879, there was filed a subcontract with Eli Hanson, calling for \$3,100 per annum. Rerdell signed as attorney for Miner.

On the 8th of May, 1880, there was a letter from postmaster Walters, at Greenwood, 9 C, page 869. This was after expedition.

GREENWOOD, COLO., May 8, 1880.

To the FIRST ASSISTANT POSTMASTER-GENERAL,

Washington, D. C.:

DEAR SIR: We have received no daily mail by route 38134 since April 30, 1880, it having been carried to the former location of the office. While this office is located on the route on which the contract was let, they have persistently refused to deliver here. Both myself and postmaster at Rosita, Custer County, Colorado, also P. M. Ingersoll, at Pueblo, consider it a useless and expensive route to the Government, as this office is the principal one on route 38134, can be, and is now supplied by route 38169, which is ample to supply the demands of this office. We suggest that route 38134 be discontinued, and that Silver Park Office [a precinct containing about fifty persons all told] can be supplied by a tri-weekly mail from Rosita at a trifling expense to the Government compared with the present.

Hoping the above will receive your earnest attention, I remain, yours respectfully,

J. W. WALTERS,

Postmaster, Greenwood, Custer County, Colo.

There are two of them—Monroe first; Walters second; different postmasters from the same office, writing to the department that it is a useless expense to the Government; one before expedition, and the other afterward.

On the 31st of January, 1881, the entire route was discontinued—this useful route.

Tuttle, in giving his testimony, said, "I made three trips a week in twelve hours." You remember, gentlemen, that fifteen hours was the full time. Tuttle, the first man who got it, received \$700, and said, "I made three trips in twelve hours; my contract only called for one." See? One trip was to be in fifteen hours. He made three trips in twelve hours; and that was done before expedition was ordered.

The COURT. You mean twelve hours for each trip?

Mr. KER. The time was fifteen hours, and he made each trip in twelve hours; yes, sir. He made two more trips than there was any necessity for. And the reason of that was, gentlemen, because he said he had a coach and was carrying passengers; but when he found it was no use, that there were no people coming over that route at all, but they were coming down the other from Cañon City, as I have shown, then he did not want to have any more to do with this route. He told us that on the stand. He did not care about carrying it anyhow, but while he was carrying it he made three trips in twelve hours. Brady brought it down to ten hours, and made it three trips.

Vaile drew the pay, Stephen W. Dorsey drew the pay, and Bosler drew the pay on this route. And I call your attention, gentlemen, to the fact that in the first quarter of 1881 there was an order signed by Miner for the pay for that quarter. Do you not remember that Miner said, "I had nothing more to do with the routes after they passed into the hands of Stephen W. Dorsey?" Here is his order, dated on the 13th day of October, 1879, and he says: "We parted on the 5th of May," and this is dated on the 13th of October, 1879, and is not disputed. It is signed by John R. Miner for the pay to Stephen W. Dorsey for the quarter ending December 31, 1880.

Again, on the 7th of October, 1879, is another order signed by John R. Miner, and that order is not disputed.

Now, gentlemen, Marks testified that the mail on this route left Pueblo at 7 o'clock in the morning, and arrived at 6 o'clock in the evening. The railroad mail left at 1 o'clock in the afternoon. This mail got back from Rosita at 6 o'clock p. m. What difference would it have made to have it carried in fifteen hours, or twenty hours, for that matter? What was the necessity for making it ten hours when it got in five hours after the mail had left, and about nineteen hours before it could pass out of that office again? Then the postmaster says that "the mail for Rosita was sent by way of Florence and Cañon City." "When this route became daily only two or three letters passed over the route; sometimes one letter and sometimes only the mail bill." Not a thing going over it but the mail bill. Rosita got its mail by Cañon City. The mail from Pueblo did not go over this route. Greenwood was the only office that was supplied on the route, and that got its mail from Florence on the railroad.

A number of papers were shown you by the defense. They wanted to show that Mr. Brady had some good reason for making an order; and, among others, they exhibited to you an advertisement that was cut from the paper. I think, gentlemen, that when I handed you that clipping from the paper they thought it was something that ought to have had weight in Brady's favor. It was a clipping from a paper called the Chieftain, and it was said to have been edited with "vim, vinegar, and vitriol." I showed you the "vitriol" part. But I suppose it was sent along with the petition, because they knew that Brady was a newspaper man, and if anything would capture Brady it would be a newspaper article. That advertisement is printed in the record. It seems to have been a printed advertisement of the time the mail coaches left. But what that had to do with Brady making an order for expedition is a little more than I can imagine.

Now let us see about this oath. There were two oaths. One says that on the present schedule three men and twelve animals are required. That would be fifteen. The other says two men and six animals; that would be eight. There is a big difference between eight and fifteen. On the reduced schedule, the first oath says seven men and thirty-eight animals; that is forty-five. The second one says six men and eighteen animals; that is twenty-four. There is a big difference between twenty-four and forty-five. But Brady says, "There was the same proportion." Well, gentlemen, you can make the additions for yourselves. The figures that they would work upon, to give him the amount of pay in one oath, would be thirty, and in the other it would be sixteen; and for the life of me I cannot make the same proportion to come out of sixteen and thirty. There was not the same proportion, and if you will take the affidavits and put the figures together yourselves you will see that there could not have been.

Mr. Merrick suggests to me that it did not make any difference; that it is a question of veracity. Let us see how many men were actually used. Tuttle says that when he carried it he used four men and eight animals, and he carried passengers with the mail. He made three trips and used four men and eight animals; that is twelve. And John W. Dorsey says in one oath it required forty-five, and in another he said twenty-four. Tuttle says he used twelve. Tuttle was asked: "If you did not carry passengers how many would you have used?" "Oh," he says, "Two men and three animals;" that would be five. Heavens! John W. Dorsey says forty-five in one oath, and in the other he says twenty-four. Hull, another carrier, said he made seven trips. You remember the oath was put in for three trips, but he says: "I made seven trips, and I used twelve men and fifteen animals, making a total of seventeen. Dorsey's lowest was twenty-four; his highest forty-five.

The COURT. Twelve men and fifteen animals make how many?

Mr. KER. Twelve men and five animals, adding them together, makes seventeen.

The COURT. You said twelve men and fifteen animals.

Mr. KER. Dorsey's lowest was twenty-four and the other was forty-five. Now, it is upon the strength of that affidavit, and with utter disregard of the wants of the people and the advice that he received from the postmasters on the route, that the pay that originally had been \$388 was jumped up by Brady until it reached \$8,148.

You know the defendants here say: "Why, this country was growing rapidly; towns sprang up by magic; the population was pouring in." Where did that population come from? Where did this vast increase come from? Do you find, in your community, people with their goods packed ready to start, the moment they hear a whisper that there is a gold mine here or a silver mine there? I do not think that is your experience. A great many people come from other countries, and a great many people leave the East and go West. But the people here are not, as it were, dancing upon a wire, ready, the moment the wire is pulled, to shoot off West. Let me give you the explanation. Mathematics is, I believe, the only exact science in the world, and the figures will hardly tell a lie.

You know, that as the railroad went along from place to place, it was mapped out in advance by the engineers, and immediately towns would spring up. The railroad laborers would camp, and people would flock in from the surrounding places and settle there. In this way a place like Pueblo, when it started, drew its population from all the little villages that were anywhere in its neighborhood. Two or three families in each little village like Greenhorn packed up their goods and went up to Pueblo, where they thought they would be better off. And immediately the population from the surrounding country would come into Pueblo, and in that way Pueblo grew up, as it were, by magic. But it grew up at the expense of the surrounding country. If those people were, as is represented, Eastern people, used to mail facilities, anxious and eager to write, would they not buy their stamps at the office, and would not the office show that there was an increase in the revenues and mail? Would it not show that there was such an increase as warranted the idea that these were people who demanded increased mail facilities? Gentlemen, I tell you the figures will not lie. The figures show that in 1879, when Brady made the great majority of these orders for expedition, in the railroad towns that were then being started along the line of railroads, in Greenhorn and Greenwood and all those places of that kind not on the railroads, the population decreased and the revenues of the post-offices de-

creased, while the revenues of the post-offices at the other places on the railroads increased, but not in a double proportion, simply bearing a little more than the proportion of decrease in places like Greenhorn and Greenwood.

In 1880, one year afterwards, as I will show you, the revenues of the offices at those places not on the railroads fell off; in other words, the men who had gone up to Pueblo went back to the places where they started from, and the revenue of the offices back in the region where they came from began to increase. In 1880 the revenues of the old places were less than they were in 1879. The population out there, gentlemen, is a floating one. It is not one that is wedded to a place by old ties and old associations. The returns to the Post-Office Department show that the revenues of all such offices were less in 1880 than they were in the year 1879, and they were less again in 1881. The railroads were carrying the population out of Colorado clean on to Montana and Dakota. And I think that if you were to take the census of Dakota, Montana, and Colorado now, you would find that the population is drifting to the New El Dorado, which is Washington Territory. Washington Territory is growing, and growing at the expense of the rest of the West. Of course these places fall off from time to time; there is no question about that. But I say I will show you as I go along, as I have shown you in this case, that the revenues do not warrant the assertion of these gentlemen that "the people were flocking in from the East and that they were demanding an increase of mail facilities."

They paid Eli Hanson after the seven trips were put on \$3,100. Gentlemen, they had a clean and clear profit of \$5,048 out of this route; \$5,048 over and above everything. And right on the jacket before Thomas J. Brady was the very evidence of that fact. The revenue of the only office upon that route, Greenwood, was \$52.29, and yet Brady raised the pay of the route from \$388 to \$8,148. As I said to you in my opening, without Walsh's testimony and without any of the evidence that has come before you, there is no man who lives and breathes and has the sense with which Providence endowed him who would say that Brady made this order honestly.

The COURT I do not want to disturb the order of your argument, but I would like to know what petitions or Congressional recommendations there were in this case.

Mr. KER. There is a newspaper clipping and there are petitions filed for daily mail from Pueblo to Rosita, but not specifying the route. There are four of those signed by people living in Pueblo and by people living in Rosita. There is a letter written by Rerdell, signed by Governor Pitkin, and a letter written by Rerdell signed by Chief-Justice Thatcher and Associate-Justice Stone. Those are the papers upon which this increase and expedition were granted.

Now, gentlemen, let me call your attention to the overt acts in this case. There is no mistake about the 8th of July, 1879. I simply want you to see that is the true date as mentioned in the indictment. On the 8th of July, 1879, Brady made this order. [Exhibiting order.] No matter what you call it, improvident, fraudulent, or anything else, he made that order. In the jacket upon which he made that order are the two inconsistent oaths. They have been shown to be fraudulent. One of the oaths is marked filed May 6, 1879; the other is marked May 8, 1879, and is the oath that was used by Brady when he made his calculation for this order on the 8th of July, 1879.

ROUTE 38145, GARLAND TO PARROTT CITY, COLORADO.

This is what is called the Ojo Caliente route. The route was originally from Garland to Parrott City. Garland was cut off, and it was started at Ojo Caliente and ran to Parrott City. By cutting off Garland the route was reduced from two hundred and eighty-eight miles to one hundred and seventy-two miles. It was one trip a week, and the time was seven days. When they cut off this branch of the route the time was still seven days. It made no difference at all. They were allowed seven days to do what they ought to have done the whole route in. John W. Dorsey was the contractor. The pay was \$2,745 for the entire route. The proposal was written by Miner and the amount was filled in by Rerdell. I will give you the official orders:

June 10, 1878, letter from S. W. Dorsey to Brady.

June 26, 1878, service curtailed to Ojo Caliente.

July 16, 1878, Postmaster Trew wrote Brady.

January 23, 1879, service curtailed to end at Animas City.

January 30, 1879, subcontract with Anthony Joseph.

March 11, 1879, J. W. Dorsey made an oath.

April 14, 1879, letter from Anthony Joseph to Brady.

April 16, 1879, letter from J. W. Dorsey.

April 17, 1879, letter from General Hatch.

April 24, 1879, letter from S. W. Dorsey to Brady.

April 24, 1879, letter of J. W. Dorsey.

April 24, 1879, order from Brady to embrace Pagosa Springs.

April 26, 1879, letter of General Hatch filed.

April 29, 1879, order for increase and expedition.

May 31, 1879, letter from the postmasters to Brady.

August 7, 1879, subcontract of Pedro J. Jaramillo.

September 29, 1879, notice sent of the subcontract.

April 4, 1880, Postmaster Trew wrote Brady.

January 8, 1880, agreement with Jaramillo.

June 12, 1880, subcontract with Sanderson.

August 16, 1880, letter of J. W. Dorsey to Brady.

August 19, 1880, Brady made an order for remission.

February 26, 1881, order for increase.

Now, let me go back and explain to you. I find by the papers that on the 31st of March, 1878, there was a subcontract made with a man named J. H. Watts that was not on file, though it is mentioned in the papers. This is a route that Dorsey took. On the 10th of June, 1878, S. W. Dorsey wrote to Brady asking to have the service increased to seven trips and the schedule reduced. Rerdell wrote the body of the letter. After the letter was written Stephen W. Dorsey wrote in the words, "Denver and," "river," and "this." Mr. Ingersoll, after looking at it, said, "There is no doubt about that." They admit it. This letter was written by Dorsey to Brady, asking him to make it seven trips, while Dorsey was still in the Senate. On the 26th of June, 1878, Brady made an order (2 F, page 1075) to curtail the service to end at Animas City, decreasing the distance one hundred and sixteen miles, and decreasing the contractor's pay.

On the 16th of July, 1878, John M. Trew, the postmaster at Animas City, wrote to Brady, "We have no use whatever for that route. No mail passes Parkview." You see, gentlemen, down here [exhibiting map to jury], "No mail passes Park View." That was the jumping-off place.

There was no mail beyond there. "Between that and Parrott City it is a useless expense." That is 69 F, page 1201.

On the 23d of January, 1879, there was an order made curtailing the service to end at Animas City, decreasing the distance eighteen miles. That is 3 F, on page 1075. I will show you when I come to the other route why they made it end at Animas City. There was a trail over here [indicating on map] which made the route thirty miles shorter, but Joseph told you, on the stand, that he was ordered to go around the other way, and he went around the other way, and Animas City then, of course, was on the route he passed over.

On the 30th of January, 1879, Joseph testified that Rerdell paid him a visit, and on that date he made a subcontract with Joseph. The testimony was that Miner sent Rerdell down there to make this subcontract. This was on the 30th of January, 1879. They had their lawsuit in February or March, 1879. This was while Rerdell was in the employ of Vaile and Miner.

On the 11th of March, 1879, John W. Dorsey made the oath 20 F. It was made up in Addison County, Vermont. I will give you another one after a while on the same route. You will notice it is filled in. Rerdell filled in the blanks. He filled it in afterwards. He says Stephen W. Dorsey gave him directions to fill it in. Now, I will read to you what Stephen W. Dorsey says about it on his examination-in-chief, page 3771:

Q. Mr. Rerdell has testified that you instructed him to have a lot of affidavits made in blank and sent to John M. Peck and John W. Dorsey to be sworn to. You may state what instructions you gave him, if any, upon that subject.—A. I never gave him any.

Q. He has also sworn that in some instances you filled up the affidavits purporting to have been made by John M. Peck or John W. Dorsey, in which the number of men and animals necessary on the then schedule was stated and the number of men and animals necessary on the proposed schedule. You may state whether you ever filled up any affidavits, and, if so, what.—A. I do not remember of ever doing any such thing.

Q. I now read the paper marked 22 F, being a sworn statement in regard to the number of men and animals required to perform service on the present and proposed schedule on route 38145:

"Hon. THOMAS J. BRADY,

"Second Assistant Postmaster-General:

"SIR: The number of men and animals necessary to carry the mail on route 38145, on the present schedule, and three trips a week, is five men and fifteen animals. The number necessary on a schedule of fifty hours three times a week is twelve men and forty-two animals.

"Respectfully,

"JOHN W. DORSEY."

"CITY OF WASHINGTON,

"County of Washington:

"John W. Dorsey being duly sworn, deposes and says that the above statement is true, as he verily believes.

"Sworn to and subscribed before me this 26th day of April, 1879.

"W. F. KELLOGG,

"Notary Public."

You may state whether you filled up that affidavit, putting in the number of the route, the words "three trips," the word "five," the word "fifteen," the word "fifty," and the words "three, twelve, and forty-two."—A. I have no recollection about it at all.

Q. Can you now see what the writing is?—A. No, sir; I cannot, I am sorry to say.

Q. You have no recollection one way or the other?—A. None at all.

Q. You may state whether you have any recollection of filling up any affidavits.—A. I have no idea that I ever did. I have no recollection that I ever did.

I will pass the oath, gentlemen, until I come down to the place where it was filed along with the other, and then I will bring your attention to both of them.

The next was on the 9th of April, 1879, when Stephen W. Dorsey wrote a letter to Brady. It is 39 F, on page 1102. I want you to listen to this letter:

KANSAS CITY, MO., April 9, 1879.

Hon. A. JOSEPH, Taos, N. Mex.:

DEAR SIR: The department talks some about discontinuing the mail route from Pagosa Springs to Parrott City, and I write this to ask you to send *every protest within your power* by petition and letter against any such proposition. Do this forthwith.

That is all that is worth reading in the letter at the present time. On the 14th of April, 1879, Anthony Joseph sent a letter to Brady, which is 8 F, on page 1078:

TAOS, N. MEX., April 2, 1879.

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General, Washington:

SIR: The postmaster at Ojo Caliente has placed before me your communication of the 21st of March, 1879, changing the schedule of departures and arrivals of the mail on route No. 38145 (Ojo Caliente to Animas City). As the subcontractor on said route permit me to inform you that it is impossible to carry the mail on said route once a week inside of one hundred hours. The distance is from Ojo Caliente to Animas City, one hundred and eighty-one miles; the road is mountainous and very rough; the mails are very bulky and heavy, and the rivers are very bad to ford four months in a year. The best that I can do under the circumstances is to carry the mail through on a schedule of six days.

Then he gives a schedule and continues:

This arrangement will satisfy all parties, make the proper connections, and allow me just time enough to make the service regular and efficient. Trusting that you will take the above facts in consideration, and do me justice in the premises, I remain your obedient servant,

ANTHONY JOSEPH,
Subcontractor.

On the 16th of April, 1879, John W. Dorsey filed his oath of March 11, the one I have shown you. The letter is 21 F, on page 1086. Let me read it to you:

WASHINGTON, D. C., April 14, 1879.

Hon. T. J. BRADY,

Second Assistant Postmaster-General:

SIR: I beg to transmit herewith my proposition to carry the mail on route 38145, from Ojo Caliente to Parrott City, Colo., on an expedited schedule.

I have to state that there is an error in the distance of more than forty miles. The actual distance is about one hundred and ninety miles, which will be shown in due time by distance tables. The road is a difficult one, with many large mountains and streams to cross.

Hoping that the proposition will be acceptable,

I am, very respectfully,

J. W. DORSEY.

Rerdell wrote that letter and signed Dorsey's name to it. Now, in the letter I have read to you from Stephen W. Dorsey to Brady, he said that he had sent a letter to General Hatch and to other people. On the 17th of April, 1879, General Hatch, in answer to the letter that Dorsey sent to him, wrote to Dorsey. In that letter he said: "I would be very thankful for a daily mail from Pagosa Springs." Dorsey had written to Hatch, telling him he was going to apply for it, and Hatch wrote to Dorsey, saying that he would be very thankful for it.

On the 24th of April, 1879, Stephen W. Dorsey wrote a letter to Brady, and in that letter he inclosed a number of petitions. He said in the letter, 23 F, page 1087:

I am personally familiar with the facts stated, and know the necessity for the increase. I simply write this to add my testimony to theirs.

This was one of his own routes. Some of the petitions that he put inside of that letter were ones that he had written himself, and

sent to Joseph on the 9th of April. One of those petitions was written by Rerdell, and two of them were written by Stephen W. Dorsey himself. Here they are [exhibiting petitions]. He wrote them and sent them out to Joseph, and they came back, and he sent them to be put on file in the Post-Office Department.

On the same day, April 24, 1879, there is a letter sent in from J. W. Dorsey with the oath. It is 19 F, page 1085. Here it is, gentlemen [exhibiting it]. That letter was written and signed by Stephen W. Dorsey. You will have an elegant chance now to see what a good penman Stephen W. Dorsey was, and how many different hands he could write. Inside of that letter was this oath [exhibiting it]. The body of the oath was written by W. F. Kellogg. Stephen W. Dorsey wrote the interlineations in the oath. I have just read you his testimony. He says he did "not remember it;" he has "no recollection of it." It is testified that Stephen W. Dorsey wrote those interlineations in that oath. The oath is dated the 26th of April, 1879, and is attested by Mr. Kellogg, who was in Stephen W. Dorsey's own office. Rerdell could not have done that, for Rerdell was out West. We had the books here to show where he was. I want to read you what Stephen W. Dorsey says about it.

The COURT. We will take a recess now.

At this point (1.05 p. m.) the court took its usual recess.

AFTER RECESS.

Mr. KER. Gentlemen, I showed you the two affidavits. The last one that was put in is dated April 26, 1879. On the 26th of April Rerdell was out West, according to the testimony of the books. I now read from Stephen W. Dorsey's testimony, on page 3937:

Q. Did you not have that paper among your papers originally as a blank affidavit?—A. I could not say.

Q. Did you not, with your own hand, fill up this affidavit by writing the word "three" before trips, the word "fifty" before hours, the word "three" before times, the word "twelve" before men, and the words "forty-two" before animals?—A. I don't think I did.

Q. Have you no recollection of it?—A. I have no recollection of it at all.

Q. Had you written it in, there would you have recollected it?—A. I probably would.

Q. You probably would have recollected it; do you say you did not?—A. I do not think I did.

Then, on page 3939:

Q. Are you willing to say that you did not write those words in that affidavit?—A. I am willing to say that I do not believe I did.

Q. Are you willing to say you did not?—A. I will not say that I did not, but I don't believe I did. That is as far as I want to go.

Q. That is as far as you can go?—A. Yes.

Q. Where was John W. Dorsey on the 26th of April, 1879?—A. I do not know.

Q. Was he in Washington City?—A. I don't know whether he was or not.

Q. Do you not know that he was not in Washington City?—A. I say I don't know whether he was or not.

Q. Try and recollect.—A. I can't recollect a thing I don't know.

Q. You may recall by an effort. Have you not located him in your testimony as elsewhere than in Washington City on that day?

The WITNESS. In my testimony?

Mr. MERRICK. Yes.

A. I don't know that the question has been asked me.

By Mr. INGERSOLL:

Q. What date is it?—A. 26th of April, 1879. He went to California, but whether he went before that or not I do not know.

By Mr. MERRICK:

Q. Did he not go to California to look after the Redding and Alturas route prior to that time?—A. Yes, I believe he did.

Now, John W. Dorsey testifies, on page 4140:

Q. [Interposing.] It is not what he told you, but what you state. I told you I would call your attention to two other affidavits, into which we happened to run. Will you tell me whether you signed those two papers, marked, respectively, 20 F and 22 F? I tell you beforehand that those are the two affidavits that I say are not consistent and you say are. I give you the benefit of knowing what are the facts. Look at them carefully and tell me if you signed them.—A. Yes, sir; I signed them both.

Q. Have you looked at them?—A. I have looked at the signatures; that is all.

Q. If you want to read them, read them.—A. One is made for an eighty-hour schedule, and the other for a fifty-hour schedule.

Q. And they are consistent, are they?—A. Yes, sir; I consider them so.

Q. These affidavits are made, one on the 11th of March, 1879, and the other on the 26th of April, 1879. The March affidavit is sworn to before Wainwright. That is in Vermont?—A. Yes.

Q. Then in April the other is sworn to before Kellogg. Now, in March you swore as follows:

"The number of men and animals necessary to carry the mails on route 38145, from Ojo Caliente to Parrott City, three times a week, is three men and seven animals."

And in April you say:

"The number of men and animals necessary to carry the mail on route 38145, on the present schedule, and three times a week, is five men and fifteen animals."

Which is true and which is false?—A. I could not tell you in regard to that.

Q. Look at them and tell the jury if they are consistent. You say in March "three men and seven animals," and you say in April "five men and fifteen animals." Both cannot be true. Tell us which is true.

Then there was some objection by counsel. Then, at the bottom of the page:

The WITNESS. One is made for a long schedule and the other for a short schedule.

Mr. MERRICK. I am not talking about that. I am talking about the number necessary on the present schedule, which was not to be changed. You speak of that as an existing fact. Now, look at it and read that, and tell the jury what you have to say about it.—A. All I have to say about it is that I relied upon somebody else. I believed at the time it was correct. As I said before—

Mr. MERRICK. [Interposing.] No, no, but—

Mr. INGERSOLL. [Interposing.] Let him answer.

The COURT. Let him explain.

The WITNESS. As I said before, I had no interest in it—not a contingent interest.

Q. No pecuniary interest?—A. No, sir; I did not consider that I had.

Then, further, down on the same page:

Q. Who had charge of this mail route in March?—A. Vaile and Miner, as I understand it.

Q. Did Rerdell have anything to do with it?—A. I don't know whether he had or not.

Q. Who wrote this affidavit that you made before Kellogg?—A. All I can tell is my own handwriting.

Q. Did not Kellogg write it?—A. I can't say whether he did or not.

Q. Are there two handwritings in the body of it?—A. I can't say whether there are two handwritings. It looks rather like two different colored inks; one part seems to be a little blacker than the other; that is about all I can say.

On the 24th of April, the same day, Brady was getting ready to make the increase and expedition. He made an order, 63 F, on page 1192:

From July 1, 1878, allow \$190.62, for Pagosa Springs embraced, the distance being twenty miles.

Now, gentlemen, in the first place, Pagosa Springs was already on the route. In the next place he made this order from the 1st of July, 1878,

the beginning of the contract term, although the order was made on the 24th of April, 1879. Before I began upon these routes I read to you the law, which is that every order shall have its true date upon it, and that no order shall be made for the payment of money to take effect before the time of making the order. Here is a plain, palpable violation of that act of Congress that I read to you. On the 26th of April the letter of General Hatch was filed. Dorsey had written to Hatch, stating that he was going to make application for a daily mail to Pagosa Springs, and Hatch wrote back thanking Dorsey for his interest in it, and his letter was put in as a letter asking for the increase. Then, on the 29th of April, 1879, Brady made an order, 18 F, on page 1084:

First, increase service two trips per week from May 12, 1879, and allow contractor \$3,316.80 per annum additional pay, being pro rata.

Second, reduce running time from ninety (90) to fifty (50) hours from May 12, 1879, and allow contractor \$8,457.84 per annum additional pay, being pro rata.

Mr. Brady gave his testimony in regard to this order, at page 3418, at the bottom of the page:

Question. Do you remember the route which was originally known as the route from Garland to Parrott City, and afterwards came to be known as the route from Ojo Caliente to Animas City?—Answer. I have a recollection of there being such a route.

Q. Do you remember whether you made any order for increase or expedition upon that route?—A. I think I did.

Q. Do you remember who interested himself in procuring that order?—A. I do not. If you will show me the papers I will tell you.

Q. You do not remember independently of the papers?—A. No, sir; I do not.

Q. Upon that route the pay for a single trip from Ojo Caliente to Animas City was \$1,467.78. At six trips a week, pro rata, the pay would have been \$8,808.68. You made the expedition, reducing it from ninety hours to fifty hours, at an expense of \$13,433.04. Assuming that you did that, can you tell us why you did not prefer to make it a six-trip route at the original rate of speed, thereby saving to the Government \$4,626 a year?—A. As I said, I do not remember anything specially about that route. I repeat what I said in a general way before, that it was much better to have a fast three-times-a-week service than a slow six-times-a-week service.

Q. That was your general idea, was it?—A. That was my idea, especially as they wanted it that way.

Q. It has appeared in evidence here that the postmasters along the route, in reply to your circulars requesting them to fix a schedule within fifty hours, repeatedly replied that it was impossible.

The WITNESS. Impossible to do what?

Mr. BLISS. That was their statement. Why did you insist upon having the fifty hours?—A. Simply because nothing was impossible in that direction. They could have carried the mail in fifty hours if they had men and horses enough to do it. That was their business, not mine.

Q. Not the postmasters' business?—A. Not the postmasters' business.

Q. The postmasters so urged, and you considered that your judgment was better than theirs, did you?

The WITNESS. You say they said it was impossible.

Mr. BLISS. Yes, sir.

A. That was ridiculous on the face of it. It was not impossible.

There is Brady's answer to the statements that came in from the postmasters; first, that there was no mail coming from Park View up to Pagosa Springs, and no use for the route; and next, that it was impossible to make the schedule time. I read you Anthony Joseph's letters, in which he said it was impossible to do it inside of six days. Brady says it was not impossible; that fifty hours was what the people wanted.

On the 30th of April, 1879, Stephen W. Dorsey wrote to Joseph. The letter is 43 F, on page 1104:

WASHINGTON, D. C. June 22, 1879.

ANTHONY JOSEPH, Esq., Taos, N. Mex.:

DEAR SIR: Your two letters to Mr. Rerdell have just come to my attention, and I make haste to answer them.

In regard to the schedule time of fifty hours from Ojo Caliente to Animas City being too fast, I have to say that you are evidently laboring under a singular misapprehension. Fifty hours' time is about three and a half miles an hour, which is slow walking time for a horse or man; a good horse will walk four miles an hour for eight hours every day in the year.

The time is slow compared with the time on almost every route in Colorado. The time on the route from Parrott City to Silverton, over a worse country than your route, is six (6) miles an hour. The average speed on nearly all mountain routes in Colorado is over four (4) miles an hour, and many of them as high as seven (7) miles, and that, too, over mountain roads.

Your statement that it would cost \$12,000 to run this service in fifty hours is equally absurd. That would be at the rate of \$26 per mile per annum, while the average cost of horse-back service is less than \$5 per mile per annum. I am afraid the trouble is that you are not giving this matter your personal attention, which you will have to do before you will get it in shape.

Now, there is no use of writing to the department about these matters; we are responsible to the Government and you are responsible to us, and this service must be carried according to the instructions of the department. Furthermore you are doing yourself and us a great wrong in getting postmasters to write the department asking to have the old time restored. This, I hope, will never be done again. If you want anything, we are the proper persons to write to. You have nothing to do with the department, except through us.

Finally, you can easily make the time required by the department, to wit, fifty hours, *and you must do it without further delay.*

The mail *must* also be carried *three times a week*, or you will be fined until there will be nothing left to pay you or us.

Do no more writing, but go forward energetically and carry this mail according to your contract, and I will see whether we can pay you something over and above the amount you are now getting, which is \$5,160 per annum, according to our calculation.

I do not promise to pay you any more than the contract calls for, but if you go forward as you should, I have no doubt I will do something additional. I hope to hear that this service is running on time, and three trips a week.

Yours, truly,

S. W. DORSEY.

Gentlemen, he says that fifty hours is not too fast, and explains how routes are run in Colorado. He says that \$12,000 is equally absurd. Mr. Merrick calls my attention to the fact that it is stated here "This signature is also admitted."

Mr. MERRICK. Dorsey's signature is admitted.

Mr. KER. [Reading:]

Your statement that it would cost \$12,000 to run this service in 50 hours is equally absurd.

\$3,316.80 for two trips and \$8,457.84 for expedition—a little over \$13,000 given to him by Brady, for he had what preceded it for the other trip, \$1,467. Gentlemen, Dorsey said that \$12,000 was absurd, when he was getting over \$13,000. \$12,000 was Joseph's estimate of what it ought to be. Then he says also:

That would be at the rate of \$26 per mile, while the average cost is \$5 per mile.

Do you remember what Brady testified to? He had it in his mind that it was somewhere from \$25 to \$35 per mile that the proper price would be. "This is \$26 a mile," and Stephen W. Dorsey says that \$5 a mile is the price of carrying the mail.

The next is on the 31st of May, 1879, 9 F, on page 1078:

We, the undersigned, postmasters at the terminal points of said route, and subcontractor upon the same, do hereby recommend that, although the service requires to be increased from two times a week to three times per week, yet we deem it immaterial to the interests of the people on said route as to the schedule time; and furthermore, deem it impracticable and almost impossible to run the mail each way in the fifty hours herein stated, for the following reasons:

The said post route being a new one, the roads are mountainous and very rough;

the Chama, Navajo, and Blanco, all quite large rivers, are not bridged over, and will necessarily have to be forded over, and they are very high and dangerous to cross or ford in the summer season, and in the winter the deep snows that fall all along the said route are a great obstacle in the way. Consequently we recommend that for the present the tri-weekly mail service on this route may be allowed to run upon a six-days schedule, remaining the same through the summer and winter.

JESUS HERNANDEZ,
Postmaster at Ojo Caliente.
JOHN M. TREW,
Postmaster at Animas City.
ANTHONY JOSEPH,
Contractor.

This letter was sent forward and received in the department. They were willing to run the three trips, but the time was impossible. I want you to bear this in mind, because I will show you that Brady did not consider it impossible. He went on multiplying the service. He did not stop. He still went on. On the 30th of April, 1879, Stephen W. Dorsey wrote to Joseph informing him of the increase. The letter is 42 F, on page 1103:

WASHINGTON, D. C., April, 30, 1879.

ANTHONY JOSEPH, Taos, N. Mex. :

DEAR SIR: The service from Ojo Caliente to Parrott City has been made three times a week with a schedule of fifty hours, to begin May 12, 1879. Do not fail to start the service promptly upon time, and be sure that the postmasters at the two terminal offices report your arrivals and departures promptly to the department the 30th of June. If the mail is carried *well now I think* it will be made daily July 1, 1879. *I am personally responsible to you for all dues under your contract.* Address all letters either to me or to M. C. Rerdell, box 706, here.

Truly, yours,

S. W. DORSEY.

There is no dispute about that handwriting either, gentlemen. He says, "I think it will be made daily July 1, 1879." We will see how his thoughts came out right. Remember, it had been increased to three trips. On the 7th of August, 1879, there was a subcontract made with Pedro J. Jaramillo. You know Joseph had to throw up his contract. He got no money. He had lost everything he had. He told you that the carriers instead of crossing at the regular place, when the rivers were swollen, had to go away up through the mountains and find a place to cross the river and then come down. He lost all he had and gave it up—dropped it. Then they made a contract with Pedro J. Jaramillo. Rerdell signed as attorney for John W. Dorsey, and John W. Dorsey indorsed the contract.

On the 22d of August, 1879, Rerdell wrote to Joseph informing him that Jaramillo had entered into a contract with them at an advance of \$1,200, and demanding that Joseph pay the difference between his, Joseph's, compensation and the new contract with Jaramillo; that is, that Joseph should pay the \$1,200.

In August, 1879, Stephen W. Dorsey paid Joseph \$109.39. I want to read to you what Joseph said about it on page 1113:

Q. State what he said, as near as you can recollect, in substance?—A. That is what he said, "We have not received a dollar for the service you have rendered, as the fines and deductions have consumed the earnings of the service."

Q. Did he pay you anything?—A. At that time he did.

Q. How much?—A. One hundred and nine dollars and thirty-nine cents, I think.

Q. Had you received any other sum from him or from any one else?

Then there was some interposition by counsel. Then, further down:

Q. [Resuming.] What passed between you and Dorsey at that interview as to payments made to you or fines other than what you have already stated?—A. I do not know that I understand the question.

Q. What did you say to Dorsey, and what did Dorsey say to you about any money that had been paid to you, or had not been paid to you for this service?—A. He said that the fines and deductions for the non-compliance with the schedule time of fifty hours on the trip had consumed the pay and consequently there was nothing due me.

Q. Nothing due you?—A. I except the \$109 that he then paid me.

Q. What was that due you for; was it stated for the whole time from January up, or what?—A. For the first quarter of 1879 I received the sum of \$383.89.

Again, on page 1115:

Q. What did you tell him?—A. I told him that I had received a statement and also a check for the balance due me for the second term.

Q. When did the second term begin, and when did it end?—A. The second term, I think, commenced on the 1st of April.

Q. Well, go on. What was said?—A. And that I thought it very strange that there was not any more than \$109 due me for the services performed for that term, and it was then that he told me that the fines and deductions as reported had consumed the earnings. I told him furthermore that this check had not been signed by any one, and was in blank, and it was not negotiable in the condition it was then; and he then signed it himself, and furthermore told me to go back and go over the route and go to each postmaster and get a certificate of service rendered from each one and to forward all the certificates to him at Washington, and that he would then go before the Post-Office Department and endeavor to get the remissions of fines imposed upon me. Of course, after I related to him the difficulties that existed for the non-performance of the service, he said that he would do me the favor to represent the matter in that light to the department, and if he got these remissions that they should go to me.

Q. Did you do as he told you, get those papers from the men along the route?—A. I did.

Q. And send them off?—A. Yes, sir.

Q. Did you ever get your remissions?—A. I did not.

Wait until I show you who did. The next is a notice from Brady to the Auditor of Jaramillo's contract. On the 13th of December, 1879, after the settlement that was made with Dorsey out in New Mexico, Rerdell again wrote to Joseph and told him if he did not pay up they would sue him. Of course Joseph paid no attention to that. On the 4th of April, 1880, Postmaster Trew wrote to Brady. The letter is 68 F, on page 1199:

ANIMAS CITY, LA PLATA COUNTY, COLORADO, *April 4, 1880.*

SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

SIR: I have to inform you that the mail carriers on route 38174, Animas City to Farmington, and route 38145, Ojo Caliente, N. Mex., to Animas City, Colo., have been compelled after a long and hard struggle against the elements to withdraw.

The past winter has been one of unusual length and severity, deep and drifting snow. Forage all consumed by the Army, and impossible to get from the railroad, distant two hundred miles, with from two to four feet of drifting snow blocking up the road.

The carriers have struggled with great energy, and endured great hardships, and lost many animals. It has been simply a physical impossibility to take the mail through on schedule time.

* * * * *

The subcontractor and carriers could do no other way, and have done the only sensible thing for them to do. They have endured great hardships, lost their animals, and are in debt to all their friends for supplies, and not a dollar from the Post-Office Department in payment for services rendered.

Respectfully,

JNO. M. TREW,
Postmaster.

On June 8, 1880, Jaramillo threw up the contract which he had made in August, 1879. Gentlemen, he did not get a dollar. As Trew wrote, he lost all he had. He was in debt to everybody, and he actually paid \$500 to Stephen W. Dorsey to be released from his contract. They could not collect the money without showing that the subcontractor, whose subcontract was on file, had withdrawn it or been paid, and they put

in the office this agreement made between them and Pedro J. Jaramillo, Jaramillo having by that agreement paid them \$500, and in consideration of it they released him from his contract and he released them from all further payments. He lost all he had, he was in debt, and then paid \$500 to get out of his contract. You remember that Joseph and Jaramillo were both on the stand. Both of them, it appears, were taken in hand by Stephen W. Dorsey, or some of his friends, while they were here; and before they testified, I suppose in order to make their testimony come as light as possible, and he gave them each \$500.

On June 12, 1880, a subcontract made with J. L. Sanderson was signed by Rerdell as attorney for J. W. Dorsey.

On the 16th of August, 1880, John W. Dorsey wrote a letter to the department asking for a remission of the fines and deductions from the pay for the quarter ending March 31, 1880. On the 19th of August, 1880, page 1198, 64 F, Brady ordered:

Remit \$1,655.98 for deduction reported week ending May 8, 1880.

Jaramillo says, "I never received it. I never got it." Joseph says, "I never received it." On page 1172 is Jaramillo's testimony:

Q. Were any fines and deductions imposed upon you?—A. Yes, sir.

Q. Did you receive any remission of those fines?—A. I have not received any remission.

While he was on the stand he said, "I have not received any remissions. Here is one of \$1,655.98. Now, there were a number of petitions put in asking for a further increase upon this route. You know, gentlemen, up where Pagosa Springs was there was a railroad, and the people wanted to connect with the railroad. They did not want to communicate with Parrott City, but they wanted to reach the railroad, and as it was a short distance from the railroad down to Pagosa Springs, they asked to have the mail supplied in that way. Now, look at these papers, gentlemen [exhibiting petitions]. There they are, printed petitions. We have no testimony as to who did the printing. Here are the petitions which came into the office asking for a supply from Pagosa Springs up along this line that you see here [indicating on map] to the railroad. Let us see how Brady worked it.

On the 13th of January, 1881, Brady sent a telegram to put on service from Chama to Animas City. Now, gentlemen, you will have to fall back on the map. You see Chama is on the railroad just above Park View. Chama was not on this route. Brady telegraphed to put Chama on this route and to increase the service to seven trips. I want to show you how nicely it was engineered. You know that the postmaster said, "This route from here [indicating on map at Park View] to here [indicating at Animas City] is no good." Brady ordered it to be put on there [indicating], and the carrier had to go up to Chama and run thence to Animas City.

Then, on the 26th of February, 1881, Brady made another order, 11 F, page 1080:

From January 15, 1881, increase service to seven trips per week, and allow contractor \$17,910.72 and subcontractor \$10,666.64.

Here is an order made in February to take effect the 15th of January. That was retroactive. It increased the whole route to seven trips; not from Chama. Brady testified, "I telegraphed out there." The telegram will be found on page 4346. It is only from Chama. But he used that for his explanation, so as to make it appear, "I sent a telegram out there and made the order to increase it over the whole route." You

remember the law I quoted. He could not allow pay for "service performed prior to the making of the order." He should have made the order and let the pay follow after the order. In addition to that, I have also shown you the act of Congress of the 7th of April, 1880, by which he got his certificate of character and vindication. They said in that act of Congress, "The Postmaster-General hereafter shall not have the power to order expedition upon a route to any sum exceeding 50 per cent. of the contract as originally let. The original contract price was \$1,658. Under that law of Congress Brady could only allow \$829 for expedition. I have here made a calculation that he does not make in his order, for the order embraces both allowances. He not only increases the trips but the time. For the expedition alone he allowed \$11,278.82. That one order for expedition covered \$11,278.82. Now, in the order, he allowed them \$17,910.72, and he allowed the subcontractor \$10,666.64. Gentlemen, with that order before him when he signed it he knew that he was allowing the contractor \$7,244.08 over and above the price that it was being carried for by Sanderson, who was as good a carrier as Dorsey, and who was then carrying other mail on other routes and was a man well known. Yet Brady allowed that amount—\$7,244.08—over and above the subcontractor's price. He made no effort to get a good bargain for the Government, but deliberately made this allowance upon these printed petitions; when he had received notice that it was impossible to make the time, he doubled the whole service up and made this outrageous order.

On this route Vaile drew the pay, Stephen W. Dorsey drew the pay, and Bosler drew the pay. These petitions I told you only asked for increase over a part of the route. Brady made it over the whole. Postmaster Trew testified "They insisted upon a fifty-hour schedule. We protested against it always, but they kept sending in circulars, and I was tired of getting them and making protests, and I put them in the waste-basket." The postmaster at Animas City was tired of answering the questions about the fifty-hour schedule, and protested, and he said "I put them in the waste-basket." He testified to that right here on the stand. Joseph said "The mail was two hundred pounds; 25 per cent. of that was letters and papers, and the balance was fourth-class matter." I explained to you how, under the law, the Postmaster-General was directed to make different contracts to carry that kind of mail in a different way.

There were two affidavits, one specifying three men and seven animals, making ten, and the other specifying five men and fifteen animals, making twenty, which is just double. Joseph said "On the then schedule I used three men and six animals." That made nine. He said he could not use any more, it was of no use. On the proposed schedule of three trips, Dorsey said in his affidavit that it would take nine men and twenty-seven animals, that is thirty-six. He said in the second affidavit, the one that Brady acted upon, that it would take twelve men and forty-two animals, that is a total of fifty-four. Their active figures in the first affidavit would be twenty-six, and in the second fifty-four. Joseph's testimony was, "I carried it with six men and twenty-seven animals." That is thirty-three, or one less than Dorsey put it at. Jaramillo said, "I carried it with six men and twenty-six animals." That is thirty-two, or two less than Dorsey put it at in the second affidavit. But then they got the difference in the figure thirty-six, applying it to one hundred.

Animas City, as I told you, was taken off this route, and \$171.56 was deducted for taking it off, and then a month's extra pay allowed. Then Animas City was embraced on another route, 38156, and John W. Dor-

sey was the contractor on that route. Brady allowed him for putting Animas City on that route \$215.65. He took it off of one route, deducting \$171.56, and put it on another route and allowed \$215.65. On both routes the carriers passed through Animas City, and could not help it. Now, gentlemen, you will remember that Brady made his calculation as to Pagosa Springs before he ordered the expedition, so as to make the expedition mount up much higher. You know he put the mail bills in. I want to show you what the postmaster's return was. There are a whole lot of them, and I will give you a sample. I read from page 3003:

Mail, consisting of one leather sack, was dispatched this day at 6 o'clock a. m.

Mail, consisting of one leather sack, was received this day.

Mail, consisting of two leather pouches, was dispatched this day.

Mail, consisting of one leather pouch, was received this day.

Mail, consisting of two leather pouches, was dispatched this day from Animas City.

Mail, consisting of one leather pouch, was received this day from Ojo Caliente.

Mail, consisting of one leather pouch, was dispatched this day.

Mail, consisting of one leather pouch, was received this day at Animas City.

That was about the extent of the mail. It was the same all the way through. The original pay was \$2,745. Then it was decreased \$1,279.22. Then it was increased to three trips, and \$13,242.28; then increased to seven trips, and \$31,343.46. Joseph's pay was \$5,300; Jaramillo's pay was \$6,200; Sanderson's pay for three trips was \$8,000, and for seven trips \$18,666.64. Gentlemen, if you subtract \$18,666.64, the pay given to Sanderson, from \$31,343.46, the pay allowed by Brady, you have a clear profit of \$12,676.82 each year. Of course, as the trips went up, they had a little more to pay, but when it reached \$31,343.46, the profit that they had over and above everything was \$12,676.82.

I have shown you the extent of the mail. Let us see what the productiveness on this route was. That is a good way to get at the extent of Mr. Brady's order. In 1879 the entire revenue from every office was \$402.26. Excluding Animas City the entire revenue was \$78.05. In 1880 the entire revenues were \$935.82; excluding Animas City, \$244.68. Taking all the offices on the route in 1881 supplied by railroad and in every way the entire pay was \$3,855.21, but throwing off the railroad offices the amount was \$252.15, and at that time, in order to carry that amount of mail, by Brady's order the Government was paying \$31,343.46 a year.

There are overt acts upon this route, gentlemen. It is one of the longest routes. I shall not take as much of your time with the others as I have with this, but I think it is due to you and to the Government that the case should be stated fully. Our friends on the other side insist upon it. On the 26th of February, 1881, Brady made that order [exhibiting order to jury]. I want you to look at it, and see that I give you the correct date, because that is the date specified in the indictment. I have shown you its illegality in every respect. It was retroactive. It increased the pay for the increase of service against the plain command of the act of Congress. It was not needed. It was not necessary. I think I have sufficiently demonstrated that fact.

The COURT. The act of Congress prohibited an increase of more than 50 per cent. in case of expedition.

Mr. KER. In case of expedition; yes, sir.

The COURT. This is increase of service, is it not?

Mr. KER. This was both. It doubled both.

Mr. MERRICK. He put both in one order.

The COURT. In the remark you just made to the jury you spoke of increase of service.

Mr. KER. I may not have made it sufficiently plain, but the amount allowed for expedition in that case was \$11,278.82.

The COURT. I remember that very well, but what attracted my attention was your last remark, that it was increase of service.

Mr. WILSON. If your honor please, it was an increase of service.

Mr. MERRICK. Was it?

Mr. WILSON. Yes, sir; that is just what it was.

Mr. MERRICK. Let us see. Judge Wilson says it was an increase of service and not expedition.

Mr. KER. If it was an increase of service they would multiply the trips by the original price.

The COURT. Yes.

Mr. WILSON. If your honor please, we had better understand this right here. Here there had been expedition as in other cases there had been expedition, and after the expedition was made, then they increased the trips. Now, Mr. Ker's proposition is, that in increasing the trips you can only go back and multiply the original contract price.

Mr. MERRICK. Yes.

Mr. WILSON. That is his proposition, and that is the way he gets at the illegality.

The COURT. Is not that so?

Mr. WILSON. No, if your honor please. It is absolutely absurd.

Mr. MERRICK. Where there has been an increase of the trips and expedition, to double up the whole concern afterwards is to grant a new increase contrary to that law which says that the increase or expedition shall only be 50 per cent. of the original contract price.

Mr. WILSON. Oh, no. That is not what the law says.

Mr. MERRICK. Where is the law?

The COURT. If that is not the law then I have misunderstood it all along.

Mr. MERRICK. Let us look at the law.

Mr. WILSON. That is just where the mistake is. It is this way—

Mr. MERRICK. [Interposing.] Let us look at the law.

The COURT. Where the service, for example, is one trip a week at \$1,000 and it is increased to three trips a week without any change in the expedition, then the pay will be \$3,000. Then if another order is made to six times a week that would make the pay \$6,000.

Mr. WILSON. Certainly.

The COURT. And if to seven times, \$7,000.

Mr. WILSON. Exactly.

The COURT. So that the original contract for the service is the basis of the allowance for the subsequent increases throughout.

Mr. WILSON. Yes, sir; the subsequent multiplication of trips.

The COURT. But in regard to expedition there is no such standard, because everything depends on the affidavits.

Mr. WILSON. Certainly.

The COURT. And in regard to affidavits there seems to be some looseness in the law.

Mr. WILSON. Will your honor allow me a word right here.

Mr. MERRICK. Allow me to read the law before we go on.

The COURT. Just allow me to finish. Before the passage of the act of April 7, 1880, the lower the contractor put the number of horses and men that were necessary on the existing schedule the better it was for him, because the more readily it could be doubled. It was to his interest, then, to swear down the original service as low as possible, and to his interest also to swear up the number required for the increased service as far as possible. After it was ascertained how many men and animals the existing schedule required and how many men and animals the proposed schedule required, then the allowance was fixed pro rata. If the proposed increase of men and animals was five times the existing number of men and animals, of course it would be five times the existing price. Well, the act of 1880, as I understand it—I may be in error, but that is the way I read it—provided that in increasing the speed in no instance was the Second Assistant Postmaster-General to allow more than 50 per cent. for any amount of increased speed over the existing rate of pay.

Mr. WILSON. That is right. Now, your honor, let me—

Mr. MERRICK. [Interposing.] Before Mr. Wilson goes on I want to read the act. He and I are a little bit at issue about it.

Mr. WILSON. Go on. I would like to have it made plain.

Mr. MERRICK. [Reading:]

The Postmaster-General shall not hereafter have the power to expedite the service under any contract either now existing or hereafter given to any rate of pay exceeding 50 per centum upon the contract as originally let.

The COURT. Yes.

Mr. WILSON. Yes.

The COURT. That is clear, I think.

Mr. MERRICK. *As originally let.*

The COURT. Now, Mr. Wilson, I will hear what you have to say about it.

Mr. WILSON. If your honor please, here is a contract, we will say, to carry the mail on a certain route once a week within a certain time for \$1,000 a year. Now, it is to be carried, we will say, once a week, fifty hours, for \$1,000 a year. After that contract had been let, and when it is just simply one trip a week, the schedule is reduced to thirty hours, and we will say that that adds \$500 to the pay of the contractor. Now, that becomes the contract between the Government and the contractor. Whereas they started out with once a week on fifty hours, they have it now once a week on thirty hours; and whereas the contract originally was to pay \$1,000, now on the schedule for thirty hours at once a week the pay is \$1,500. That is the contract between the Government and the contractor. Now, something transpires by which it becomes important to have two trips a week. They do not change the schedule a particle, but it is to be two trips a week on a schedule of thirty hours. In that case you simply double the contractor's pay; you give him \$3,000 instead of \$1,500. But if you make it six trips a week instead of one, you just multiply the price that he is getting by six. The difference between us, which is a question of law, I presume, is this: They say that when you have got the schedule increased whereby the price has come to be \$1,500, and that increased price is brought about by the expedition, then, when you require two trips instead of one, for this additional trip you can only give him \$500; that is to say, one-half of the original contract price. In other words, according to their theory, the Government is getting an additional trip, with the expedition, at the same price that it got the original trip on the slow schedule. That is their theory of it.

The COURT. I think the statute refers to the original contract.

Mr. WILSON. That is the contract as it has been changed by the Government in expediting the service.

Mr. MERRICK. It says, "as originally let."

Mr. WILSON. Oh, yes; I know it says that. It is originally let at a certain price, and the Government changes that contract, and *that* becomes the contract.

The COURT. But that was not the contract at the letting.

Mr. WILSON. I know, if we were to be governed by the very strict letter of that statute, that would be what it would be, just as Mr. Merrick has said, and that is the reason I call your honor's attention to it.

The COURT. The reason of the law is this, as I understand: That no expedition absolutely shall be allowed at all where the expedition already allowed has exceeded the 50 per cent., and where any further expedition would increase the allowance beyond 50 per cent. of the original contract it is to be disallowed.

Mr. WILSON. That is not the construction that has been placed upon it by the department, your honor.

The COURT. May be not; and I can see a reason why Congress might take this course to stop that thing altogether.

Mr. WILSON. The construction that has been placed upon this by the department has been the uniform practice, and, I think, has been proved in this case; it certainly was in the other, and if it has not been in this case it is an oversight. Of course a construction can be given such as your honor suggests.

The COURT. It would stop expedition altogether.

Mr. WILSON. It would cut off the service; that is to say, it would cut off the Postmaster-General from supplying the needed service. That would be the effect of it.

The COURT. Congress had to judge whether it was needed or not. When expedition had been allowed already beyond 50 per cent., then, under that law, as interpreted by Mr. Merrick and as it seems to read, no further expedition could be allowed at all, and no expedition could be allowed, except where the original service still existed as let, and then only to the extent of 50 per cent.

Mr. WILSON. There is just where the difference is, and I want it understood right here, because this is just as good a place as any other to understand this feature of the case. I will take the case I supposed a while ago, where there is a route with service once a week at \$1,000. There is no doubt about its being let at a proper sum, no controversy about the integrity of it. Then I will suppose that it becomes necessary to expedite that service with one trip; and there is no question about the integrity of the expedition, none at all. Just take a case of that kind, and the pay is increased to \$1,500, and no question about its being all right. Now, it becomes absolutely necessary and essential to the public service to multiply those trips.

The COURT. But who is to judge of the necessity of that?

Mr. WILSON. Well, that is the question; I say the Postmaster-General.

The COURT. But the Postmaster-General has no discretion where there is a statute.

Mr. WILSON. That depends upon the construction of that law.

The COURT. Yes.

Mr. WILSON. And if he honestly thought that the meaning of the law was one way, although your honor and I might honestly think the meaning of the law was the other way, that is another question.

The COURT. That would go to his intention, of course.

Mr. WILSON. I only interrupted for the purpose of having that point brought to the attention of the court.

The COURT. It was a fair opportunity for the interruption.

Mr. WILSON. I do not want to interpose.

The COURT. My attention was not very closely called to this provision of the statute before, but I remembered that the law contained this provision. However, I was not aware that you, on your part, claimed that in a case where expedition had already been allowed beyond 50 per cent. the Postmaster-General, under that law, was at liberty to provide for increased expedition and allow 50 per cent. upon the former increase.

Mr. WILSON. No, no, not that, if your honor please. We do not understand each other yet, and I am glad you made that remark. You must remember that this subsequent order is not for expedition at all. This order that Mr. Ker has been talking about is an order for multiplication of trips.

The COURT. Then the act of 1880 does not apply to increase of service.

Mr. WILSON. Certainly not; he is applying that to the multiplication of trips.

The COURT. I agree with you altogether about that, that the act of 1880 does not apply to the increased number of trips; it only applies to orders for expedition. But I understand Mr. Ker is producing evidence before the jury of an allowance of new expedition upon former orders of expedition beyond the limits of the act.

Mr. WILSON. That is just what I am calling attention to.

The COURT. Then it is a difference of fact.

Mr. WILSON. I think I ought to apologize for having interfered.

The COURT. No, no; it is a good place to make the interference, and I shall invite Mr. Ker's attention to that point.

Mr. MERRICK. [To Mr. Ker.] The court wants you to explain the point instead of me doing it; you go ahead and do it yourself.

Mr. KER. The contract price is \$1,658. On the 29th of April, Brady ordered increase of two trips and allowed \$3,316.80; reduced time from ninety to fifty hours, and allowed contractor \$8,457.84.

The COURT. What is the date of that order?

Mr. KER. April 29, 1879. There are two separate orders, as the law calls for, expressing the amount for trips.

The COURT. Then there was expedition there.

Mr. KER. Then he goes on: On the 13th of January—

Mr. MERRICK. [Interposing.] 1880.

Mr. KER. [Continuing.] He raised the price; he raised the trips four more and allows for the seven trips \$17,910.72. The correct amount for seven trips would have been \$11,606. But in this order he makes it \$17,910.72.

The COURT. That is, you refer the expedition which has been granted first on the two trips to the whole increase?

Mr. KER. The whole of it; and deducting the contract price, he allowed for expedition alone \$11,278.82 in this one order.

The COURT. That was prior to the passage of the law?

Mr. MERRICK. No.

Mr. WILSON. Certainly it was, your honor.

Mr. MERRICK. He adds to the original order two trips and expedition prior to the passage of the law; then after the passage of the law he puts on additional trips.

The COURT. What is the date of the order in January, 1880?

Mr. MERRICK. The order was in January, 1881. I misled Mr. Ker by saying that it was in 1880.

Mr. WILSON. You have it wrong.

Mr. MERRICK. January 25, 1881 the order went into operation, adding four trips. Now, for the four trips, he pays so much for the trips and carries on to the additional four trips a duplication of the expedition previously granted. Do you understand, your honor?

The COURT. Yes, I understand that.

Mr. MERRICK. Now he duplicates the expedition previously granted, applying it to the four trips.

Mr. WILSON. Let us get it exactly right.

Mr. MERRICK. Is not that so?

Mr. WILSON. No, sir.

Mr. MERRICK. Then I do not understand it.

The COURT. He quadruplicates it instead of duplicates it.

Mr. MERRICK. Quadruplicates it.

Mr. WILSON. I would like to have those two orders. [Mr. Blackmar handed Mr. Wilson the papers asked for.]

Mr. MERRICK. Let me state it.

The COURT. I think you are right, Mr. Merrick. The original order was made on two trips a week, so that when four trips were added——

Mr. MERRICK. [Interposing.] It duplicates the whole, or more than that.

The COURT. It triplicates the whole.

Mr. MERRICK. \$8,457 was the cost when he added the two trips a week, and gave the expedition for both. Then he doubled that.

The COURT. The two trips amounted to sixteen hundred and odd-dollars.

Mr. MERRICK. The original cost was \$2,745. Then it was reduced, one hundred and thirty-odd miles being cut off. I have not the figures here.

The COURT. Mr. Ker stated it at sixteen hundred and odd-dollars.

Mr. KER. One hundred and sixteen miles was cut off from Garland to Ojo Caliente, leaving one hundred and seventy-two miles. Then it was to Animas City, or at least Parrott City was left off. Now it was brought down to \$1,658. That was the pay.

Mr. MERRICK. That was the original letting; then when he added these two trips and expedition it was brought up for trips to \$3,316, and expedition added on to that, \$8,457; and then when he adds the other trips on he adds in the expedition, as I understand.

Mr. KER. Precisely.

Mr. WILSON. Let me state it: On the 29th of April, 1879, this order was made (recollect this law was passed on the 7th of April, 1880):

Increase service two trips per week from May 12, 1879, and allow contractor \$3,316.80 per annum additional pay, being pro rata.

The COURT. That is plain enough.

Mr. WILSON. That was April 29, 1879.

Second. Reduce running time from ninety (90) to fifty (50) hours from May 12, 1879, and allow contractor \$8,457.84 per annum additional pay, being pro rata.

The COURT. That is for expedition with two trips.

Mr. MERRICK. It was one trip originally.

Mr. WILSON. That made three; so that it was expedition on three trips.

The COURT. Originally there was one trip and that was sixteen hundred and odd dollars; and then when the order was made for the additional trip, it amounted to over \$3,300.

Mr. WILSON. He added on two trips.

The COURT. That would make more than \$3,300?

Mr. MERRICK. No.

Mr. WILSON. \$3,300 was the amount added to the original contract price.

The COURT. If it was so much added to the original contract price that would make it \$4,700.

Mr. WILSON. This expedition occurred as stated in this same order. That was done prior to the passage of the act of the 7th of April, 1880.

The COURT. I understand that.

Mr. WILSON. The act of April 7, 1880, says:

Provided, That the Postmaster-General shall not hereafter have the power to expedite the service, under any contract either now existing or hereafter given, to a rate of pay exceeding 50 per centum upon the contract as originally let.

After that time there was no order expediting this service. After the passage of this act, 7th of April, 1880, no order was made expediting this service. There is no pretense that there was, and I have the order right here before me. It was made in February, 1881, and it reads:

From January 15, 1881, increase service to seven (7) trips per week.

It was not expedition; it was increase of service. The law simply says:

That the Postmaster-General shall not hereafter have the power to expedite the service under any contract, either now existing or hereafter given, to a rate of pay exceeding 50 per centum upon the contract as originally let.

The COURT. I understand your point now.

Mr. WILSON. So that what was done was simply to multiply trips upon an expedition that had already formerly been made.

The COURT. Yes.

Mr. MERRICK. It was to carry the expedition of three trips up to seven trips.

Mr. WILSON. It was to multiply the service as then existing.

Mr. MERRICK. [To Mr. Ker.] Go on.

Mr. KER. [Resuming.] Gentlemen, on this route John W. Dorsey was the contractor. The proposal was written by Miner; the amount filled in by Rerdell. John W. Dorsey made two oaths. Stephen W. Dorsey furnished two petitions in his handwriting, and filled in the words and figures in the oath that I showed you last. Vaile helped to draw the pay. The whole of them engaged in some act that was connected with this route, including Mr. Brady's order.

NO. 38156, SILVERTON TO PARROTT CITY, COLORADO.

This route runs down from Silverton, goes into Animas City, and runs off then to Parrott City. This is one of Dorsey's routes. The distance was sixty-five miles, two trips a week; time, thirty hours. John W. Dorsey was contractor; pay, \$1,488. Miner wrote the body of the proposal. Rerdell filled in the amounts. The official orders were:

January 14, 1878, Postmaster Trew sent a letter to Brady.

May 1, 1878, John W. Dorsey made subcontract with Earle.

June 14, distance circular sent out.

October 1, Earle's subcontract filed.

October 31, distance circular sent out again.

January 23, 1879, order to embrace Animas City.

March 1, changed schedule.

April 21, date of oath.

April 23, letter from J. B. Chaffee.

April 24, letter from A. McDonald.

April 26, letter from A. E. Reynolds.

April 28, letter from Governor Pitkin.

May 5, letter from J. B. Belford.

May 5, letter from J. W. Dorsey.

May 6, oath of Dorsey filed.

May 12, order for increase and expedition.

November 11, S. W. Dorsey filed subcontract.

November 25, J. W. Dorsey made subcontract with Steineger.

January 21, 1880, S. W. Dorsey withdrew his subcontract.

January 21, Steineger's subcontract filed.

August 16, letter from J. W. Dorsey for remission.

August 19, order for remission.

September 24, letter from the postmaster for change of schedule.

October 5, Fort Lewis established.

November 8, petition for change of schedule.

November 12, petition to extend schedule.

December 28, order for allowance for increase to Fort Lewis.

Fort Lewis, gentlemen, is down there near the river. [Pointing on the map.] Now, let us return again.

January 14, 1878, Postmaster Trew, at Animas City, wrote to Brady stating that the carrier passes through Animas City, and that it should be embraced upon this route. This was in January, before the contracts went into effect, before the bids had been opened and the contracts awarded.

On the 1st of May, 1878, John W. Dorsey made a subcontract with Earle for two trips at \$2,280. You see their pay was only \$1,488, but he made this subcontract with Earle for \$2,280. Miner wrote that subcontract. This was Dorsey's route.

June 14, 1878, there was a distance circular sent out showing Animas City upon the route.

October 1, 1878, Earle's subcontract was filed.

October 31, 1878, there was another distance circular sent out and returned, showing Animas City upon the route.

January 23, 1879. This was the same date upon which Animas City was taken off the other route, where I told you it was at a less price, and put upon this route. There was an order made by French to embrace Animas City next after Hermosa, increasing the distance ten miles, and allowing the contractor \$215.65 per annum additional, and allowing subcontractor \$330.03. The order added ten miles to this route, making it seventy-five miles, apparently, whereas it was only sixty-five.

March 17, 1879, Brady ordered change of schedule from thirty to thirty-seven hours, allowing seven hours for this increase of Animas City. April 21, 1879, is the date upon which John W. Dorsey made an oath for seven trips, fifteen hours. Rerdell wrote the body, he says, about May 5 or May 6, 1879, and S. W. Dorsey furnished the figures.

Rerdell says, on page 2347, at the bottom :

Q. I hand him the oath for expedition upon that route, marked 6 Q, and ask him in whose handwriting that is?—A. The body of this is in my handwriting. The signature is that of John W. Dorsey.

Q. Were the numbers in there before Mr. Dorsey's signature was affixed?—A. No, sir; I put those in after it was sworn to.

Q. After the jurat was there?—A. Yes, sir.

Q. Do you know when you put them there?—A. Either on the 5th or 6th of May.

By Mr. INGERSOLL:

Q. What year?—A. 1879.

By Mr. BLISS:

Q. When you put in those numbers there, how came you to select the particular numbers?

The WITNESS. On this?

Mr. BLISS. On any one of them; take that for instance.

A. On all that I have had presented to me so far, that I entered, except on the route from Toquerville to Adairville, 41119, the figures were made up by S. W. Dorsey.

Q. By whose direction did you put them in, if by anybody's?—A. I put them in by the direction of S. W. Dorsey.

Now, gentlemen, there is no testimony from S. W. Dorsey as to this particular affidavit. He was not questioned about it, either in his examination-in-chief or upon his cross-examination; and where a thing is stated and not denied by anybody it is not worth while to go into cross-examination upon it. And this is the 21st of April, 1879, the very same day as to which I called your attention to the two affidavits on the other route—the day on which John Dorsey said “I got one in the morning and the other in the afternoon, and I got a letter from Rerdell.” You remember that I showed you that Rerdell could by no possibility have been here, for he was away out in Nebraska at that time.

Mr. DAVIDGE. He said he thought it was from Rerdell.

Mr. KER. On the 23d of April, 1879, there is a letter from J. B. Chaffee, from New York, to Brady, asking for daily mail on fast schedule. The body of that was written by Mr. Sibbald. Gentlemen, I showed you in the other route a letter from J. B. Chaffee, dated 23d of April, and filed on the 22d. That was on route 38135, Saint Charles to Greenhorn, and here comes another letter from Chaffee, on this very route, written by Sibbald, who was a clerk in the employ of Dorsey. I do not know whether the signature is genuine or not.

On the 24th of April, 1879, there is a letter from New York, from A. McDonald to Brady, for an increase to daily, and fast line. And, gentlemen, by a strange coincidence or something of that sort—I cannot frame a word to express it—it was written in New York, and it was filed the very same day. Mr. McDonald must have been a very early riser, and got up about 2 o'clock in the morning to write that letter so as to put it in the newspaper train that reaches here by 11.15, because you know if he had waited for the limited express it would not have reached here until 4 o'clock in the afternoon, and at 4 o'clock the department is closed. But on the very day it was written is the very day that it was filed in the department.

On the 26th of April, two days afterwards, along comes a letter from A. E. Reynolds, of Chicago, asking for daily service and fast time from Mr. Brady.

On the 28th of April there is a letter from Governor Pitkin and other State officers at Denver asking for daily mail and fast time. You remember that Rerdell wrote that, and it is the best evidence in the world that Mr. Rerdell was not here in Washington fixing up Dorsey's affidavit, for it was on the 28th of April, 1879, that he was fixing up this letter for Governor Pitkin and the State officers to sign, and upon those letters of introduction from S. W. Dorsey the State officers affixed their names to what he wrote.

On May 5, 1879 letter from J. B. Belford, House of Representatives,

Washington, D. C., asking for a daily service and fast time. Rerdell wrote the body of that letter, and Belford signed it. You know Rerdell got back on the 5th of May, and he lost no time; he was an active man, and he was still at work.

May 5, 1879, the same day, a letter of J. W. Dorsey transmitting the oath. Rerdell wrote and signed that letter.

On the 6th of May the oath of Dorsey was filed.

The COURT. I think Rerdell said he arrived here the 4th.

Mr. KER. I have read his testimony, and he says he arrived on the 5th or 6th of May, he did not know which.

The COURT. Very well; I stand corrected then.

Mr. KER. I will come to it some time, and when I do, I will call your honor's attention to it.

Mr. DAVIDGE. I think, when he was called in rebuttal, he said the 5th or 6th; but it makes very little difference.

Mr. KER. On the 12th of June was Brady's order, 4 Q, page 1855:

1st. Increase service five trips per week from July 1, 1879, and allow contractor \$4,259.12 per annum additional pay, being pro rata.

2d. Reduce running time from thirty-seven hours to fifteen hours from July 1, 1879, and allow contractor \$10,549.51 per annum additional pay, being pro rata.

Remember, before it was two trips, and five added made it seven, and for trips there is \$4,259.12. You know it was thirty hours, and he made it by schedule thirty-seven, but allows, to reduce it down to fifteen hours, \$10,549.51. Gentlemen, this increase and this expedition were all made upon the letters I have stated to you—the letter from Chaffee, the letter from McDonald, one from Reynolds, one from Governor Pitkin, and one from Mr. Belford. They brought the increase upon this route. Brady was interrogated as to how it was that he hit upon fifteen hours, and he says, upon page 3453, at the top:

Q. Does the fact that the contractor made the affidavit on the 21st day of April preceding, in which he specifies fifteen hours, and which is the only paper on file other than the order which specifies fifteen hours, aid your memory any?—A. It does not. Fifteen hours is about as slow as it ought to have been expedited to.

Q. On a route that passes ten thousand feet above the level of the sea, do you say that fifteen hours is about as slow as it ought to have been expedited to?—A. I do not remember how far it is above the sea. I do not know that I ever heard about that. I know it was a very difficult route.

Q. You have no knowledge how it happened that the contractor on the 21st of April and you on the 12th of June concurred in hitting upon the time fifteen hours, when you were to reduce it from thirty-seven hours?—A. I have not.

We attempted to get from Thomas J. Brady how he hit upon fifteen hours and allowed this vast sum for the change, but he did not remember how he hit upon it. But away back on the 21st of April the contractor got ready his oath in anticipation of the fifteen hours.

On the 11th of November, 1879, S. W. Dorsey filed his subcontract dated April 1, 1879.

On the 25th of November, 1879, John W. Dorsey made a subcontract with Fred. Steineger for seven trips, at \$9,400. Why, gentlemen, for expedition alone they were allowed \$10,549.51. Rerdell wrote part of that subcontract, John W. Dorsey part of it, and Stephen W. Dorsey guaranteed the subcontract. Steineger said in his testimony, at page 1866:

I told Mr. Dorsey that it was impossible in the winter time to make the schedule of fifteen hours. * * * He (Mr. J. W. Dorsey) told me that the Post-Office Department always made allowance in the mountains for bad weather in the winter.

You remember that John W. Dorsey did not deny that conversation. There were some that he did deny—two or three—but the balance of

them he did not deny. And here on the 25th of November, 1879, in making his subcontract, he told this poor fellow, as an inducement to get him to take it, that the Post-Office Department always made an allowance for trips over the mountains in the winter. He was like his brother, he had a little "cunning" on his tongue.

January 21, 1880, Stephen W. Dorsey withdrew his subcontract. Rerdell wrote and signed the letter.

January 21, the same day, Steineger's subcontract was filed.

August 16, 1880, letter of J. W. Dorsey asking for a remission for the quarter ending March 31, 1880. Rerdell wrote and signed that letter.

August 19, three days afterwards, Brady ordered (30 Q, page 1894):

Remit \$1,845 of the deduction noted in report for week ended May 8, 1880.

Now, gentlemen, there was a remission of \$1,845. To whom ought it to go? Steineger, I think you will agree with me. John W. Dorsey had brought him into signing the subcontract. I will show you where the money went to: \$1,380 was paid to Bosler, and the remainder, \$465, went to the attorney who collected it. \$465 for collecting \$1,845. It seems to me it was a good business, collecting that. The letter was put in on the 16th of August, 1880, asking to have the fines or deductions remitted, and three days afterwards Brady made the order remitting the fines, and, according to the testimony given as to the disposition of the money, the attorney who made the application to Brady got \$465 for getting that remission. Walsh, you know, said that Brady got 50 per cent. I do not know how much Bosler gave him, but there was evidently somebody who got something out of it. That is in the books and (turning to defendant's counsel) if you will bring them here I will point it out to you. Laugh. Look at Mr. Davidge laughing. It is a funny thing to keep the books away from the jury.

On the 24th of September, 1880, letter from postmaster to have schedule changed. It is 14 Q, on page 1858. It is worth reading:

SILVERTON, COLO., September 24, 1880.

To the Hon. HORACE MAYNARD,
Postmaster-General United States:

The undersigned, Fred. Steineger, mail contractor from Silverton to Parrott City, in the State of Colorado, being mail route No. 38156, and citizens residing upon said mail route, respectfully request you to issue an order changing the schedule time from Silverton to Parrott City from fifteen to twenty-four hours, from the 15th day of November until the 15th day of April of each year, until further orders, and that you fix the time of departure of the mail from Silverton at the hour of 10 a. m., and from Parrott City at the hour of 1 p. m. In support of this petition we have the honor to respectfully represent that during the period above stated, owing to the rigor of our winters here, heavy snow storms, snow slides, snow drifts, and the mountainous character of the country, all experience shows that it is physically impossible for any contractor to carry the mails over said route on the present schedule time, or in less time than twenty-four hours. Much of the time carriers on the route can proceed only upon snow-shoes. Hoping you will see the importance of these suggestions, we most earnestly and respectfully submit them to your consideration.

It is signed by Steineger, signed by all the postmasters, and with about two hundred names of people, asking him to change the schedule to twenty-four hours; that it was impossible to carry it in the schedule time.

On the 5th of October, 1880, Fort Lewis was established, and an allowance made for it.

On the 8th of November, 1880 (13 Q, page 1857):

DENVER, COLO., November 8, 1880.

HON. THOMAS J. BRADY,
Second Assistant Postmaster-General:

DEAR SIR: I inclose a petition of the citizens of Silverton to the effect that the time from Silverton to Parrott City on route 38156 may be extended from fifteen to twenty-four hours from November 15 till April 15.

This petition is signed by nearly every business man in Silverton, and by many in La Plata County. It is consistent with what many of them stated to me on the occasion of my recent visit to that part of the State. It is based upon the fact that it is nearly impossible to get the mail through when the snow is deep, and much of the time absolutely impossible to get it through in fifteen hours.

There is no use in my reading it any further. It is signed by nearly every business man, and every one of them willing to have it carried in twenty-four hours; they did not want it carried in fifteen. And yet the order was for fifteen hours, and \$10,549.51 paid for carrying it in that time.

Then, on the 12th of November, 1880 (15 Q, page 1858):

PARROTT CITY, LA PLATA COUNTY, COLORADO,
 November 12, 1880.

HON. THOMAS J. BRADY,
Second Assistant Postmaster-General:

SIR: The western portion of mail route No. 38156, from Silverton to Parrott, lies in a country which during the winter is usually blockaded by snow, and the mail carriers are often obliged to traverse it upon snow-shoes. On this, the Parrott end, the altitude is nearly nine thousand feet, the winter vigorous, and the trip dangerous. A mail carrier lost his life here last winter, and in order to avoid the chances of such casualties it is requested that the following be fixed as schedule time for above route:

Leave Silverton 10 a. m.; arrive at Parrott 3 p. m. following day.

Leave Parrott 10 a. m.; arrive at Silverton 10 a. m. following day.

That is twenty-four hours' time, and the petition is from Silverton.

Then, on the 28th of December, 1880, there was an order from November 1 (47 Q, defense, page 3288) to allow contractor \$716.66 and subcontractor \$470 per annum additional pay for four miles' increase to Fort Lewis.

Clarence W. Cornell testified that the mail would not weigh over forty pounds, and that he carried it on horseback. Frederick Steineger says that in the winter of 1879-'80 the mail was carried for four months on snow-shoes part of the distance; that it was impossible to use horses over that portion. Do you remember that he said that he could slide down with the snow-shoes a great deal faster than a horse could go?

John M. Trew says, on page 1888—listen to what Trew says:

The people that were carrying the mail wished me to certify that by coming by way of Animas City it would add ten miles to the distance—I refused to do it until I could examine into the matter. I investigated the matter. I do not remember just how now and found they were getting pay for sixty-nine miles, which would make the longest road that was ever traveled between Silverton and Parrott City.

There is a specimen of an honest postmaster; one of the men that Brady ought to have paid attention to. He says they came to him and wanted him to certify that by going through Animas City it would add ten miles to the route, and he positively refused to do it. You remember also that he says they passed through Animas City on their way to Parrott City. You remember he wrote a letter to Brady telling him that. You remember that they took up a collection, and he and the citizens there had to pay the carrier to take their letters from Animas City up to Silverton.

On this route Vaile drew the pay, Dorsey drew the pay, and Bosler drew the pay. They all had a share in it.

Let us look at the oath. Dorsey's oath says that on the present

schedule, seven trips, it would be three men and ten animals; that is, thirteen. Reduced to fifteen hours, it would take six men and thirty animals; that would be thirty-six. That would give him thirty-six to figure upon.

Cornell says, for seven trips in fifteen hours he used four men and twelve animals; that is sixteen. He says sometimes he had used sixteen animals; that would be twenty; but in the summer he used six men and twenty animals; that would be twenty-six. You know that in the winter they carried it on snow-shoes. John W. Dorsey had thirty-six. Steineger says that he used six men and fourteen animals; that would be twenty—sixteen less than Dorsey wanted it. He said that it was impossible to make the trip with more horses; that they had to make it with snow-shoes.

The original pay on this route was \$1,488; it was increased to \$14,870.01. Steineger was paid \$9,400. The profit, after they got Steineger to carry it, each year was \$5,470.01. I do not wonder that Miner said to Moore that they were "all good affidavit men." Now, if you take an account of what it costs the Government for putting Animas City upon this route, the figures are just \$2,006. They always passed through Animas City, but by adding it to this route that addition cost the Government \$2,006.

Gentlemen, here is the oath of Dorsey [handing it to the jury] filled in, dated April 21, 1879.

The COURT. Which Dorsey?

Mr. MERRICK. John?

Mr. KER. John W. Dorsey. Filled in by Rerdell and put into the office. In the indictment it is alleged the order was made on the 12th of June, 1879. There it is, June 12, 1879: "Do this.—Brady." There is the order that was made. And in this jacket was that oath upon which this order was based; that was the time it was brought into the case and became part of the records of the office. In this jacket were the letters that I have spoken of from people in New York and a man out in Chicago, and the whole of this work was done upon such evidence as that.

Mr. MERRICK. Mr. Ker, you spoke of the time when Rerdell returned. I find on page 2233, the following:

Q. When did you return from that visit?—A. I returned about the 5th of May.

Q. State whether or not after you returned, about the middle of May, as you say, I believe—

A. [Interposing.] I said about the 5th of May.

Q. [Continuing]—about the 5th of May, 1879, you found blank affidavits among the papers connected with the business?—A. Yes, sir.

Q. How many did you find?—A. Well, there were several blank affidavits of John W. Dorsey's and several of John M. Peck's. I don't know how many there were.

Q. Were they blank affidavits?—A. Well, sir, they were blank affidavits—

Mr. DAVIDGE. [Interposing.] May it please your honor, I object to the argument of the counsel to the jury being supplemented by Mr. Merrick.

Mr. MERRICK. I am not going to supplement anything; I was simply reading the testimony for Mr. Ker.

Mr. DAVIDGE. It is very much like a supplement.

Mr. MERRICK. Not at all. There was a question raised by his honor as to the date when Rerdell returned, and I was going to read it all in connection. Read it, Mr. Ker.

Mr. DAVIDGE. You may read what you please, and Mr. Ker may make any argument he pleases, but do not let us have two at the same time.

The COURT. I am astonished at the objection of counsel.

Mr. MERRICK. It is most outrageous, ridiculous, and unprofessional.

Mr. DAVIDGE. Your honor does not understand. Mr. Ker stated the time of the return of Mr. Rerdell——

The COURT. [Interposing.] He stated it as the 5th of May.

Mr. DAVIDGE. Your honor does not understand me, I am sure. Your honor said that you thought it was about the 4th. I remarked that my recollection was that when he was recalled in rebuttal he said the 5th or 6th. Now, I have no sort of objection to Mr. Merrick calling the attention of Mr. Ker to this question of time, but I do object to Mr. Merrick going beyond that point of time and into other matters testified to by Rerdell.

Mr. MERRICK. My object was to help Mr. Ker along.

The COURT. This is the merest, smallest objection I ever heard.

Mr. DAVIDGE. In respect of time I make no objection.

The COURT. Certainly Mr. Ker's colleague may rise to read a part of the evidence to relieve him for a moment.

Mr. DAVIDGE. I would suppose, inasmuch as Mr. Ker proposes to take five days in his address to the jury, he would be able to read it all himself.

Mr. MERRICK. Who told you that?

The COURT. For that reason he needs the more assistance, probably, from his colleague.

Mr. DAVIDGE. He did not ask for assistance. He manifested no fatigue.

The COURT. I shall overrule the objection.

Mr. DAVIDGE. Yes; I supposed you would.

The COURT. You might have anticipated that, and the fact that you did shows that you did not consider the objection well founded.

Mr. DAVIDGE. But the whole question now is whether the case is to be argued on opening by two counsel at the same time or by one.

The COURT. I have already ruled that counsel for the Government may make a half a dozen speeches in the opening if they want to.

Mr. DAVIDGE. I have understood that your ruling was that they could have two.

The COURT. I said as many as they wanted.

Mr. MERRICK. I was not submitting an argument nor making more than one. I was doing that which I have never seen any gentleman object to at the bar—simply reading a paper.

The COURT. It is certainly not customary to object to that.

Mr. DAVIDGE. I hope I will not be put in the wrong in this matter. I objected to no interruption to fix the article of time. However, when one counsel is assigned to open the case to the jury, it is expected that such counsel will open the case, and I deny that there is any right existing for two counsel to participate in the opening at the same time. If two may do it, half a dozen may do it.

The COURT. I have stated my opinion, and stated it two or three times before.

Mr. DAVIDGE. In regard to the number of counsel I want your honor to understand that I have no objection to the number. They may all open, if they please, but my objection is to two opening at the same time. I want to hear this gentleman, and then after that I want to hear as many as they think proper to trot out.

The COURT. I object to two talking at the same time, too. But that was not the case in this instance. Mr. Ker stopped, and Mr. Merrick was reading the evidence for him. I said the other day that as the Government had but one counsel to close, it necessarily must be allowed more than one, if they chose, to open the case, and that the Government

might have as many counsel as they pleased to open the case, and after that was done, then counsel for defense should follow, and then the Government might close with one counsel.

Mr. DAVIDGE. If your honor will excuse me, I understood you afterwards to say that the case would be opened by two counsel on behalf of the Government. Now, personally, I would be very glad to have them all speak in advance; that is my personal view of the matter; if I could accomplish that rule I certainly would; personally, I do not object to hearing them all. But time is the only article now in which I have any interest. If your honor thinks that the case ought to be opened by more than two, let it be done, but do not let us have two at the same time.

The COURT. There cannot be two at the same time.

Mr. DAVIDGE. This looked very much like it.

Mr. MERRICK. Not at all; that is not so. I was only reading from the evidence.

The COURT. Two cannot speak at the same time any more than two bodies of matter can occupy the same space at the same time.

Mr. DAVIDGE. Whether that law of physics applies or not, I think your honor will agree with me that in the trial of a cause it is frequently found that two intellects can occupy the same space, and not a very large one, either.

Mr. MERRICK. We have had that manifestation on your side this evening.

The COURT. I will suggest that this is a very common indulgence to a counsel to permit his colleague to help him in that manner.

Mr. DAVIDGE. I do not object in the least to Mr. Merrick helping him, but I do object to his being interjected into the argument of Mr. Ker.

Mr. MERRICK. I was not interjected. I was reading the testimony.

The COURT. Mr. Merrick was only reading from the testimony. I think the court will exercise its discretion.

Mr. DAVIDGE. I know you will, and for that reason I made the appeal to you.

The COURT. When there is some foundation for an appeal I am very glad to entertain it, but I do not think that in this instance it is proper.

Mr. DAVIDGE. I want the appeals made one at a time.

The COURT. The court has ruled upon that point.

Mr. MERRICK. [To Mr. Ker.] Go on, Mr. Ker, and read the evidence.

Mr. KER. On page 2233:

Q. When did you return from that visit?—A. I returned about the 5th of May.

Q. State whether or not after you returned, about the middle of May, as you say, I believe—

A. [Interposing.] I said about the 5th of May.

Q. [Continuing.]—about the 5th of May, 1879, you found blank affidavits among the papers connected with the business?—A. Yes, sir.

Q. How many did you find?—A. Well, there were several blank affidavits of John W. Dorsey's and several of John M. Peck's. I don't know how many there were.

Q. Were they blank affidavits?—A. Well, sir, they were blank affidavits similar to that one I sent, leaving out the number of men and animals in each case.

Q. Did they purport to have been sworn to?—A. Yes, sir.

Q. Were those affidavits among the papers when you left here to go West?—A. Some of them were. I think those of Peck's were here, probably four or five, or half a dozen, and I had made out, before I left here, a lot of them and sent them to John W. Dorsey. In the mean time, when I returned here, John W. Dorsey was here; but still there were some of the blanks here; some of them acknowledged up there and some acknowledged here.

Q. Acknowledged up where?—A. At his home.

Q. In Vermont?—A. In Vermont.

Q. With blanks still in them?—A. All blank so far as men and animals were concerned, and the number of the route.

Q. Then there was not much left. What did he want with them? What were they to be used for?

Mr. WILSON. Hold on.

Mr. INGERSOLL. He does not know what he wanted with them.

Q. What did S. W. Dorsey want with them?—A. They were to be used whenever a route was to be expedited, and when he wanted to state the number of men and animals that would be required on the route upon which to base the pay.

Q. By whom were those papers signed?—A. They were signed by John W. Dorsey and John M. Peck.

Q. What use was made of those papers afterwards?—A. Whenever it became necessary to use one of them the blank would be filled up, and they would be filed in the department.

Q. Filled up by whom?—A. In some cases by me, and in some cases by Mr. Dorsey.

Q. S. W.?—A. Yes, sir.

No wonder you did not want it read.

Mr. DAVIDGE. I have not the slightest objection to the contents, not the slightest; it was only to the manner.

The COURT. Let us drop it now; it is not worth while to continue it.

Mr. DAVIDGE. There was a remark made that called that out.

The COURT. Adjourn the court until to-morrow morning.

Thereupon (at 4 o'clock and 2 minutes p. m.) the court adjourned until to-morrow at 11 o'clock.

TUESDAY, APRIL 24, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. KER. I will now take up—

ROUTE No. 41119, TOQUERVILLE TO ADAIRVILLE, UTAH.

This route was one hundred and thirty two miles long, the time was sixty hours; the number of trips a week, one; John M. Peck was the contractor, and the pay was \$1,168. The proposal, excepting the signature, was written by Miner. Rerdell filled in the amount. The official papers are:

October 10, 1878, two additional trips ordered.

January 22, 1879, oath of Peck made.

March 8, 1879, Vaile filed a subcontract.

May 5, 1879, Vaile's subcontract withdrawn.

May 8, 1879, Rerdell filed a subcontract.

May 15, 1879, Rerdell's subcontract withdrawn.

June 23, 1879, Rerdell wrote a proposition.

June 25, 1879, petition filed for additional trips.

June 25, 1879, oath of Peck filed.

July 8, 1879, order for increase and expedition.

July 10, 1879, second subcontract with Nephi Johnson.

July 14, 1879, service curtailed to end at Pahreah.

Now I will go back and take the papers that are not official and put them with the official papers. I find that on the 27th of May, 1878, there was a contract sent by mail to Nephi Johnson for one trip, and the amount \$1,127. The contractor's pay was \$1,168. On the 10th of October, 1878, two additional trips were ordered, and \$2,336 additional pay allowed. On the 11th of October, 1878, there was a letter from

Peck to Johnson, informing him of the two extra trips. Miner wrote that letter and signed Peck's name to it. On the 6th of November, 1878, there was a letter from Peck to Johnson. That letter is marked "31 D," and is found on page 1007 :

WASHINGTON, D. C., November 6, 1878.

NEPHI JOHNSON, Esq., *Johnson, Utah* :

DEAR SIR: Please get up strong petitions to have the schedule time on your route reduced to forty-eight hours. Get letters from the officers of the Territory asking the same. If it is granted I can pay you \$5,000 a year for carrying the mail.

Yours, truly,

J. M. PECK.

That letter was written on Senate paper with the heading cut off, and it was written and signed by John R. Miner. On the 22d of January, 1879, the oath of Peck was made for thirty-three hours and seven trips. It is 6 D, and found on page 1007. Miner wrote the body of the oath, and Rerdell filled in the figures by direction of Stephen W. Dorsey. On page 2242, at the top of the page, Rerdell says :

I can only give the conversation in substance.

Q. Give it in substance; and where you cannot recollect the language, give it in language that conveys the exact substance as near as you can remember it. And whenever I ask you for a conversation hereafter, give the whole of it.—A. He said to fill out one of Peck's affidavits for daily service or seven times a week, on the Toquerville and Adairville route, and to preserve the proportion of from 150 to 200 per cent. increase. I asked him to make the calculation. "Oh," he says, "you can make it. That is all you want to do—preserve the proportion."

On page 2278 he afterwards corrected that, saying he had made a mistake in the figures, and that the last amount should be 250 per cent. Further down on the same page, 2242 :

A. [After making a calculation.] I took the number of men and animals on the then schedule and added them together as one part. I then took the number of men and animals on the proposed schedule and added them together. Then I said, as the first is to the second so is one hundred to the answer, getting as near to the proportion as I could. It is very rarely that you can get it exactly.

Q. Did you at that time have any information in regard to the number of men and animals used on the existing schedule?—A. I did not, sir.

Q. Did you have any information of the number of men and animals that were necessary on the proposed schedule?—A. I did not. I only carried out the idea of the percentage of increase without any regard to the other. I did not know.

Q. You say that Mr. Dorsey told you to take one of Peck's blank affidavits. How many of these blanks did you have?—A. I had quite a number of them. I do not recollect the number

Stephen W. Dorsey says, on page 3945, in answer to this statement of Rerdell:

Q. Did you give Rerdell directions as to filling up one of these blank affidavits?—A. Well, the only recollection I have about that is that he telegraphed me, or wrote me, when I was West, in 1879, that the department required a shorter schedule on two routes, I think, but what reply I made to him I don't remember.

Q. Did you not direct him to fill up a blank affidavit and preserve the proportion of 150 to 200 per cent.?—A. Oh, I don't think I did.

Q. What is your recollection about giving him directions as to filling up the affidavit?—A. My recollection is that I did not, but I don't know; it is possible that I might have done it.

Q. I have here the affidavit on route 41119, Toquerville to Adairville :

"HON. THOMAS J. BRADY,

Second Assistant Postmaster-General :

"SIR: The number of men and animals which are necessary to carry the mail on route 41119, seven times a week on the present schedule, is three (3) men and six (6) animals. The number necessary to carry the mail on said route on a schedule of thirty-three hours, seven times a week, is five (5) men and eighteen (18) animals.

"Respectfully,

"JOHN M. PECK."

"TERRITORY OF NEW MEXICO,
"County of Colfax, ss :

"Personally appeared before me the above John M. Peck, and being duly sworn, deposes and says that the above statement is true, as he verily believes. Sworn to and subscribed before me, a notary public in and for the county of Colfax, on the 22d day of January, A. D. 1879.

"J. S. TAYLOR,
"Notary Public."

Can you tell when that affidavit was filled up?—A. I cannot, sir.

Q. Have you no recollection upon that subject?—A. None whatever.

Q. Do you recollect when it was filed in the department?—A. I do not.

Q. It bears upon the back of it the indorsement of the department as having been filed June 25, 1879.—A. That is, probably, the correct date.

Q. Does that refresh your recollection?—A. No, sir.

Q. This is one of the routes that passed to you, is it not?—A. Yes, sir; and about which I know nothing at all scarcely.

Q. You know nothing about that route?—A. Hardly a thing.

Q. Where were you on June 25, 1879?—A. I was here.

Q. Did you not direct Rerdell to take the blank affidavits of Peck and fill them up on that route?—A. I don't think I did.

Q. Have you any recollection upon the subject?—A. I have no recollection about it, but I am quite sure I did not direct him to do any such thing.

Q. You are quite sure you did not?—A. Yes, sir.

Q. If you have no recollection, why are you sure you did not?—A. I don't believe I did.

Q. I ask for your reason; why you are sure you did not if you have no recollection of it?—A. Because he had charge of that business entirely and attended to it entirely.

Q. But you gave him instructions from time to time, did you not?—A. I don't know that I did; I suppose I gave him general instructions, perhaps.

Q. On that affidavit there was an increase upon that route running up to \$17,390 from \$1,168; you got the benefit of that, did you not?—A. I have not seen the benefit yet.

Q. Whatever benefit there was you got, you drew the draft for the end of that quarter, did you not?

The WITNESS. The September quarter, 1879?

Mr. MERRICK. Yes.

A. I think I did.

Q. Rerdell got no benefit from it, did he?—A. None that I know of.

Q. He was in on a salary, was he not?—A. Yes, but I think he got some benefit since.

Q. He got no contingent interest, did he?—A. I think he claimed one.

Q. On the increase of this route?—A. Yes.

Q. Toquerville to Adairville?—A. Yes.

Q. You did not give him any, did you?—A. The records of the department will show that.

Q. I am asking you what you paid him for his services?—A. I paid him \$3,000 a year.

Q. And wherever he did any work on this matter it was done for your benefit, was it not, as your employé?—A. It ought to have been so done.

Q. It was so done entirely, was it not?—A. It ought to have been so.

Miner says, on page 4245 :

Q. The affidavit you said was in your handwriting, except the filling up?—A. Except the words I specified.

Q. Can you tell when Rerdell filled that up?—A. I don't know anything about it; I don't know that he did fill it up.

Q. You said just now that it looked like his handwriting; are you sure it is not yours?—A. I am sure that it is not mine.

Q. Is it not a fact that this is one of the blank affidavits turned over to S. W. Dorsey at the time of the division, and filled up by Rerdell afterwards?—A. It is not a fact that any affidavit, so far as I remember, was turned over to S. W. Dorsey at any time.

Q. Do you know who sent this affidavit to Peck?—A. I do not.

Q. You were managing the details of the business at that time?

The WITNESS. At what time?

Mr. MERRICK. January 22, 1879.

A. I was.

Q. You were managing the whole details of it?—A. I was.

Q. And to get these affidavits was part of your business, was it not?—A. I do not know that I ever sent an affidavit to Mr. Peck.

Q. You do not know that you ever sent one to him?—A. I do not.

Q. What did you do with the affidavit you wrote for Peck?—A. I don't know anything about it.

Q. You do not know anything about it?—A. I do not.

Q. This affidavit was acknowledged in the "Territory of New Mexico, county of Colfax." When you wrote it you intended it for Peck, did you not?—A. It would so appear.

Q. I think so. And although you wrote it, and think you wrote it for Peck, and although it was an affidavit to benefit the route in which you were interested together with three others, and you four alone, you cannot tell who sent it to Peck or whether you ever sent it to him or not?

Mr. HENKLE. Do you want to go into an argument?

A. I don't remember that piece of paper. If it did not happen to appear in my handwriting I should not know that I had ever seen it before. I have no recollection in regard to it.

Q. Was it a blank when you sent it to Peck?—A. I don't know.

Q. If Rerdell filled it up afterwards it must have been a blank, must it not?—A. I don't know anything about it, whether he filled it up afterwards or before, or at any time.

Q. Did you send it to him, after you wrote it, to put in the number of men and horses, and to send it back?—A. I don't think I ever gave it to him afterward or before; I don't remember anything about it.

Q. That is your memory about it?—A. I said I don't remember anything about it.

Q. Nothing at all about it?—A. I do not.

Remember that Miner wrote the body of the oath, and Rerdell filled in the figures. On the 8th of March, 1879, Vaile filed a subcontract, dated the 1st of April, 1878. Miner signed as attorney for Peck, and Rerdell signed as a witness. On the 12th of April, 1879, Rerdell wrote to Johnson to get up petitions, and not to use the exact language of the copy that he sent. On the 15th of April, 1879, there was a letter from Peck to Johnson to address all communications to Rerdell as agent, box 706. Miner wrote and signed the letter. On the 5th of May, 1879, Vaile's subcontract was withdrawn. Both the contractor and subcontractor had to sign the letter asking for the withdrawal. Rerdell wrote the letter of withdrawal, but Miner signed Peck's name to it. On the 5th of May, 1879, Stephen W. Dorsey wrote to Johnson. The letter is 20 D, and found on page 980:

[M. C. Rerdell, agent, post-office box 706.]

WASHINGTON, D. C., May 5, 1879.

NEPHI JOHNSON, Esq., *Johnson, Utah*:

DEAR SIR: I beg to inclose you new contracts in duplicate for carrying mails between Toquerville and Adairville, which please sign and return to me here. This new contract becomes necessary on account of the dissolution of the firm, and for the further reason that all contracts made by this man in Colonel Peck's name are made without his knowledge or authority.

We do not propose to cut down your prices at all, but, on the contrary, to protect your interests. I personally guarantee that all obligations under this contract shall be fulfilled; and as to my responsibility I can refer you to Barbour Lewis, J. S. Black, and Hon. S. P. Luckey, of Salt Lake; also to Kountze Bros., bankers, New York City; Citizens' National Bank and Middleton & Co., bankers, Washington, D. C.; to Senators Jones and Sharon, of Nevada; Mr. Cannon, of Utah, &c.

And, in addition to this, you can file your new contract in the Post-Office Department and get your pay direct; and, if you wish, you may send your copy direct to the department, and not release the old contract until the department gives you notice that the United States will pay you the sums agreed upon in the new one.

Hoping to hear from you at once, I am, truly, yours,

S. W. DORSEY,
Assignee.

You can also inquire of M. Salisbury about me.

S. W. D.

On the 8th of May, 1879, Rerdell filed a subcontract, dated April 1, 1878, and being of the same date with the contract that was filed by Vaile. On the 15th of May, 1879, Rerdell withdrew his subcontract.

On the 23d of June, 1879, Rerdell wrote and signed Peck's name to a proposal to carry the mail seven trips a week on a reduced schedule. On the 25th of June, 1879, there was a petition filed asking for seven trips and a reduction of the time to forty-eight hours. That petition is 5 D. I think you have seen it before [handing 5 D to jury]. Rerdell wrote that petition and sent it to Johnson by direction of Stephen W. Dorsey. Then there is another petition, 4 D. That petition was circulated in Utah by Mr. Johnson [handing 4 D to jury]. You will remember he testified on the stand that he did not put in the "seven;" that it was "six" when he sent it on here, but afterward, when he saw it here, it had been altered to seven. On the 25th of June, 1879, the oath of Peck was filed. In July, 1879, John W. Dorsey went out to Utah and had a talk with Nephi Johnson. On page 975 will be found what Johnson says about it:

Q. Go on with the conversation.—A. I received letters from John W. Dorsey & Co. I asked him who was John W. Dorsey & Co., and he said that it was John W. Dorsey. I inquired in relation to Stephen W. Dorsey. He said he was his brother, and he was an ex-Senator of the United States and was interested in the mail contracts. I asked him why he had sent the contract to me, and he said he was interested in them. That is the answer he made to it.

By Mr. DAVIDGE:

Q. When was that conversation?—A. It was in 1879: in July.

Mr. CARPENTER. We do not object to it.

Mr. INGERSOLL. It is the truth.

Mr. BLISS. Of course it is the truth. John W. Dorsey told the truth.

Mr. INGERSOLL. It is the truth whether he told it or not.

Q. [Resuming.] What else? You say he sent that contract to you because he was interested in it?—A. Yes, sir.

Q. Was there anything more said about the contract?—A. Yes; there was a good deal of conversation, but it is so long ago I cannot remember. He said they were very anxious to have me send in petitions to try and get more service, and he told me that if the petitions were sent he certainly would get the service.

Q. Was anything said about speed?—A. He wrote that clause at the bottom that "if the Post-Office Department shall order a reduction of the speed to four miles an hour and upwards they shall carry it without more pay," or something to that effect, and I would not sign it.

Mr. CARPENTER. It speaks for itself.

Mr. BLISS. He says he wrote that clause, and he would not sign it.

Mr. WILSON. Let us see what he wrote.

Mr. BLISS. It is in evidence, and has been read to the jury.

A. [Continuing.] He said if the Post-Office Department reduced the schedule to four miles and upwards I should carry it without additional pay. That is the way it read after he had written it, and I told him I would not sign it. That is the first time that I had any intimation that there was any prospect of reducing it to short of a forty-eight-hour schedule. I told him I would not sign it, and he said he would put a thousand dollars in there if I would, and I signed it. In case that the speed was reduced as stated here he was to give me a thousand dollars. That was placed in this clause, and then I signed it.

The COURT. How did you read that—"in case the speed was reduced?"

Mr. KER. In case the speed was reduced to four miles an hour.

Mr. MERRICK. It should be "time," not "speed."

The COURT. Manifestly speed is used there for time.

Mr. KER. [Reading:]

He said if the Post-Office Department reduced the schedule to four miles and upwards I should carry it without additional pay.

The COURT. And he would not agree to that.

Mr. MERRICK. [Reading:]

That is the way it read after he had written it, and I told him I would not sign it. That is the first time that I had any intimation that there was any prospect of reducing it to short of a forty-eight-hour schedule. I told him I would not sign it, and he said he would put a thousand dollars in there if I would, and I signed it. In case that the speed was reduced as stated—

It evidently means time—

he was to give me a thousand dollars.

The COURT. It is manifest that he there uses the word “speed” in place of “time.”

Mr. KER. [Continuing to read:]

Q. [Resuming.] That was in July, 1879?—A. Yes, sir.

Q. You said something about petitions. What was that?—A. Well, he told me to get up petitions and send in for more service.

Then on page 977, at the bottom:

Q. You stated that he said if he got petitions he thought they could get an increase?—

A. Yes; that is what he told me—he thought he would be able to get increases.

Q. Did he give any reason why he thought so?

The answer is on the next page, after an objection.

A. He said he thought they had influence enough to get them granted. That is about the talk there was about it—that they thought they could get them granted.

Q. And as you say, in a week or ten days afterwards you got notice of increase of speed and addition of trips?—A. Yes, sir.

Q. To what time was that speed of which you got notice increased?—A. It was increased to thirty-three hours.

Q. Did you ever know of any petition being forwarded for an increase to thirty-three hours?—A. No, sir; I did not.

On the 9th of July, 1879, John W. Dorsey wrote a letter to Johnson, which is 19 D, and found on pages 973 and 974:

BEARDSLEY'S UNION DEPOT HOTEL, M. H. BEARDSLEY, PROPRIETOR,
Ogden, Utah, July 9, 1879.

N. JOHNSON, Esq.:

DEAR SIR: You will recollect that when I was writing the contract you said to me that I had better make Pahreah the terminus of the route, and I did so, but intended to reduce the pay in proportion when I came to make the figures, but I forgot all about it till I was within five miles of the railroad, when it all seemed to come to me at once.

I had no fears but that you would correct the mistake, judging from my acquaintance with you and your reputation where you are known. I saw Mr. Cannon Monday, and he indorsed the petitions, and spoke in the highest terms of you, and said he would do all he could to get the increase asked for. I have sent all the petitions on to Washington, but I do not suppose they will present them till they get the new contract, as they will see at once that there is a mistake, and will probably return the contract to you. I consider it a matter of form only, but perhaps they would be better satisfied if you would have your brother's and sons' names on as sureties, and witnessed in regular form. If it was my own contract I would not care anything about it. I put the amount just the same as it was in the contract which you returned, which you said was satisfactory. It brings it nearer prorating than any trade I have made since I left home, and I say nothing about the thousand dollars either, but I am satisfied, and hope you will make a good deal of money out of it. I hope you will execute it and mail it at once, as I want it in Washington by the time I arrive there, and you will oblige,

Yours, very truly,

J. W. DORSEY.

Now, gentlemen, you know that they wanted to force Nephi Johnson to make this subcontract, with a clause in it for expedition; you remember that Stephen W. Dorsey wrote to Johnson that whoever it was that made the contract with him in the first place had no authority at all to do it. Then John W. Dorsey had this conversation with Johnson, which is not denied by Dorsey in any manner whatever. He says, in this letter, that he had taken the petitions and had them indorsed by

Mr. Cannon, and forwarded them to Washington, but that the petitions would not be put on file in the Post-Office Department until Johnson had forwarded the contract signed; in other words, that whoever was engineering it here on the part of the combination of these defendants would not allow the expedition to be granted until they made the proper terms with Nephi Johnson. In addition to that, gentlemen, bear in mind this fact, he writes to Johnson, and says, "I have made the terminus at Pahreah as you asked. Now, take your maps and look at them, and you will find that Adairville was the jumping-off place. There was nothing beyond it; no mail at all. By some means they arranged out in Utah that the route was to be cut off, by omitting Adairville and making Pahreah the terminus. I will show you when I get down to the balance of the orders that it came out just exactly as it was planned in Utah. On the 8th of July, 1879, Brady made an order. That order is 2 D, and found on page 949:

First. Increase service four trips per week from August 1, 1879, and allow contractor \$4,672 per annum additional pay, being pro rata.

Second. Reduce running time from sixty hours to thirty-three hours, from August 1, 1879, and allow contractor \$12,718.22 per annum additional pay, being pro rata.

Third. Increase pay of subcontractor in like amount.

These four trips that were added made seven. It started with one, then he put it up two, and then put on the four trips, making the number of trips seven. Then he reduced the time from sixty hours to thirty-three hours.

The COURT. I do not see how two and four make seven. The first increase must have been an increase from one to three.

Mr. MERRICK. What was the first increase?

Mr. KER. Two trips.

Mr. MERRICK. And that added to the previous one made three.

The COURT. I think that Mr. Ker did not so state it.

Mr. KER. On October 10, 1878, two trips were added, making three; and afterwards four, making seven.

Brady testified in regard to this matter, on page 3435:

Q. I see the order calls for thirty-three hours; do you know how you arrived at that time?—A. I do not. The order probably states. This seems to be reducing the schedule time from sixty hours to thirty-three. I presume that thirty-three was arrived at by ascertaining that even at thirty-three hours, the running time would be about four miles an hour, night and day.

Q. I see that the petitions here ask for forty-eight hours?—A. Well, it would not have been much of an expedition, you know, from sixty hours down to forty-eight; that is to say, the running time would not have been.

Q. And you therefore disregarded the petitions and the application, did you, and made it thirty-three hours?—A. As I said before, when we expedited, we wanted it fast; four miles an hour was about as slow as would be wanted.

Q. How did you happen to alight upon thirty-three hours and not thirty-five or forty or thirty?—A. Four times thirty-three is about one hundred and thirty-two, isn't it? The route is one hundred and thirty-two miles long. That would be four miles an hour.

Again, on the next page:

Q. Still, you made the order for thirty-three hours?

Mr. WILSON. That is what he said.

A. Certainly, I made the order for thirty-three hours.

Q. And you made it upon this affidavit?—A. It seems so. You say that is the only one there.

Mr. BLISS. I have shown you all the papers and asked you to look for yourself.

The WITNESS. The affidavit is just as good, even if it was made in January, as if it had been made in June.

Mr. MERRICK. A singular coincidence.

The WITNESS. Very.

Then, on page 3555:

Mr. MERRICK. We will see how far each horse had to travel, according to that order.

The WITNESS. About the only figuring we did upon the route from Toquerville to Adairville was to ascertain the result that after the increase and expedition the service cost about \$22.61 a mile, which was considerably less than our general rule.

Q. The affidavit upon that route states that to make seven times a week on the present schedule six animals would be needed, the distance being one hundred and thirty-two miles or two hundred and sixty-four miles both ways. You say you did not figure to see how many miles each horse would have to travel, did you?—A. I have no recollection that I did anything of that kind.

The COURT. It is not the miles each way, but the miles one way, according to the rule.

Mr. BLISS. That is as to the pay. I am asking as to how many miles each horse would have to travel.

Mr. WILSON. Colonel Bliss has got this thing down a good deal finer than that.

Mr. MERRICK. We want to show that the affidavit led necessarily to a perfectly absurd conclusion, which must have been apparent to any officer who would look at it.

The WITNESS. It led to \$22.61 a mile, and that was comparatively cheap.

Mr. BLISS. It probably was cheap under you.

Mr. MERRICK. According to the rule you stated to Congress.

The WITNESS. It was cheap under anybody; even now.

Q. Did you make a calculation to see if it is not true that if that affidavit correctly stated the fact each animal named must have traveled twenty hours in each day. Did you examine the affidavit far enough to see whether it shows that?—A. I did not.

Q. Did you examine the affidavit far enough to see that if it were correct each man employed upon that route must have traveled forty hours in every twenty-four?—A. I did not.

Q. Did you examine the affidavit far enough to see that before expedition each animal would have to travel forty-four miles in a day?—A. I did not.

Q. And that after expedition each animal would only have to travel fourteen miles in a day?—A. I have no recollection of making any particular examination of that affidavit.

On the 10th of July, 1879, there was a second subcontract made with Nephi Johnson. John W. Dorsey wrote the body of it; Stephen W. Dorsey signed Peck's name to it; Rerdell signed as a witness; Stephen W. Dorsey guaranteed the subcontract.

On the 10th of July, 1879, the same day, Rerdell wrote to Johnson notifying him of the increase of trips and expedition.

Then, on the 14th of July, 1879, service was curtailed to end Pahreah and one month's extra pay allowed. Remember, gentlemen, Dorsey had in the contract he made with Johnson agreed that the service was to end at Pahreah; he then agreed it should be done, and here on the 10th of July it is done. And I ask you to remember, in this connection, that if it were necessary to drop Adairville off the route at all, would it not have been better for the United States if this place had been dropped off before Brady allowed his expedition? Because he allowed expedition up to Adairville and gave one month's extra pay. By keeping on Adairville they received on expedition a good deal more than they otherwise would have received.

On the 3d of April, 1880, Rerdell wrote to Johnson (24 D, found at page 982): It seems that Johnson was not satisfied with the expedition, and could not make the time, and he got Mr. Cannon, the Delegate here, to see about it and try to have the time put back. He never asked for thirty-three hours.

[M. C. Rerdell, agent, box 706.]

WASHINGTON, D. C., April 3, 1880.

NEPHI JOHNSON,

Johnson, Kane County, Utah:

DEAR SIR: We have concluded to increase your pay \$1,556 per annum, in order to meet the objections you have made in regard to route 41120.

This action is voluntary on our part, and is intended to cover all losses on account of failure of trips or loss of time, and in future you must be expected to bear all fines and deductions. We make this allowance in order to have the service remain as it now exists, as I find that you have been writing letters to your Delegate asking to have the schedule time changed to what it was originally. If the schedule time on this route were changed back to where it formerly was, at your pay, we would lose considerably. As it is we have, of course, a small profit.

If the schedule time were changed, we certainly would endeavor to have it put back to once a week.

Hoping that you will perform the service in the future so as to avoid all fines and deductions, and further, that you will write to your Delegate asking him to withdraw all objections as to the present schedule,

I am, very truly,

M. C. RERDELL.

Then, on the 9th of May, 1880, Rerdell wrote again [25 D, page 988:]

[M. C. Rerdell, agent.]

WASHINGTON, D. C., May 9, 1880.

NEPHI JOHNSON, *Johnson, Utah*:

DEAR SIR: Yours of the 20th ult. to hand. In reply I have to say that your increased pay, which in my letter of April 3 I proposed to give, was, of course, intended to commence from January 1, 1880. As that seems to be satisfactory to you, I suppose there will be no more trouble between you and me in regard to your compensation. I would like you to write at once to Mr. Cannon, asking him to withdraw his objection to the present schedule as proposed in your letter.

So far as a change of the schedule of arrivals and departures is concerned, that is entirely with you and the postmasters at the terminal offices. I inclose a blank for you and the postmasters to agree upon, leaving the running time, of course, as it is now. Please return this to me at the earliest moment, and I will see that the change is altered at the department.

Very truly,

M. C. RERDELL.

Now, gentlemen, I have called your attention to the fact that these petitions all asked for forty-eight hours, and that the order was for thirty-three. If you go back to the oath, which you will find was made on the 22d of January, 1879, you will see that "seven times" is written in, and calling for thirty-three hours. In other words, these petitions were circulated at a time subsequent to that; and the oath, if it were the correct date, was previously sworn to in January. But Rerdell says that he filled in the figures afterwards, at the direction of Stephen W. Dorsey. And as this oath is one of the overt acts, I call your attention to it, in order that you may observe it. If you will turn to the back of that oath you will find that it is marked as filed on the 25th day of June, 1879. Gentlemen, that is the date that is laid in the bill of indictment as the date upon which this oath was put in the department. When our friends upon the opposite side come to comment upon the dates and say, "Why, that is not the date, and that is not the date," then just ask them to show the papers and the jacket upon which the order was made, and see if they do not go together. That paper was found in this jacket, and was the paper upon which the order was based, and it has the post-office mark upon it of June 25, 1879, the very date that is laid in the bill of indictment.

The next is the 8th of July, 1879. There it is, Mr. Foreman, the correct date of the order, and in blue pencil across the order: "Do this.—Brady." There can be no mistake about that. That also is the correct date laid in the bill of indictment.

On this route Vaile received the pay, Stephen W. Dorsey and Bosler

drew pay, and on the 4th of February, 1880, Rerdell, as subcontractor, drew the pay.

Let us analyze the oath. The oath was: On the present schedule three men and six animals, which, of course, make nine; the proposed schedule, five men and eighteen animals, which, of course, make twenty-three. Therefore they asked for the difference between nine and twenty-three, which is fourteen. Johnson says: "On the former schedule I carried it with two men and six animals," making eight; "when the trips were increased to seven, I used seven men and fifteen animals." Fifteen and seven are twenty-two. Dorsey's oath called for twenty-three. But Johnson used these men and animals not to carry the mail alone, but to carry mail, freight, and passengers. He never tried to see what number of men and horses it would actually require to carry the mail alone.

The original pay upon this route was \$1,168; it was increased to \$19,726.22. The pay of Johnson, under his second subcontract, when their pay had been increased to the fullest extent, was \$8,444. And, gentlemen, Rerdell wrote that they "would have a small profit." Their "small profit" upon this route was \$11,282.22. If it was a "small profit" it was a very nice one.

The next is the productiveness, because increases are to be made "with due regard to productiveness." In 1879, from every office on the route, the total receipts were \$1,586.47. Exclude Toquerville, and the entire proceeds were \$767.76. In 1880 the entire proceeds were \$1,042.57; throw off the large office, and the entire receipts were \$386.50. Then in 1881 the entire proceeds were \$1,094.07; and throwing off the larger office, the proceeds were \$497.46—\$497.46 to carry that mail! Brady ordered the pay on this route to be increased from the sum of \$1,168 up to \$19,726.22, when he knew, or could have known from the contract on file, that it was being carried for \$8,444, and, by calculating, that the contractor here in Washington was getting a nice profit of \$11,282.22. You know, gentlemen, that in making this calculation of what the receipts were it is not fair to take the offices that are supplied upon other routes, because they derive their revenues from other sources. But still, if we were to take the entire revenue derived from those offices from any and all sources in 1881, at the time he made the large one (of course it was after the time he made his large increase), the total revenue was \$1,094.07.

Now, I told you about the decrease in population. Just let me show you the figures in this case, to show that I am right in what I say. We begin in 1879. The receipts upon this route, throwing off the large office, were \$767.76. In 1880 the total receipts were \$386.50. It ran down from \$767.76 to \$386.50. Then, again, it went up a little in 1881, and became \$497.46. So that you see increase and expedition did not amount to much, as far as revenues were concerned and allowing people facilities for writing and receiving their letters.

NO. 38150, SAGUACHE TO LAKE CITY, COLORADO.

[Maps shown to jury.]

That takes in two routes, gentlemen. This route is ninety-five miles long; three trips, thirty-six hours. John R. Miner was the contractor; pay, \$3,426. John W. Dorsey witnessed the contract.

September 18, 1878, a subcontract was made with J. L. Sanderson. This subcontract was not put upon file until the 11th of October, 1881.

On the 19th of September, 1878, there was an oath of Sanderson, as

subcontractor, filed in the office, for a schedule of twenty-four hours. In that oath he mentions no trips at all, but says "schedule, twenty-four hours." You remember that Sanderson was apparently not a subcontractor, and had no more to do with the route than you or I had. He was not in this combination; his name was not mentioned in the papers, and yet his oath as subcontractor is accepted and filed.

On the 20th of September, 1878, Brady ordered:

From October 1, 1878, increase service four trips and allow contractor \$4,568 per annum additional.

Reduce the time from thirty-six to twenty-four hours and allow contractor \$15,437.12 per annum additional.

On the 1st of October, 1878, Brady ordered a curtailment of service to Barnum, decreasing twenty-one miles, and allowed one month's extra pay.

On the 26th of July, 1880, the Postmaster-General ordered a reduction of service to three trips a week, and Brady reduced service to three trips a week, and allowed one month's extra pay.

August 24, 1880, Brady ordered:

From September 1, 1880, increase service to seven trips from Powderhorn to Barnum, and allow contractor \$987.57 per annum additional pay.

August 11, 1881, the error in the calculation was corrected.

October 11, 1881, the subcontract of J. L. Sanderson was filed. The increase in this case was made upon one petition and a letter from H. M. Teller. It was run up from the original price, \$3,426, for three trips, until it reached the sum of \$20,005.12. Now, gentlemen, there was a mistake made in the calculation on this route. The calculation for expedition was \$15,437.12; it should have been \$11,068.02, making a difference against the Government, and in favor of the contractor and subcontractor of \$4,368.12. And this mistake ran along—was never corrected, was never inquired into—nothing was done until it was stirred up in this investigation. On the 11th of August, 1881, the error in the calculation was corrected. They restated the account, made the contractor and subcontractor repay the Government the amount of money that had been taken from it. When we came to go over the figures on these routes we had our own calculations made, and found out this mistake. It was one of Mr. Turner's errors. But I do not want to dwell upon this route. I simply want to call your attention to that mistake. I ask you to reflect upon it and see if you cannot agree with me that the story that Rerdell told was the correct story. It was not a question of how many men and animals were required, but it was a question of how much money was to be allowed for each increase; and then the contractor, or subcontractor, or the agent was to make the calculation and fill in the number of men and animals to suit the amount of money.

Mr. WILSON. Do you make any point of that mistake?

Mr. MERRICK. No.

Mr. KER. Judge Wilson wants to know if I make any point of that mistake. Yes, undoubtedly. The point I make is the theory of the prosecution—that the calculation of the number of men and animals did not amount to a row of pins. Brady and his coconspirators, Dorsey, Vaile, Miner, and the rest of them, agreed upon the sum that was to be allowed; and then, having agreed upon that sum, they told Rerdell, or some person who was to make the calculation, "You calculate it up so that it will be 250 per cent. of an increase." And then the increase was made; and, as Rerdell says, "We could not often make it hit right." They could not often bring it exactly the way they wanted it.

This was Miner's route. Of course I do not know what the arrangement was with Sanderson. We did not go into that; the thing was too small. We had plenty of other material to work upon, and we did not care about following it up any further. The subcontract was given to Sanderson for the entire term, but I presume it was not given to him for nothing, because Mr. Miner furnished Mr. Sanderson with the material to go on to the end of the contract term. Mr. Miner, being the contractor upon the route, furnished Sanderson with the drafts and so on to draw his pay, so that Sanderson would have no trouble.

Take this route in connection with the next one, which is—

NO. 38152, OURAY TO LOS PINOS, COLORADO.

The distance was twenty-five miles. There was one trip a week in twelve hours. John W. Dorsey was the contractor, and the pay was \$348.

On the 5th of February, 1878, Postmaster Ruggles, of Lake City, wrote to Brady, asking to have the mail go by the way of Barnum and Los Pinos to Ouray. Gentlemen, you will see down here [pointing on the map] is Lake City; over here is Ouray. There is a very short space between Ouray and Lake City. In that space are high mountains that cannot be crossed, in the winter time especially, and very seldom at all. Therefore, practically, this space was of such a character that the carrier could never get across it. The route that we are looking at runs from Ouray up to Los Pinos. This is the route upon which double service was performed. This combination had the route running down here, and the two routes ran together. There was one mail-bag and one carrier, and yet they got pay for the double service upon the one route. 21 M, page 1782:

LAKE CITY, COLO., *February 5, 1878.*

THOMAS J. BRADY,

Second Assistant Postmaster-General:

DEAR SIR: Your communication of January 28 came to hand to-day, and I hasten to reply. Route No. 38146, from Garland, via Lake City, to Ouray, going from Lake City to Sherman, Burrows Park, Tellurium, Animas Forks, Mineral Point, to Ouray, is impracticable, for this reason: it is impossible for an animal to go beyond Burrows Park this winter, and this one is very mild so far. Last winter they had to snow-shoe from Sherman. The mail would have to be carried on snow-shoes from Sherman to about five miles beyond Mineral Point on snow-shoes. Only about fifteen miles of the distance could be carried the year around on a stage or pack animal; would have to snow-shoe (the mail that leaves this office for Ouray is a very heavy one) from twenty to thirty miles every winter, and winter is our longest season here. But if the mail was carried from Lake City to Barnum and from Barnum to Los Pinos, Hot Springs, and Ouray, it would be a longer route, but would be the most practicable route for all seasons of the year.

It can be carried on a stage the year around this way.

Respectfully,

HENRY D. RUGGLES, *P. M.*

On the 7th of February, 1878, Post-Office Inspector Charles Adams wrote a letter to Brady [20 M, page 1781]:

[Post Office Department, office of special agent. Charles Adams, special agent, Post-Office Department, Denver, Colo.]

FEBRUARY 7, 1878.

HON. SECOND ASSISTANT POSTMASTER-GENERAL,

Contract Division, Washington, D. C.:

SIR: I have the honor to call your attention to mail route No. 38145, as advertised, to invite proposals for contracts to take effect on July 1, proximo.

That portion of the route between Lake City, Colo., and Ouray, via Burrows Park

and Mineral Point, cannot possibly be served during eight months of the year, on account of natural difficulties to be encountered, deep snows and difficult trails over the mountains, unless by snow-shoe service, which would be unreliable, costly, and unsatisfactory to the people.

A good wagon road, open all the year from Lake City, via Barnum, to Ouray, although somewhat longer, is the commonly traveled route on which the mail at present is being carried regularly and satisfactorily, and this route should by all means be designated as the proper mail route for the extreme western portion of Colorado.

Service on the route from Lake City, via Sherman, Burrows Park, Tellurium, Animas Forks, and Eureka, to Howardsville, should be three times a week in winter, and would give ample mail facilities to the people; a branch route from Animas Forks to Ouray, via Mineral Point, should be maintained as it is at present, but the mail route to Ouray should be via Barnum.

The distance from Garland to Ouray is about two hundred and fifty miles, and I would recommend that proposals in accordance with the above recommendations be advertised specially and at once, so that the service be not interrupted.

Very respectfully,

CHARLES ADAMS,
Special Agent, Post-Office Department.

That was February 7, 1878. Gentlemen, the route referred to by this post-office inspector was this [pointing on the map]: Down here is Garland. This was the route that was carried by Sanderson, and this route ran over here, up this way to Lake City. See, there is a mark on the map. Then it crosses over from Lake City to Ouray. The Post-Office inspector wanted them to readvertise this route and make the route run up this way and down that way [indicating]—the only traveled road, the only way they could reach Ouray, and that would give satisfactory service. But instead of doing that they allowed the contract to be signed and go into effect, the contract on both those routes being held by John W. Dorsey.

On the 20th of September, 1878, Brady ordered temporary service by J. L. Sanderson from Barnum to Ouray, ninety miles, three trips a week, from October 1, 1878, to March 31, 1879, at \$675 per annum.

September 30, 1878, a letter came from Sanderson to Brady suggesting that Barnum be placed upon that route. Sanderson wrote to Brady, and told him that the only way to do would be to put the route just as it had been stated by the Post-Office inspector.

On the 1st of October, 1878, Brady made an order on route 38146, Garland to Ouray, the one that I have mentioned, running up that way. [Indicating:]

Change service to embrace Barnum between Lake City and Ouray, increasing one hundred and ten miles, and allow \$7,699.65 per annum additional pay.

Reduce the time from seventy-two to thirty-six hours from Lake City to Barnum, and allow \$15,994.77 additional.

This gave \$23,694.42 for one hundred and ten miles, while the former pay was only \$19,000. Brady, by his judicious order, and fair, honest management of these routes (when it came to the interest of the sub-contracts and the people who were in combination with him), made an order by which the Government lost over \$4,000 for that service; whereas, if he had held on to the old contract, he would have saved the \$4,000 to the Government.

On the 25th of January, 1879, there was a letter addressed by John W. Dorsey to the postmaster at Los Pinos, ordering that postmaster to deliver the mail to J. L. Sanderson. Miner wrote the letter and signed the name of John W. Dorsey.

On the 27th of January, 1879, a letter from McDonald, postmaster at Los Pinos, was received, stating that route 38152 was discontinued. That is the route I am speaking of, the one that ran down here [pointing on the map], the double route; he wrote and said, "I have received

a letter from John W. Dorsey to deliver the mail; the route is discontinued." He wrote that to the department.

On the 8th of February, 1879, Barlow & Sanderson sent a letter to Postmaster McDonald to make out duplicate certificates. That is 5 M, and is on page 1774:

OFFICE OF BARLOW & SANDERSON, STAGE AND EXPRESS LINE,
Pueblo, February 8, 1879.

A. J. McDONALD, Esq.,
Postmaster, Los Pinos :

DEAR SIR: I am just in receipt of your welcome letter of January 27th. Service on route 38152, Los Pinos to Ouray, has never been discontinued, and since daily service has been performed via Los Pinos to Ouray, on route 38146, we have been transporting the mail for both routes. L. Voorhees is contractor on route 38146, and we are subcontractors.

We are also subcontractors on route 38152, and we would like you to make out in duplicate certificates certifying that contractor on route No. 38152 transported mail regularly and according to schedule for quarter ending December 31, 1878, and send duplicate to us here and original to Post-Office Department. By attending to this as soon as possible you will oblige us.

Truly yours,

BARLOW AND SANDERSON.

At that time Barlow & Sanderson were coming up from Garland to Lake City, and from Lake City around by Barnum to Los Pinos and then to Ouray, and they wanted the postmaster to certify that from Los Pinos down to Ouray there were two mails, when in point of fact there was only one.

On the 18th of March, 1879, Postmaster McDonald wrote to Brady (2 M, page 1773):

LOS PINOS, GUNNISON COUNTY, COLORADO,
18th March, 1879.

CONTRACT OFFICE, INSPECTION DIVISION, POST-OFFICE DEPARTMENT,
Washington, D. C. :

SIR: I have the honor to submit the following report regarding the matter of the transportation of the mails on route No. 38152 :

"The registers of arrivals and departures" sent by me to the department show that the mail was regularly carried on this route up to the 12th day of October, 1878. At this date a daily mail was established (viz, route No. 38146) which stopped at this office twice every day, once on its way from Lake City to Ouray, and once on its way from Ouray to Lake City. Seeing that the route No. 38152 was now quite superfluous I very naturally supposed that it was discontinued. Accordingly I ceased sending in the "registers of arrival and departure" until called upon by the department to render them. I then reported that no mail had been carried on the route, and I understand that the postmaster at Ouray, Colo., made a similar report, showing that he also was of opinion that the route in question had been discontinued.

He then goes on to recite the letters that he received :

I respectfully request instructions as to whether or not my reports of arrival and departures for the months of November and December, 1878, shall be corrected, and whether or not I am required to submit a report for the month of January, 1879.

In this connection I would respectfully state that this being merely a way station, no record of time of arrival and departure on route No. 38146 has been kept by me.

Very respectfully, your obedient servant,

A. J. McDONALD,
Postmaster.

Now, gentlemen, you have the secret of it. One route going up from Garland was a daily mail, and when it got to Los Pinos the postmaster was not obliged to send a mail bill, because the mail bills come from the offices of arrival and departure, and therefore, that being daily mail, the postmaster at Los Pinos never made the report of arrivals and departures ; but he did make a report of the weekly mail that was carried

there on route 38152, the one that is mentioned in this indictment; and, acting upon that weekly report, they were drawing their pay right straight along until the postmaster got orders to correct the report; then these letters that were sent from Barlow and Sanderson, asking him to make out duplicates, were communicated to the department.

Away back in January, 1879, Brady had it brought home to his attention—beginning in March, 1878, and then in January, 1879, and so on. But he took no action until the 3d of August, 1880, when he made an order:

From August 15, 1880, discontinue the service and allow the contractor one month's extra pay.

Now, gentlemen, the discontinuance of service was a proper order that ought to have been put in force about two years before it was put in force; but our claim is that he had no right to allow these people one month's extra pay when he knew that they had not performed the service. The total pay that was received upon this route was \$1,190, for work that they never performed.

Postmaster Dunbar, of Ouray, says there was daily mail; they only sent one pouch to Lake City; that went over route 38146 every day. This was the only mail that was sent over both routes.

There is no use in dwelling any longer upon this route.

No. 44155, THE DALLES TO BAKER CITY, OREGON.

[Maps shown to jury.]

Gentlemen, let me explain this map to you, because this is the key to two other routes we will take up. You see this route starts at The Dalles and goes along to Baker City. Over here you will find Canyon City. Canyon City to Camp McDermitt is another route that will be taken up. Then along further over to your left you find Bridge Creek. Eugene City to Bridge Creek is another route. So that these two routes I name—Canyon City and Bridge Creek—both end upon this route, and therefore this one (The Dalles to Baker City) was the route upon which mail coming up from those others was distributed.

This is one of the routes that Moore operated upon. There were two trips a week; the time was one hundred and twenty hours. John M. Peck was the contractor, and the pay was \$8,288. Miner wrote the body of the proposal. The oath was taken in blank. Stephen W. Dorsey reduced the estimate and fixed the price upon the route at the beginning.

I will here recall to your attention the fact that Boone prepared some blanks for subcontracts, and the instructions that Moore received from Stephen W. Dorsey to assure the subcontractors that the service would be increased and expedited, and also the instructions that Miner gave to Moore to get up petitions for increase and change the headings as much as he could and leave a space between the heading and the names in case the headings should want to be changed. The official orders are:

July 1, 1878, Postmistress Wilson sent a letter.

September 18, Peck's oath was signed.

October 1, Vaile filed a subcontract.

October 21, letter of Peck—proposal.

October 28, Peck's oath filed.

October 29, Brady made an order for increase and expedition.

January 17, 1879, order to increase pay of subcontractor.

June 27, 1879, Brady made order for increase.

April 17, 1880, Postmaster-General ordered service reduced.

July 16, 1880, Brady ordered the service increased.

Before going into the details of the orders let me remind you of the testimony that was given in this case, that there never was a through mail from The Dalles to Baker City. The mail was sent over the route up the railroad, as you see, by way of Pendleton.

The first is the letter of July 1, 1878, from Postmistress Wilson, who wrote stating that she had employed temporary service. There was no service on the route at that time.

Then, in July, Moore made a subcontract with a man named Hutchinson, who, it seems, afterwards threw up this subcontract.

On the 8th of July, Clark S. Pierce commenced to carry the mail for Emil Schutz. You will remember that Moore said to Schutz that if he would get "one or two original petitions, they would doctor them up and get as many as they wanted." Schutz testified to that on the stand. Moore was acting under the instructions he had received.

September 18, 1878, there was an oath signed by Peck, for thirty-two hours, and in that oath there are no trips mentioned. It is 14 L. [14 L shown to jury.] Miner wrote all that part but the signature of Peck. On page 4188 he gives his testimony in regard to it:

By Mr. HENKLE:

Q. What is the paper 14 L?—A. The affidavit on The Dalles and Baker City route.

Q. In whose handwriting is it?—A. It is all in my handwriting, except the date, which appears to be in the same as the notary public's, and the signatures. The signatures are Peck's and Taylor's.

On page 4189 he says:

Q. Was the paper 14 L all written at the same time?—A. From the appearance of the paper it was not all written at the same time, though there may have been a lapse of only fifteen minutes between the writing of one part of it and another.

Q. Was it filled up before it was sworn to?—A. So far as I remember, it was.

On page 4252, upon cross-examination:

Q. There is a third affidavit which is dated the 18th of September (14 L). Look at that and tell me if you recognize that. That is the third one, and it makes a small batch?—A. That is in my handwriting, except the signatures and the date in the jurat.

The jurat is that portion of it where the notary public states that he was sworn.

Q. All of it in your handwriting?—A. All except the signatures and the date of the jurat.

Q. Here appear to be three affidavits signed by Peck on the 18th of September, 1878, that being the date at the top. Do you recollect sending those three affidavits out to Peck?—A. I do not.

Q. Do you recollect nothing about those three affidavits?—A. I do not.

Q. Do you recollect anything about the consequence of filing those three affidavits?—A. I remember that they were increased.

Q. On those affidavits?—A. I do not know.

Q. You got them up for the purpose of an increase, did you not?—A. I do not remember whether I did or not, but—

Q. [Interposing.] For what purpose did you get them up?

The WITNESS. Let me finish, please.

Mr. MERRICK. Go on and finish.

A. But I did get them up for that purpose, I should say.

Q. And that design?—A. Yes.

Q. How much increase did you get, some \$40,000 to \$50,000?—A. I don't remember now.

Q. And you do not recollect anything about how you got them up?—A. I do not.

Q. Nor when you got them up?—A. I do not.

Q. Nor where?—A. I should think I got them up here; I was here.

Q. You do not recollect?—A. I do not.

Q. You do not recollect of sending them to Peck?—A. I do not.

Q. You do not recollect of them coming back from Peck?—A. I do not.

Miner says that he wrote this last part of it [indicating]; the other part is the jurat; but this part, above the signature of John M. Peck, he wrote here in Washington; he did not remember where he sent it. In his former answers he had said he sent it, but he could "not remember the time."

Miner was called upon to explain how it was in regard to the dates. At the head it is dated September 18, 1878, and when you come down here to where the notary public puts in his figures, the notary says, "On this 18th day of September." We could not get Mr. Miner to give us an explanation of how it was that an oath written in Washington would go away down to Chico Springs and reach there in time to be sworn to on the same day. I do not know how many days it takes to reach Chico Springs, but I suppose it takes at least five or six. But Miner never could explain that point to us. He says he wrote it, and that is about all he knew about it.

On the 1st of October, 1878, Vaile filed his subcontract, dated July 1, 1878. Miner signed the subcontract as attorney for Peck.

October 21, 1878, there was a letter from Peck offering to carry the mail three trips, seventy-two hours, for \$18,648 per annum. Miner wrote and signed the offer. This is on the 21st of October, 1878.

Then, on the 28th of October, 1878, the oath, according to the time marked on there in red ink, was filed.

On the 29th of October, the next day, Brady ordered, 12 L, page 1669:

First. Increase service one trip per week from November 15, 1878, and allow contractor \$4,144 per annum additional pay, being pro rata.

Second. Reduce schedule time from one hundred and twenty hours to seventy-two hours from November 15, 1878, and allow contractor \$18,648 per annum additional pay, being less than pro rata, but in accordance with his written agreement.

BRADY.

On the 17th of January, 1879, Brady ordered:

Increase the pay of the subcontractor—

That is, Vaile—

in like amount.

On the 23d of April, 1879, there is a petition for daily service. Now, gentlemen, you will remember that this order for increase was made in October, 1878. You will remember that after Vaile came here and signed his contract with these people, in October, 1878, dating it back in August, immediately they went to work, and on some of these routes there were increases made right away. Here is one of them that was increased in October, 1878. For expedition alone there was allowed to the contractors \$18,648 per annum additional. I suppose this allowance was given to help them to put on the service, because they took the drafts up and negotiated them at the German-American National Bank, and got the money upon them away in advance. On the 23d of April, 1879, as I told you, this petition for daily service was sent in. Here it is, gentlemen, 23 L [exhibiting petition to jury]. Miner wrote that petition. The signatures upon that petition are those of officers in the Twenty-third Infantry. Mr. Fisk, who was a carrier on this route, says, "I do not recognize a name; there was not a soldier on the route nearer than Camp Harney." That was down on the Canyon City

and Camp McDermitt route. Postmaster Hall, at Canyon City, says, "I do not recognize a name on that petition." You see how it was gotten up. It was gotten up just as Moore told you he was to get them up. There is a space between the names and the body of the petition. Moore said Miner gave him those instructions. Miner said that what Moore told you was not true. Here is a petition in John R. Miner's own handwriting, fixed up exactly as he told Mr. Moore to fix petitions up. The names are pasted on. Not one of those persons resided on the route. We attempted to show you where the people were who signed that petition, but the offer was ruled out. We brought witnesses upon that route to show that there was no such infantry there at all. Mr. McBean, who lives on the route, says, "I do not know a name on that petition; I cannot recognize one of them." Emil Schutz, who was the carrier on the route, says, "I have lived on the route since 1862, but I do not know a name on that petition." Gentlemen, the route having been started with two trips, on October 29, 1878, Brady added one trip, making three, and expedited the schedule. Afterwards this petition from soldiers was sent in by Miner. Then, on the 27th of June, 1879, Brady ordered, 27 L, page 1677:

Increase service four trips per week from July 14, 1879, and allow contractor \$41,440 per annum additional pay, being pro rata.

Brady testifies in regard to this order, beginning at the bottom of page 3422:

Q. Do you remember the route from The Dalles to Baker City?—A. I do.

Q. Do you remember whether you made any orders on that route for increase or expedition?—A. Yes, sir; I undoubtedly did. I made orders on almost all the routes in the country; ten thousand, more or less.

Q. For increase and expedition?—A. Orders of some kind.

Q. By the terms of the contract two trips were required at \$4,144 per trip, which would have made for six trips \$24,864. If you ordered three trips and expedition at an expense of \$31,000, thereby costing the Government \$6,000 more than it would have cost for six trips a week, is your answer as to your reason for doing that the same as on the other routes?—A. Certainly. It seems to me ridiculous to think that a slow service six times a week would be better than a three-times-a-week service upon a fast schedule.

Q. I merely want to get at what influenced you.—A. And especially if the people wanted it that way.

Q. You say especially if the people wanted it. How did you judge whether the people wanted it?—A. By the petitions and the representations of their members of Congress.

Q. You assumed that the petitions were the free expression of the wishes of the people, did you?—A. I did.

Q. You assumed that the expressions of Members of Congress and Senators were the expressions of their unbiased judgment, did you?—A. I did. I could not assume anything else.

You see the form of the question that was put to him. If he had made this route six trips a week on the schedule that it was advertised at, he would have had to pay \$24,864. Instead of doing that, he made it three trips a week and put on expedition, and when he put on the expedition it amounted to \$31,000. If he had given them six trips, the cost would have been \$24,864 and by that means he would have saved to the Government \$6,000 a year. By the order of June 27, 1879, after he had made the order in October, putting it up to over \$31,000 just for the four trips alone, he allowed the contractors \$41,440, when he could have had six trips for \$24,000. On the 17th of April, 1880, the Postmaster-General ordered the service reduced one trip. There was no reason given why it was to be reduced one trip, but that was about the time, or a little after the time, that they had the quarrel with Congress, or was after Congress had been investigating Brady orders; but promptly

on the 16th of July, 1880, Brady made an order, from August 1, 1880, to increase the service to seven trips. After the Postmaster-General took off one trip, Brady promptly restored the trip again. In the jacket containing the order to restore this trip there is a single paper. The jacket is 19 F. It is worth looking at to see whether there is not something on it. Yes ; there is an explanation on it :

Under date of October 29, 1878, the service on this route was increased to seven trips per week in order to enable the department to place in operation temporary service, and to reduce the expenditure within the appropriation for the fiscal year ending June 30, 1880. The service on this route was, under date of April 17, 1880, reduced to six trips per week. (See petitions and recommendations on file asking for daily service.)

From August 1, 1880, increase service to seven trips per week, and allow contractor and subcontractor \$10,360 per annum, being pro rata.

BRADY.

Gentlemen, the numerous petitions that were inclosed in this jacket amounted to a single slip of paper. That single slip contains these words :

TURNER: Restore this route to a daily.

BRADY.

You know he had his moods, and when he found that the Postmaster-General had interfered with him and cut off one trip a week he was in the imperative mood and he said :

TURNER: Restore this route to a daily.

I told you that there was no through mail on this route at all. It went by way of Pendleton. The mail consisted of two locked pouches, and it did not average over eighty or ninety pounds from Baker City, and twenty pounds the other way. The Canyon City mail went to Baker City. The Bridge Creek mail went up to The Dalles. Between the two there was nothing done. Schutz says, "I circulated petitions. There is no trouble in getting signers when you don't want any money." Mr. McBean says, "I signed that petition, 24 L." That is not the one I showed you. "I do not know that I read it. I would sign one to blow a horn." I am not able to tell you exactly the number of men and horses that were required on this route from the fact that they had to be divided up and cut in two because of different contracts. Joseph P. Masterson says he "carried the mail from The Dalles to Canyon City three trips from November, 1878, to July, 1879." He "used three men and thirty-four horses. In the spring two more horses were added. It took two days to make the trip." The time was one hundred and twenty hours, and it was reduced to seventy-two. The service was increased in July to seven trips. "I then drove from The Dalles to Cross Hollow in fourteen hours, and used two drivers and fourteen horses. I carried freight and passengers." John M. Fisk carried the mail from Canyon City to Baker City from September 5, 1878, to April 15, 1879. It took two days to make the trip. He afterwards carried the mail thirty-five miles further to South Fork. He carried freight and passengers. The service was increased to three trips. He used fourteen horses and two men altogether. He made three trips with the same number of horses that he used to make two.

On this route Vaile drew the pay. He drew it upon orders signed by Peck. There was one of them on the 30th of September, 1881. That, according to the testimony, was after Peck had died, which shows conclusively the truth of the statement made, that

they furnished each other with material with which to work when they made this apparent division. The original pay was \$8,288. It was increased from that amount to \$72,520. Owing to the way in which it was carried, and the subcontracts not being on file, we were unable to show you what they actually paid for carrying the mail, but we do know that it was jumped from \$8,288 a year up to \$72,520. In order to show why it should have been increased in that way, and whether Mr. Brady obeyed the law as to productiveness, I will give you the total revenues from the route. In 1879 the total revenue of every office on the route was \$3,716.91. Taking off The Dalles and Baker City, that were on the railroad and were supplied in other ways, the total revenue on the route was \$629.62. In 1880 the total revenue on the route was \$5,638.35. Taking off the railroad towns, the total revenue was \$685.48. In 1881 the revenue of all the offices was \$6,257.65. Taking off the railroad offices the total amount was \$601.64. It had come down in 1881 from what it had been in 1880. In 1880 it was \$685.48. In 1881 it was \$601.64. In 1881, taking all the offices, the total revenue was \$6,257.65 for the mail that was carried over the route. The amount received from the offices that were actually benefited by the mail going over it was \$601.64. And yet Brady made orders allowing his coconspirators \$72,520 for this service.

There are overt acts on this route. The petition that I have shown you, which the testimony shows to have been written by Miner, and contains the names of people not residing on that route, I submit to you, gentlemen, is proved beyond dispute. On the 27th of June, 1879, Brady ordered an increase of four trips. There is the order, Mr. Foreman. [Exhibiting order.] It bears the date mentioned in the indictment. In that jacket was this petition that I have shown you, written by Miner. The next is the order restoring the route from six trips to seven. That is dated the 16th of July, 1880. That is the time Brady had his trouble with the Postmaster-General. This was Peck's route, but on this route you have Miner writing a proposal, Miner writing the affidavit, Miner writing a false petition, Stephen W. Dorsey reducing the estimate, and Vaile drawing the pay for the entire term, while Brady made the orders.

The COURT. We will take our recess now.

At this point (1 o'clock p. m.) the court took its usual recess.

AFTER RECESS.

ROUTE 44140, EUGENE CITY TO BRIDGE CREEK, OREGON.

Mr. KER. This was one of the routes that Dorsey took. It was two hundred and seven miles long, and there was one trip a week in one hundred and twenty-one hours. John M. Peck was the contractor, and the pay was \$2,468. Miner wrote the body of the proposal. John W. Dorsey wrote in two places "District of Columbia." Stephen W. Dorsey signed Peck's name in two places. The official orders are:

January 22, 1879, date of the oath of Peck.

April 21, 1879, order to curtail the service.

May 5, 1879, letter of Peck to change address.

May 10, 1879, letters addressed to Dorsey.

May 10, 1879, petitions signed by people in Eugene City.

May 23, 1879, letter from Stephen W. Dorsey to Brady.

May 24, 1879, Peck's oath filed.

May 24, 1879, letter from Peck transmitting oath.

June 26, 1879, order for increase and expedition.

October 23, 1879, letter of Peck to Brady.

October 24, 1879, notice of change of pay to subcontractor.

November 5, 1880, warrant to Bosler.

November 15, 1880, letter of Peck to Brady.

November 15, 1880, another letter of Peck to Brady.

November 20, 1880, order to change schedule.

January 15, 1881, warrant to Bosler for pay.

March 19, 1881, another warrant to Bosler.

March 29, 1881, another change of schedule.

Now, let us go back to the facts of the case. Peck was the contractor, Miner wrote the body of the proposal, John W. Dorsey filled in the words "District of Columbia," and Stephen W. Dorsey signed Peck's name. Upon being interrogated upon that subject Dorsey's answer was, "I could not say, but I think not." That was all the answer he could give. It is found on page 3834. There was a subcontract with P. J. Wycoff. It was made by A. W. Moore. This route is what is known as the Gum-Boot route. The 22d of January, 1879, is the date of the oath of Peck, 8 I. On the 21st of April, 1879, Brady made an order, 28 I, on page 1342:

Curtail service to end at Mitchell, decreasing distance eighteen miles, and allow one month's extra pay.

Gentlemen, you will see by the map that Mitchell is just below Bridge Creek. It is the next station on the map. I would like to have you look at it. There is no mail route passing out of Mitchell to go anywhere. Bridge Creek was on the line of The Dalles and Baker City route. Brady cut off Bridge Creek and made this route terminate at Mitchell. There is no explanation why he did that. There does not seem to be any reason for its being done, and I have been totally unable to ascertain why such an order was made, because when the mail reached Mitchell it must have been carried from there in some other way. It must have been necessary to make another route from Mitchell up to Bridge Creek. The only theory that I can offer to you for this change that was made without any explanation on the jacket is that they had a postmaster at Bridge Creek who would not stand any nonsense, and insisted upon making correct returns, or else the postmaster at Bridge Creek was making returns they did not like, and in order to get rid of that they arranged the route so that he would have no returns to make at all, and so that it could not be seen how the mail was carried on the other route from The Dalles to Baker City. At any rate they chopped this post-office off, and left this end of the route without any communication with the outside world.

On the 5th of May, 1879, a letter from Peck to change the address to care of Rerdell was sent. Rerdell wrote the letter and signed Peck's name. On the 10th of May, 1879, there were some letters addressed to Stephen W. Dorsey. One was signed by W. R. Walker, another by B. F. Finn, and another, from Eugene City, signed by Joshua J. Walton.

On the 10th of May, 1879, there was a petition signed by people of Eugene City. It is 19 I. It was written by Rerdell. There it is, gentlemen. [Exhibiting petition.]

On the 23d of May, 1879, Stephen W. Dorsey wrote a letter to Brady. It is 9 I, page 1333:

WASHINGTON, D. C., May 23, 1879.

HON. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: I have the honor to transmit herewith letters addressed to me in relation to an increase of mail service on the route from Eugene City to Bridge Creek, Oreg., which please place on file in your department, and to request your early consideration of the same.

Very respectfully,

S. W. DORSEY.

There was Rerdell getting up a petition and having it signed in Eugene City, and then came a letter from Dorsey himself to Brady on the 23d of May, 1879. I want to read you what was inclosed in that letter:

SPRINGFIELD, OREG, May 10, 1879.

W. S. DORSEY, *United States Senate,*
Washington City, D. C. :

DEAR SIR: An effort is being made to secure an increase of service on the mail route leading from Eugene City, via McKinzie and Ocheco, to Bridge Creek, Wasco County. The country through which this route passes, both east and west of the Cascade Range of mountains, is rapidly filling up with settlers, and the mail facilities under the present contract is, in my opinion, entirely inadequate to the population. I would therefore most respectfully ask your assistance in securing such increase of service as prayed for in the petition.

Very respectfully, your obedient servant,

W. R. WALKER.

SPRINGFIELD, May 10, 1879.

HON. S. W. DORSEY, *United States Senate,*
Washington, D. C. :

DEAR SIR: Having learned of your willingness to assist in procuring mail facilities, I take the liberty of addressing you and asking you to assist us in procuring an increased mail service on the route from Eugene to Bridge Creek, which is now only once a week, over a route that should have a daily mail service, and I hope you will favor us with your influence for that purpose.

Very respectfully,

B. F. FINN.

EUGENE CITY, May 3, 1878.

HON. S. W. DORSEY, *United States Senate,*
Washington, D. C. :

DEAR SIR: You will confer a great favor on the citizens of this State by aiding to increase the mail service on the McKinzie route, from Eugene City to Bridge Creek, from a weekly to a daily mail.

Respectfully,

JOSHUA J. WALTON,
Judge of said County.

These were the letters that were addressed to Dorsey in the United States Senate, evidently instigated by some person, because one of them was addressed to him as W. S. Dorsey. He sent those letters inclosed in his letter to Brady. Remember, that at that very time Stephen W. Dorsey had an interest in this route. It was one he took in the division.

On the 24th of May, 1879, Peck's oath was filed for three trips at fifty hours. The time before was one hundred and twenty-one hours. Here is the oath, S I [exhibiting oath to jury], marked on the back, filed May 24, 1879. That is an overt act alleged in the indictment, and that is the date that is alleged in the indictment. I ask you to look at it and see that it is the correct date. It was evidently used when the order was made. It is stamped on the back May 24, 1879. Let me explain that oath to you. Miner wrote the body of it. On page 2340 is the testimony of Rerdell:

Q. I hand you the paper marked "8 I," and ask you in whose handwriting that is?—
A. The body of this is in the handwriting of John R. Miner. The figures "44140," "three" times a week, the words "four," "nine," "fifty," "ten," and "thirty" were written by myself.

Q. Were they written before or after the signature of Miner?—A. No, sir; this is not the signature of Miner; the body of it is written by Miner and signed by John M. Peck.

Q. Before or after the signature of Peck?—A. After the signature of Peck.

Q. Where were they written?—A. I wrote them here in Washington.

Q. Under what circumstances?—A. Under the direction of S. W. Dorsey.

Q. Were they written in before or after the 22d of January, 1879, the date the jurat purports to be dated?—A. They were written several months after that.

Miner gives his explanation about that. It is found on page 4246, beginning at the bottom of the page:

Q. Look at the paper now handed you (8 I) on the route from Eugene City to Bridge Creek, and tell me whether you ever saw that before or not?—A. A portion appears to be in my handwriting; I don't remember that I ever saw it before.

Q. You do not remember anything about it?—A. Aside from the fact that it appears in my handwriting.

Q. Is it all in your handwriting?—A. It is not.

Q. What part is not?—A. "Three times a week," "four," "nine," "fifty," "three," "ten," and "thirty." A portion of the jurat is not in my handwriting.

Q. I suppose a portion to the other one (6 D) is not in your handwriting, too? Look at it. Is it not so?—A. That all appears to be the notary's; it is not mine, at least. The portion from "Sworn to" is not mine.

Q. "Sworn to and subscribed before me, a notary public in and for the county of Colfax, on the 22d day of January, A. D. 1879. J. S. Taylor." That is not in your handwriting?—A. That is not mine.

Q. And in the other one (8 I), "Sworn to and subscribed before me, a notary public, this 22d day of January, 1879. J. S. Taylor." That is not in yours?—A. I think not.

There were two affidavits shown to him on the same date.

Q. All the other words are in your handwriting?—A. Yes.

Q. Who filled in these words that have been filled in?—A. It appears to be Rerdell's.

Q. Is it Rerdell's?—A. I do not say positively that it is.

Q. It appears to be his?—A. It appears to be his.

Q. This affidavit bears date the 22d of January, 1879, the same date with the other affidavits. Then it seems that two affidavits were sent out to Peck?—A. It would so appear; yes, sir.

Q. You do not recollect of sending a batch of them to Peck?—A. I do not recollect anything of the sort.

Q. The paper last shown you (8 I) is as follows:

"THOMAS J. BRADY,

"Second Assistant Postmaster-General:

"SIR: The number of men and animals which are necessary to carry the mail on route 44140, three times a week, on the present schedule, is four men and nine animals; the number necessary to carry said mail on a schedule of fifty hours three times a week is ten men and thirty animals.

"Respectfully,

"JOHN M. PECK.

"TERRITORY OF NEW MEXICO,

"County of Colfax, ss:

"John M. Peck, being duly sworn, deposes and says that the above statement is true, as he verily believes.

"Sworn to and subscribed before me, a notary public, this 22d day of January, 1879.

"[SEAL.]

"J. S. TAYLOR,

"Notary Public."

As I understand you, it is all in your own handwriting except the number of men and animals?—A. I think the words "three times a week" and the number of men and animals and the number of hours are not mine.

Q. This appears to have been filed on the 24th of May, 1879, and both affidavits, as I have said, bear date the same day. You do not recollect of sending these two affidavits to Peck?—A. I do not.

Q. You do not recollect when you wrote the last affidavit, 8 I?—A. I do not.

Q. Do you recollect writing it at all?—A. I do not.

Q. You have no memory about it?—A. No.

Q. You do not recollect to whom you gave it after you wrote it?—A. I do not.

On the same day, the 24th of May, 1879, there was a letter of Peck transmitting the oath. It is 7 I, on page 1332:

WASHINGTON, D. C., May 24, 1879.

HON. THOMAS BRADY,
Second Assistant Postmaster-General:

SIR: I have the honor to transmit herewith my proposition for carrying the mail on route 44140 for three times a week and on a reduced schedule.

This route crosses two high ranges of mountains, and on a schedule of sixty hours the time will be equal to at least six miles an hour on an ordinary road.

Hoping this will receive your favorable consideration, I am,

Very respectfully,

JOHN M. PECK.

This letter was written and signed by Rerdell. It says:

On a schedule of sixty hours the time will be equal to at least six miles an hour on an ordinary road.

Gentlemen, the oath that was transmitted in this proposition calls for fifty hours. If the time were reduced to sixty hours it would be over six miles; then if the time were reduced to fifty hours, of course it would be close on to seven miles an hour. On the 26th of June, 1879, Brady made an order, 5 I, found on page 1332:

1st. Increase service two trips per week from July 14, 1879, and allow contractor \$4,649.86 per annum additional pay, being pro rata.

2d. Reduce running time from one hundred and twenty-one (121) to fifty (50) hours, from July 14, 1879, and allow contractor \$14,486.10 per annum additional pay, being pro rata.

3d. Allow subcontractor \$6,971.02 per annum, for three-times-a-week service on a schedule of fifty (50) hours, from July 14, 1879.

His order made upon this jacket, where he had to state the subcontractor's pay, allowed the contractor for expedition alone \$14,486.10. That would make altogether over \$19,000. The difference between the amount that he allowed the contractor and the amount he allowed the subcontractor, Wycoff, whose subcontract was on file, was just \$14,060.89. When he was making the order, he had right before him the evidence of the fact that the contractor was getting the mail carried for a sum that put into his pocket a clear profit of \$14,060.89. Brady testified in regard to this, on page 3460:

Q. You think it was just and proper to the contractor to make an order, where there was \$14,486.10 paid out of the Treasury for certain service, to allow him more than half of that amount for doing nothing, with less than half of it allowed to the man who did the service? Did you think that was proper to the Government?—A. I did. The subcontractor who was performing the service might at any time, in mid-winter, during a snow-storm, or anything like that, have thrown up the contract, and then the contractor would be held to put the service on again. We held him responsible, not the subcontractor. It was none of our business how much the contractor could get the service done for. And it was none of our business how much money he made out of it, provided we got a good service, and that service was not excessively paid for.

Q. But was it not some of your business to get the service performed at the lowest rate at which you could get it performed?—A. The papers show, and that was the law.

Q. And did not the subcontract show that a man had bound himself, and was willing to bind himself, to perform the service for the entire term, subject to all the conditions of the original contract, for the rates stated?—A. But he was not bound to us to perform it.

Q. I am aware of that.—A. We could not deal with him. We had nothing to do with him. That Eugene City and Bridge Creek service cost only \$28.66 per mile, and it was an exceedingly difficult service to perform. We had nothing to do with the subcontractor except to see that he got his pay.

Q. And upon that route you paid \$21,603 for the service, and of that amount the subcontractor, who performed the service, got only \$6,976. And you say that that was a proper contract for you as a Government officer to make?—A. I do. I say the service was cheap then.

Again, on page 3583, at the bottom of the page :

Q. On the route from Eugene City to Bridge Creek, it appears that by orders 5 and 6 I, dated June 26, 1879, you reduced the running time from one hundred and twenty-one hours to fifty hours, and you allowed the contractor therefor \$14,486.10, and at the same time you allowed the subcontractor \$6,971.02. I hand you the order and the papers with it and ask you to state in what way you arrived at the time, fifty hours.—A. I see on the face of the jacket that to reduce it to fifty hours would make it within the four-mile rule. It was one hundred and ninety-five miles long, and fifty hours would be about four miles an hour. Mr. Mitchell's letter calls for a reduction from one hundred and thirty hours to one hundred hours.

Q. Is not that the only paper in the lot that mentions any time to which reduction is desired?—A. I have not looked through all the papers.

Q. I will ask you to look through them for the purpose of refreshing your memory?—A. As I have explained in several other of the cases, according to my way of thinking there would have been very little expedition in simply coming down from one hundred and twenty-one hours to one hundred hours. It would have been somewhat faster, of course. Here is a petition (19 I) asking that the schedule be changed so as to make the speed much faster than at present. Here is a letter from Maxwell, approved and recommended by Whiteaker, wanting much faster time, or fast time (16 I).

Mr. BLISS. It says "fast time."

A. [Continuing.] Here is a petition from citizens and the postmaster at Springfield, wanting a daily service, and that the speed be greatly increased (14 I). Here is another petition of citizens of Eugene and Lane County wanting daily service and the speed greatly increased (13 I). A great many of these documents and petitions simply call for daily mail.

Q. But you find none there which name any time, except that Senator Mitchell names one hundred hours?—A. I do not.

Q. That order was made, I think, on the 26th of June, 1879?—A. Yes, sir.

Q. And the papers were filed on the 22d, 23d, 24th, and 26th of May?—A. Yes, sir.

Q. Now, that being so, can you explain how it happened that, on the 22d of January, 1879, some five months previously, in New Mexico, Mr. John M. Peck knew that you wanted an affidavit showing how many men and horses would be required on a schedule of fifty hours?—A. I cannot.

You see, the affidavit was made in January, 1879, the petitions were filed in May, and he made this order in June. He could not tell us how it was that he and Peck came so close together in the matter of the time.

On the 23d of October, 1878, there was a letter from Peck to Brady to have subcontractor Wycoff's pay increased to \$7,400 per annum. They first allowed the subcontractor \$6,971.02, and it seems that they then increased his pay, and wrote to Brady informing him of the fact. Brady received the letter stating that the subcontractor's pay was to be brought up to \$7,400, about \$500 being added to it. Rerdell wrote and signed the letter. Then the Auditor was notified of the change in the pay of the subcontractor. On the 20th of February, 1880, there was a letter from Rerdell to Powers, informing him of the failure of Congress to make an appropriation. We again get up to the time that they were before Congress. As I explained to you when I told you about another letter of the same kind, Congress had not made the appropriation. They were investigating Brady's action. They were investigating the orders upon these routes. It was not known whether Congress would make the appropriation of \$2,000,000 that Brady asked for or not. Immediately the contractors got out printed letters and sent them to every subcontractor upon every star route in the country, asking them to write to their members of Congress urging their members of Congress to vote for this appropriation, or, in other words, according to the letters, to see that the mail facilities were maintained. They were doing everything

that lay in their power, both the contractors and those who were acting for this combination and these co-conspirators. Miner and Rerdell sent out the letters, and at the same time Thomas J. Brady was doing his level best to coerce Congress into passing the appropriation. One of the things that Brady did in order to influence Congress, in order to bribe the members of Congress, was, that upon every star route in the South and upon every star route in the Middle States he immediately doubled the trips. He doubled the trips upon every one of those routes in the South and in the Middle States, and did that during this Congressional investigation, as I say, in order to bribe the members of Congress. I do not doubt that these circulars were sent all through the South in order to make the Southern members stand up for the appropriation. You know, gentlemen, the old cry from the South :

The old flag and a big appropriation.

The Southern members found that their constituents wanted this great increase maintained, and Brady knew from what had preceded that the moment there was any talk of money going into the South the Southern members would stand up for the appropriation. His honor told me not to indulge in any flights of imagination, and I always like to obey the orders of the court. You will find Thomas J. Brady's testimony upon that subject on page 3393 of the record. He was a newspaper man ; he had his newspapers. Vaile was a newspaper man, and I suppose he had his newspapers. They were all taking a big hand in stiffening up the backs of members of Congress. But the Congressional back could not be stiffened. Congress allowed Brady \$1,100,000, which was \$900,000 less than he asked for, and they gave him a certificate of good character to bring here in order that we might prosecute him, and told him to make no more expedition over 50 per cent. of the original contract price.

On the 5th of November, 1880, there was a warrant to Bosler for \$725, a remission of part of the fines for the quarter ending March 31, 1880. You see they were fined, and Bosler received the remission. On the 15th of November, 1880, ten days after that order for remission was made, there was a letter from Peck to Brady asking for a remission of the fines for the quarter ending the 30th of September, 1880. They were fined each quarter. Rerdell wrote and signed the letter. On the 15th of November, 1880, there was still another letter from Peck, calling attention to the affidavits that were filed. It is 24 I, on page 1338 :

[M. C. Rerdell, agent, box 706.]

WASHINGTON, D. C., November 15, 1880.

HON. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: I have the honor to call your attention to certain affidavits filed showing it to be almost impossible to perform mail service on route 44140 during the winter season within the schedule time of fifty hours.

This route crosses two ranges of mountains, and by reference to those affidavits it will be seen that the snow attains the extraordinary depth of fifty feet.

I have therefore to ask that a winter and summer schedule be allowed over this route, say, of sixty hours from the 15th of November to the 15th of April, and forty hours for the remainder of the year, being pro rata from November 1 to April 30 and from April 30 to November 1, each, but to commence from December 1, 1880.

Very respectfully,

J. M. PECK.

This letter was written by Rerdell and was to Brady a direct and positive notice, accompanied by affidavits, that it was impossible to per-

form the service upon the schedule of fifty hours, and that the snow reached the extraordinary depth of fifty feet. In answer to that, on the 20th of November, 1880, there was an order of Brady, which is 23 I, on page 1337. You would suppose that when an honest Second Assistant Postmaster-General received a notice of that kind, that it was impossible to perform the service, and when he had remitted fines on account of that impossibility, that he would have said: "You want the schedule changed from winter to summer. Do not people want their mail in the winter time with the same regularity and expedition that they want it in the summer? If you cannot get along with a regular schedule for all the year around, I will put the time at a figure in which the mail can be carried. I will make an order cutting off the expedition and putting the route upon a basis upon which the mail can be carried." But Brady did not work in that way. On this date, November 20, 1880, the order was:

From December 1, 1880, reduce running time from fifty hours to forty hours from April 1 to October 31, and increase it from fifty hours to sixty hours from November 1 to March 31st of each year, without change of pay, the decrease and increase of running time being pro rata.

In the summer time they were to get their mail in forty hours, and in the winter time they were to wait sixty hours. Anything at all but changing the schedule. Brady had received his 20 per cent., and of course he could not afford to go back upon the contractors and put the time up and the amount back to the old contract price. He felt compelled to keep the price where it was.

Brady testifies in regard to this, on page 3584, beginning at the bottom of the page:

Mr. BLISS. Those affidavits relate to the condition of the road. I see they have the same date of the letter. They were filed on the 19th of November. They are marked 24 I, 25 I, and 26 I. Here are all the papers on the route if you wish to see them. [Submitting papers.]

The WITNESS. This letter sending these affidavits simply explains that the route crosses two ranges of mountains. By reference to these affidavits it will be seen that the snow attains to the extraordinary depth of fifty feet. Then it goes on:

"I have therefore to ask that a winter and summer schedule be allowed over this route, say, 60 hours from the 15th of November to the 15th of April, and 40 hours for the remainder of the year."

That is the only explanation I know of. It seems to have been impossible to have done it in the winter on fifty hours and they were given sixty, and a corresponding reduction was made for the summer.

Q. You considered that that answered the public convenience as well to have forty hours in summer and sixty in winter, as fifty all the year round?—A. I do, or I should not have made that order.

On the 15th of January, 1881, there was another warrant drawn in favor of Bosler for \$889.75, for a remission of part of the deduction for the quarter ending September 30, 1880. On March 19, 1881, there was still another warrant to Bosler for \$275.61 for a remission of part of deduction for quarter ending December 31, 1880. Bosler was drawing it in. On the 29th of March, 1881, Brady made another order. It was found that the first order that he made was one under which they could not get along, and so he again changed the schedule. This order is marked 27 I, and found on page 1342:

Amend order bearing date November 20, 1880 (number 12790), so as to reduce running time from fifty to forty hours from May 1 to October 31 in each year, instead of from April 1 to October 21 of each year, and from November 1 to April 30, increase running time from fifty to sixty hours, instead of from November 1 to March 31, without change of pay.

All this was done without change of pay. He changed the schedule and altered the day of the month upon which it was to begin.

Gentlemen, there was some testimony upon this route. Powers testified: "In the winter we carried the mail a portion of the way on snow-shoes; it would average from one to a dozen letters." Just think of it! From one to a dozen letters! "It could be carried by running a railroad across the mountains and snow-shedding the road." That was his idea of how he could get through in fifty hours—run a railroad over the mountains and build a snow-shed over the road. Mrs. Powers, who was the postmistress, testified: "The mail was wrapped in a gum-boot leg, and put in the carrier's pocket. After the increase was made there was no increase in the mail." Mrs. Powers's testimony will be found on page 2086. The testimony of Mr. Powers will be found on pages 1343-4 and 1458.

The pay in this case is drawn by Vaile, then by Stephen W. Dorsey, and then by Bosler. In two of the quarters, one ending on the 30th of September, 1881, and the other on the 31st of December, 1881, the pay was drawn upon orders signed by John M. Peck, who at that time, according to the testimony, was dead and buried.

Let us see about Peck's oath. For three trips it took four men and nine animals. For expedition it took ten men and thirty animals, making forty. Powers says when he ran it in one hundred and twenty-one hours it took five men and nine animals. When he ran it in eighty-four hours—because it seems he did run it in that time—it took seven men and twelve animals. When he brought it down to fifty hours it took seven men and thirteen animals, a total of twenty; just one-half of what Peck's oath stated it would take. Peck's oath specified forty, and Powers says the number of men and animals put together was twenty. He was asked "Could you use any more?" And he answered, "No, sir; no more animals. It was the snow; the snow prevented us." He said if he could have taken a troop of horses and kept them running over the road all the time, he might have kept it open in that way. Powers also testified that these men now owe him \$1,000. You see they were scraping the money in, Bosler getting the warrants. Powers was the man who was doing the work, and Powers says they now owe him \$1,000. They did not pay him any of it; they did not pay him a part as they did some of the rest.

The pay upon this route originally, was \$2,468. It was increased to \$21,460.89. Wycoff's pay was \$7,400. That left the contractors a profit of \$14,060.89. They subsequently made a contract with Powers, and gave him an increased price, his contract pay being \$12,000. By paying him that, the contractors here, Dorsey, Miner, Vaile, and whoever was in the combination along with them, had a clear and substantial profit of \$9,460.89. There is not a gentleman on the jury who would not have liked to have had that mail route just to live on from year to year. Nine thousand four hundred and sixty dollars and eighty-nine cents without doing anything, and scooping in the fines belonging to the subcontractors beside! There were some mail bills put in upon this route. I will read you a few of them from pages 2106-7-8. You know the letters state that the country was settling up rapidly:

Post-office at Mitchell, March 28, 1880. Mail, consisting of one letter, was dispatched this day at 7 a. m.

April 2, 1880. Mail, consisting of five letters and no paper mail, was dispatched this day at 7 a. m.

April 7, 1880. Mail, consisting of four letters, was dispatched this day.

April 9, 1880. Mail, consisting of one letter, was dispatched this day.

April 11, 1880. Mail, consisting of three letters, was dispatched this day.

There is the mail as shown by the mail bills, and I suppose they are correct. There was from one up to three letters. Besides that, Mrs. Powers testified that the mail was very small and that it did not increase.

Mr. C. S. Moore, who is the active and gentlemanly assistant of the district attorney, upstairs, handed me in the ante-room a piece of paper, and I will incorporate what is upon it as part of my speech. When Mr. Moore was informed about this route, it struck him as comical, and here is what he wrote:

The mail was small,
Scarce any at all—
A letter or two and a paper,
Went over this (route) root
In the leg of a boot,
The horse on a five-mile caper.

Brady testified, on page 3584 when asked what he had to say about this, that the service was cheap, and that was his only answer. I have read to you all that went before that answer. His answer was that the service was cheap. He allowed \$21,460.89 for carrying from one to three letters in the leg of a boot, giving the contractors a profit of \$9,460.89, besides remissions of fines.

Gentlemen, there are some overt acts on this route. Let me call your attention to them. I do not want my friends who come behind me, to say that these acts are not proved. I have read to you the letter of May 23, 1879, written by Dorsey, inclosing the letters that were sent to him, upon the strength of which Thomas J. Brady made his order. I have shown you Peck's oath filed on the 21st day of May, 1879, and marked on the back with the same date. That is the date that is stated in the indictment. I will show you the order of June 26, 1879. [Exhibiting it.] That is the date mentioned in the indictment. Inside of it was a jacket on which was written "Do this.—Brady;" but here is Brady's signature on the other side. Gentlemen, I submit to you that every date alleged as to this route is absolutely correct.

Another route of the same series is—

ROUTE NO. 44160, CANYON CITY TO CAMP McDERMITT, OREGON. ■

You will see it on the map—a long line but nothing on it. It was two hundred and forty-three miles in length, and there was one trip a week in one hundred and thirty hours. John M. Peck was the contractor, and the pay was \$2,888. Miner wrote the body of the proposal. Rerdell filled in the amount Stephen W. Dorsey wrote in the proposal the word "Bidder" and signed Peck's name in three places. This was one of the routes that was taken by Vaile, as he says, in the division. The official papers are—

July 4, 1878, Postmaster Hall wrote to Brady.

July 15, 1878, Army officers at Camp Harney wrote.

July 29, 1878, postmaster at Camp McDermitt wrote.

September 18, 1878, oath of Peck made.

September 21, 1878, subcontract with McBean.

September 30, 1878, report from postmaster at Canyon City.

November 3, 1878, Postmaster Hall reported.

November 12, 1878, deduction ordered for failure.

November 16, 1878, Senator Mitchell wrote Brady.

December 16, 1878, postmaster at Camp McDermitt telegraphed.
 December 19, 1878, Senator Mitchell again wrote.
 December 23, 1878, oath of Peck filed.
 December 23, 1878, offer of Peck filed.
 December 23, 1878, Brady made an order for increase and expedition.
 December 28, 1878, Vaile filed a subcontract.
 May 17, 1879, petition filed for daily service.
 July 16, 1880, letter of Brown with petitions.
 July 16, 1880, Brady ordered increase of trips.
 August 2, 1880, subcontract made with Carrey.

Now let us go back again. John M. Peck was the contractor, Miner wrote the proposal, Rerdell filled in the amount, and Stephen W. Dorsey signed Peck's name to it. When he was asked about having signed Peck's name, and written in words upon that proposal, his answer was, "I could not say, but I think not." That was as far as he was willing to go. On the 4th of July, 1878, Postmaster Hall, at Canyon City, wrote to Brady, stating that the contractors had failed to appear by person or agent. On the 15th of July, 1878, the Army officers at Camp Harney wrote to Senator Mitchell, complaining about the mail. That letter is marked 11 H, and found on page 1245. The letter plays a very important part in the subsequent proceedings in this case. The Army officers down there at Camp Harney were not receiving any mail at all, and they wrote this letter to Senator Mitchell.

CAMP HARNEY, OREG., *July 15, 1878.*

To Hon. J. H. MITCHELL,
U. S. Senate, Washington, D. C. :

SIR: We respectfully request your polite attention to the following fact, viz: This post-office and this military post and the surrounding country has received no mail, excepting two or three letters and a newspaper or two, from the East, the South, or the West, for thirty-six days, and the mail *due* here weekly is a *very large* one. Mail matter on military or governmental, as well as private business from New York, Washington, and San Francisco, from Army headquarters, and military division headquarters, fails entirely to reach us. It is left some place on the route, believed to be left either at Kelton or Winnemucca or McDermitt as well as we can ascertain. The routes and roads are open; passengers and mail are, as we are informed and believe, carried to the East, South, and West, and passengers *from* those points to here, *but not the mail*. For more than five weeks this state of things has continued. It is true that this post-office is on a route for which no contract at present exists, so we are told, but reliable men are ready to contract to carry over the route heretofore used from Winnemucca and McDermitt through here to Canyon. What is immediately available for the present purpose is the military express that we have between here and Canyon City, Grant County, Oregon. Between Canyon and Boise, and thence to Kelton and to Winnemucca on the railroad, there are established routes, but our mail does not reach even Canyon City by the Boise or any other route.

We respectfully and earnestly request that you will please present these facts to the proper authorities and ascertain if our large and important mails cannot be made to reach us, or at least reach Canyon City, Oreg., whence we can get them.

We remain, very respectfully, yours,

J. STEWART,
Major Fourth Artillery, Commanding Post.
 M. A. COGHEN,
Captain Second Infantry.
 JOHN H. BARTHOLF,
Captain, Assistant Surgeon, U. S. Army.
 WILLIAM F. STEWART,
First Lieutenant Fourth Artillery.
 J. G. GALBRAITH,
Second Lieutenant First Cavalry.

You see they state in this letter, gentlemen, that coaches came along carrying passengers, but they could get no mail from any source whatever. The only mail they got was by what is known as military couriers.

They always run couriers from military camps. They always have dispatches that are not put in the mail, and that was the only way they got any letters at all. But, of course, these couriers could not get the regular mail. Bearing this letter in mind, you will see what became of it afterwards.

On the 29th of July, 1878, the postmaster at Camp McDermitt wrote to Brady (3 H, page 1243):

No contractor has reported either in person or by agent.

That was away down at the tail end of the route. No contractor had reported.

On the 18th of September, 1878, the oath of Peck was made, for ninety-six hours. Not a letter had been carried over the route; reports from the postmasters that there was no mail carried, yet, on the 18th of September, 1878, Peck's oath was made for ninety-six hours. At that time the time was one hundred and thirty hours. Miner wrote the body of that oath, and he testifies, on page 4188:

By the COURT:

Q. Allow me to ask you a question upon 8 H. You say that that affidavit is all in your handwriting?—A. The body of it; yes, sir.

Q. Was it all written at the same time?—A. It was not all written at the same time, from the appearance of it.

The COURT. It is manifest that it has been filled up.

[8 H was handed to the jury.]

Again, on page 4251, he says, upon cross-examination:

Q. Now, we will come to another one. That was 9 G, and that seems to have been the 18th of September. Here is another one dated on the 18th of September, the same day, on another route. Tell me what you know about that? [Submitting 8 H.]—A. I simply know that it is in my handwriting.

Q. Is it all in your handwriting?—A. All except the signatures and the date of the jurat.

Q. Was it all written at one time, or partly at one time and partly at another?—A. The appearance of the paper would indicate that it was written at different times. I don't know whether it was written fifteen minutes before or six weeks before the other part. I have no recollection of it now.

Q. You do not know whether it was sworn to in blank, do you?—A. I do not think it was.

Q. What do you know?—A. I do not know whether it was or not.

Q. If it was written here by you on the 18th, and sworn to on the 18th in Chico, it could not very well have all been written very near the same time?—A. I do not know that it was written here on the 18th.

Q. Where were you on the 18th?—A. I was here.

Q. If it was not written on the 18th why did you put that date at the head of it?—A. I don't know.

Q. Why did you say it was written at Chico Springs, when it was written here?—A. I don't know.

Q. What words in it seem to be put in at a time different from that when the body was written?—A. There is a space after the "eight," a space after the "ninety-six," a space after the "twelve," and there is a space before and after the "two."

The COURT. Whose affidavit does that purport to be?

Mr. MERRICK. Peck's.

Q. Why did you leave so much space for the words "six" and "eight" when you wrote it?—A. I don't know.

Q. Did you not leave a space there for the purpose of filling up afterwards?

The WITNESS. Do you want me to tell you what I think about it?

Mr. MERRICK. Well, I do not know.

The WITNESS. I have told you that I don't know and don't remember.

Q. You remember nothing about?—A. I do not; if you want me to suppose about it I can do it.

Q. It is written on September 18, and it is sworn to on September 18.—A. I don't know that it is written September 18.

Q. It purports to be. Do you know anything at all about it?—A. I do not.

On the 21st of September, 1878, Moore made a subcontract with

Frank McBean. You remember that this is one of the routes that Moore was sent out to attend to, and you remember that he told McBean all that Stephen W. Dorsey had told him—that it would be expedited; that it would be increased; he was assured of that. Moore had a great deal of trouble in getting McBean to come up and make the contract, but, acting upon what Moore had told him, McBean came forward and made a subcontract on the route.

On the 30th of September, 1878, Postmaster Hall, at Canyon City, reported no service:

I know of no reason why the mails should not have been carried this month, had any one offered to take them.

That was in 48 H, at page 3308.

Then, on the 3d of November, 1878, Postmaster Hall reported:

The first mail left here on the 3d day of November, 1878.

See, the first mail left Canyon City on the 3d of November, 1878, to go down.

On the 12th of November, 1878, there was a deduction ordered for failure of service for the entire quarter ending September 30, 1878. They deducted from the pay of the contractors up to the 30th of September. My object in noticing that, gentlemen, is to show you that at that time, the 30th of September, 1878, after the oath had been made and everything apparently was ready for expedition, there was no service performed at all.

On the 16th of November, 1878, Senator Mitchell wrote Brady, inclosing the letter sent to him by the officers at Camp Harney. You know that letter was dated the 15th of July, 1878, and transmitted to Senator Mitchell. On the 16th of November he forwarded that letter to the department. I told you it would play a prominent part in this case, and you will find that it does.

On the 16th of December the assistant postmaster at Camp McDermitt (Charles Bowling) telegraphed to Brady:

No contractor reported yet. There is no reason why service could not commence.

That is 6 H, page 1243. That was received at the department on the 16th of December. There was no contractor down at the lower end of the route.

On the 19th of December, 1878, Senator Mitchell again wrote to Brady, inclosing petition from Canyon City, marked 14 H. [14 H submitted to the jury.] Here it is, gentlemen. If you look inside of it you will find that it has been scratched, and that the words "ninety-six" were written into it. John R. Miner was the man who wrote those words into it. Miner testifies in regard to that, on page 4189:

Q. I pass you 14 H. What is that paper?—A. It is a petition on the Canyon City and Camp McDermitt route.

Q. I call your attention to the words ninety-six written and in figures in the body of that petition, and ask you in whose handwriting they are?—A. I do not know.

Q. Are they your handwriting?—A. They are not.

By the COURT:

Q. Are they filled in?—A. It is claimed that they were erased.

Mr. HENKLE. It has been altered, your honor.

By Mr. HENKLE:

Q. I want to ask you what you know about that petition?—A. I do not know that I ever saw it before this trial commenced, and do not believe I did.

Mr. INGERSOLL. Let the court see it.

[Paper submitted to the court.]

Q. You say you do not know that you ever saw that petition?—A. I say I do not think I ever saw the petition before the trial began.

Q. Are you sure that you never had anything to do with it?—A. I am very sure. It bears the indorsement of these members of Congress from Oregon.

That was his examination-in-chief. Then on page 4272, at the bottom :

Q. [Submitting 14 H.] Is that petition in your handwriting?—A. It is not.

Q. Do you recollect anything about that petition?—A. I don't know that I ever saw it before this trial began. With regard to all these papers I would like to say that I cannot remember individual papers. I filed some of them, and some of them I did not file; I cannot undertake to say at this time which I did and which I did not.

Q. Will you look at the word "ninety-six" and say whether that is not in your handwriting?—A. I have looked at it, and it is not in my handwriting.

Q. It is not in your handwriting?—A. No.

Mr. WILSON. What paper is that?

The WITNESS. 14 H.

Boone says, on page 2695 :

Q. I hand you petition marked 14 H; in whose handwriting are the words "ninety-six"?—A. There is 96 in figures, in brackets, and ninety-six in writing. The figure 9 and the word six, in my judgment, are in the handwriting of John R. Miner; it resembles his handwriting very closely.

There are two men who say that was written by John R. Miner. It was a route that Vaile and Miner had charge of, that they say they took in the division.

On the 23d of December, 1878, this altered and erased oath was filed. On the same day there was an offer made by Peck to carry the mail, including two additional trips, schedule ninety-six hours, for \$18,612 per annum. You know the petition (14 H) was put in on the 19th, and here on the 23d of December comes the oath and a proposal to carry the mail in ninety-six hours. There is no explanation as to where they got information that it was to be ninety-six hours. It was then one hundred and thirty hours. Miner sent this offer in, and he signed Peck's name to it.

On the 23d of December, the very same day, Brady made an order (7 H, page 1243):

From January 16, 1879, increase service two trips per week, and reduce running time from one hundred and thirty hours to ninety-six hours, and allow contractor \$18,612 per annum additional pay, being less than pro rata, but in accordance with his written agreement.

That order was made upon this petition that I have shown you and upon the letter from Camp Harney. Inside the jacket upon which the order was made was another:

Petitions numerously signed by citizens living on and receiving their mail from this route are presented and recommended by Hon. John H. Mitchell, United States Senate, asking for six additional weekly trips, and expedition of schedule from one hundred and thirty hours to ninety-six hours.

Military officers stationed at Camp Harney petition for improved mail facilities. There are two intermediate offices on this route. Revenue as follows, viz:

Camp Harney, \$210 per annum.

Alvord, \$3 per annum.

This route connects two important military posts, viz, Camp Harney and Camp McDermitt, Nev., and is the most direct line of communication between Winnemucca, a point on the Central Pacific Railroad, and Canyon City.

Six additional trips would cost, at pro rata, \$17,228 per annum.

No report of commencement of service from postmaster at Camp McDermitt, Nev.

Contractor submits sworn statement in regard to increased number of men and horses required to reduce running time from one hundred and thirty-two to ninety-six hours. Also proposition. Two additional weekly trips, \$5,776 per annum. Proposed expedition and additional \$18,612 per annum. Pro rata, \$19,771.69 per annum.

Gentlemen, it mentions the letter I told you of, from Camp Harney,

saying that there was no mail at all. It is here stated that the officers at Camp Harney want "improved mail facilities." Then, again, it says it is on the direct line from Winnemucca, on the Central Pacific Railroad. There must be some mistake about that. Then, again, on this jacket it says in plain words :

There has been no mail carried from Camp McDermitt.

And with that in front of Thomas J. Brady, the revenue of one office being \$210, and the revenue of the other office only \$3, with no mail being carried over the route, he actually makes an order for six trips, reduces the time and allows them \$18,612 per annum additional pay.

I started off by telling you what the law was, and that the law was enacted for the benefit of the people employed by the Post-Office Department, to guide them, to guide the contractors and subcontractors, and to guide everybody who had business with the Post-Office Department, including Thomas J. Brady. I told you that the law stated that every order making an increase should specify the sum that was to be allowed for increase of trips. Here, in this order, Thomas J. Brady disregards that law, and lumps the whole business together, making it for expedition and trips. But I am satisfied that when his honor comes to charge you, he will say that it was Brady's duty to have obeyed the law and to have put the amount allowed for trips upon this order. But this was one of the ways that Brady took to conceal what he was doing. Let me read the law to you again. It is section 3960 :

Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service; and when any such additional service is ordered, the sum to be allowed therefor shall be expressed in the order and entered upon the books of the department.

There is the plain language of the law—to enter this sum upon the order and upon the books of the department. Brady says in answer to this, on page 3465 :

Q. What Congressional investigation did you refer to as investigating Dorsey, Miner, and Peck?—A. The Waddell-Money investigation of the spring of 1878.

Q. When was that over?—A. I do not remember.

Q. Was it not over long before July?—A. It was over before July, of course, but how long before I do not know.

Q. Do you know when it commenced?—A. I do not.

Q. It was an investigation by a committee of the House of Representatives?—A. Yes; the Waddell Committee on Post-Offices and Post-Roads. The investigation was conducted, however, by Mr. Money, although it was called the Waddell investigation. My impression is that it was a general investigation, and that these matters were simply part of it.

Q. Do you not know that the investigation closed as early as May 14, 1878?—A. I do not.

Q. Do you not know that that investigation, so far as it related to Miner, Peck, and the others, closed as early as the 10th of April?—A. I do not.

Q. That is the investigation you refer to, is it, as furnishing an excuse why you did not insist upon the commencement of the service upon the Canyon City and Fort McDermitt and other routes where it was not commenced promptly?—A. That is one of the reasons.

Q. You mentioned an investigation in your direct examination?—A. That is the investigation I referred to.

Then at the bottom of page 3466 :

A. The 1st of July would have to arrive, as a matter of course, before we would know whether the service was in operation, unless the contractor voluntarily chose to state to us that he could not put it on by that time. It might then be a good thing for us to give that special contractor more time to put the service on.

Q. I ask you what the reasons were?—A. I am giving them to you.

Q. You said "might be." In these cases in this indictment what reasons other than the Congressional investigation were there why you did not insist that all that

service should be commenced promptly?—A. Very well, I will give you the reasons. We would not know whether the service commenced until the 1st of July. Then it would be better to give the contractor a month or even two months' time, if there were no special reasons for not doing so, rather than declare him a failing contractor, and go up the list. That would be a very good reason.

Q. Why would it be better to give him a month or two months' time?—A. For a number of reasons. First, it would be an injury to the contractor to declare him a failing contractor; it placed him on the black list; secondly, because it would cost more. If you had to go up the list you probably would not get the service on any quicker than by giving him time.

Then on page 3471 :

Q. You have no recollection about how it was?—A. No.

Q. I think you are right as to the expedition, and I show you Exhibit 9 H, and ask you to state how much of the \$18,612 was allowed for expedition.

The WITNESS. Was this jacket acted upon?

Mr. BLISS. It is the memorandum that is inside the other jacket.

A. This jacket states that two additional weekly trips would cost \$5,776, and that contractor submits sworn statement in regard to increased number of men and horses required to reduce running time from one hundred and thirty-two hours to ninety-six hours, and also proposition. Now, there is somewhere among those papers Captain Turner's exhibit of the cost of expedition. I do not see the separate calculation there.

Q. Allow me to call your attention to the figures at the bottom. Two additional trips, \$5,776; proposed expedition and additional trips, \$18,612. Pro rata would have been \$19,771.69?—A. That is probably for both increase and expedition. There is somewhere, or ought to be, among these papers something that would indicate which is which.

Q. But those papers afford no light on the question whether the saving below pro rata was on the expedition, or on the trips?—A. These papers do not. They simply show that the pro rata would have been \$19,711.69, while the contractor proposed to do the whole thing for \$18,600.

One thousand one hundred and eleven dollars and sixty-nine cents less than pro rata would have been.

On the 28th of December, 1878, Vaile filed his subcontract, dated April 1, 1878.

January 16, 1879, the first mail was carried from Fort McDermitt to Doc Anderson's. That is in the testimony of Mr. Brown, the carrier, on page 1302. All the way up to the 16th of January, 1879, there had not been a mail-bag taken out of Camp McDermitt to be brought up the route.

On the 7th of May, 1879, there was a petition filed for daily service and reduction to sixty hours, indorsed by Slater, Grover, and Whiteaker. That is 20 H. [20 H submitted to the jury.] Gentlemen, that is a well-worn and time-honored petition. You have seen it before. It has been inspected very carefully, and I suppose by no one more carefully than by the man who wrote it. John R. Miner wrote that petition, 20 H. You see how carefully he himself carried out the instructions that he had given to Mr. Moore—to preserve a space between the names and the petition. This is Miner's own handwriting; no dispute about it, and the very gentleman that he brought here to say that it was not, on the stand said that it was. The names on that petition are the names of people residing in Utah. Nephi Johnson testified:

I see the name of my nephew there, and he lives down upon my route in Utah.

The other Mr. Johnson testified to the same state of facts.

This petition was written and doctored and fixed up by Miner. How does it come that the names of people living down in Utah are affixed to an application to have the mail service changed on one of these routes away up in Oregon? What interest have they in it? Of course, we did not bring them here to say that they had not signed it. But both Mr. Johnson and his brother testified who the people were whose names

were pasted to the portion of that petition that John R. Miner had written. And this petition was put in on the 7th of May, 1879. Miner says, on page 4192, in his examination-in-chief:

Q. I pass you 20 H. What is that, Mr. Miner?—A. Petition on the Canyon City and Fort McDermitt route.

Mr. HENKLE. That is the petition we have been calling the Utah petition, your honor.

The COURT. Yes.

Q. In whose handwriting is the body of that petition?—A. Mine.

Q. Who circulated that petition?—A. I do not know.

Q. Who filed it?—A. I know that I did not; I do not know who did.

Q. Do you know how those Utah names got attached to that petition?—A. I do not; I know that I did not attach them.

Q. Did you procure anybody to do it?—A. I did not.

Q. Have you any knowledge as to how it was done, and when?—A. No.

He had no knowledge. On page 4273:

Q. I will ask your attention to 20 H, and ask you whether that is in your handwriting?—A. That is in my handwriting.

Q. That petition?—A. It is.

Q. To whom did you send it?—A. I do not now know. I probably sent it to somebody on the route. I do not remember now.

Mr. HENKLE. What route is that?

The WITNESS. Canyon City to Camp McDermitt.

Q. Was it sent back to you?—A. I do not know.

Q. Did you send it to the department?—A. I do not know. I have already stated that some of these papers I filed and some of them I did not file. I do not remember, after three or four years, the particular papers that I filed.

On the 20th of May, 1879, James F. Brown, the subcontractor, sent a lot of petitions to box 714. That was Miner's box. The petitions were 31 H, 27 H, 28 H, and 29 H. He testified to that, or, rather, there is a letter of his, 26 H, on page 1252.

On the 20th February, 1880, there was another notice sent out to Brown about the failure of Congress, and he was cautioned to get people to write to the members of Congress to see that the appropriation was made.

On the 16th of July, 1880, there is a letter of Brown, dated May 20, 1879, directed to box 714, with petitions, and this letter was filed. I will read you the letter (26 H, page 1252):

CAMP McDERMITT, NEV., May 20, 1879.

Mr. ———,

Lock-box 714, Washington, D. C.:

DEAR SIR: Inclosed you will find the petitions for a daily service on route No. 44160. My end of the route being thinly settled, it was impossible to obtain more signers.

I sent one to Canyon City, but as you had sent one beforehand it was returned. I also sent one to Winnemucca, where all the business and influential men signed it.

Hoping this will secure the result desired, I remain,

Yours, respectfully,

JAMES F. BROWN,
Per J. S. C. BROWN.

You see he mentions about not being able to get signers on account of the country being thinly settled.

Now, gentlemen, we will take these petitions that were sent. Here is 21 H. [Handed to the jury.] John R. Miner wrote it. Here is another one. [27 H handed to the jury.] I do not know who wrote that, but Postmaster Hall, testified on page 1750:

That is my signature, undoubtedly. I have no recollection of ever signing for daily mail service on that route.

It was his name, but he has no recollection of ever having signed for daily mail service on that route. Here is another. [28 H handed to

the jury.] I do not know anything at all about that, whether it is good, bad, or indifferent. Here is another. [29 H handed to the jury.] I call your attention to it. It is on a single sheet of paper, just as Miner told Moore. Miner wrote that petition. Gentlemen, there are six names upon that petition, in Miner's handwriting, that are not the genuine signatures of the people whose names purport to be signed. Six names on that petition were signed by Miner, and he admitted it. Postmaster Hall says, on page 1748 :

I do not think any of the six names (five including my own) are the signatures of the signers.

He not only wrote the name of James F. Cleaver there—I think that is the name—but he forged Postmaster Hall's own name to it, and Hall says :

That is not my signature.

Now, let us see what Miner says in explanation of this sort of work. On page 4190 :

Q. I pass you 29 H. What is that paper?—A. It is a petition on the Canyon City and Camp McDermitt route.

Mr. HENKLE. That is the petition where you claim he wrote the first six names.

Mr. MERRICK. Didn't he?

The WITNESS. I will tell you directly.

Q. In whose handwriting is the body of that petition?—A. The body is in my handwriting.

Q. You are charged with having written the first six names to that petition. Are you guilty or not guilty?—A. Well, sir, I am in doubt as to whether those are in my handwriting or not. They very much resemble my handwriting.

Further down on the page :

Q. Were you ever out on that route?—A. I never was.

Q. Do you know those parties whose names are there?—A. I do not, and I had no means of knowing that any such persons were ever in existence.

Q. If that is in your handwriting, what is your explanation about it?

Mr. MERRICK. Wait a moment. *If* it is.

Mr. HENKLE. Yes.

Mr. MERRICK. Is that proper, your honor? If he has any explanation to make, having written these names, all right.

The COURT. That is a hypothetical question, which I will allow him to answer.

Q. What is your explanation of it?—A. If those six names are in my handwriting, a petition came to me exactly like that, and I copied it with the names, for I had no means of knowing those men or knowing their names other than as I have explained. They are proven to be genuine men, living there, and the balance of the petition contains genuine names. Two of them were witnesses in this case, and they have testified that it is their handwriting. I have no recollection that I did copy the petition, but I could not have done it in any other way.

This was his examination-in-chief. Then on page 4207 :

Q. Did you ever forge the name of any person to a petition filed in the Post-Office Department?—A. I never did.

Q. Did you ever sign the name of any person to a petition filed in the Post-Office Department without the authority of that person?—A. It is possible that I copied the petition known as the Hall petition and those six names. Other than that I never signed the name of anybody to a petition.

Q. Did you ever alter a petition in a material point after it was signed?—A. I never did.

This was also in his examination-in-chief. On page 4273 :

Q. Look at the petition marked 21 H, and state whether that is in your handwriting?—A. That is in my handwriting.

Mr. MERRICK. [To the jury.] By holding 14 H up to the light you can see the writing over the erasure.

That is another one of these petitions.

Q. Did you write that (21 H)?—A. I did.

Q. To whom did you send it?—A. I do not know.

Q. Do you know whether it was sent back to you or not?—A. I do not.

Q. I show you 29 H. Is that in your handwriting?—A. It is.

Q. I believe you have testified about that?—A. I have.

Q. You stated something about your having written the four or five or six names that first appear on that petition?—A. I stated that I was in doubt as to whether I had so written or not. That resembles my handwriting.

Q. You don't recollect of having done it?—A. I do not recollect it.

Q. They are all on one piece of paper, and another piece is apparently pasted on to that?—A. That is the appearance.

Q. You said that if you wrote those names, you copied them from some other petition.—A. I said so because they are genuine names, and I had not any possible means of knowing those men's names other than to have copied them from a petition. Those same names appear on other petitions asking for the same thing.

Q. I am not asking you what they appear on. They do not all appear on other petitions asking for the same thing. That is not so.

Mr. HENKLE. Some of them do.

A. I think there are five out of the six.

Q. No, sir; there are not. You say these are all genuine names. Is the name D. M. Clifford a genuine name?—A. He has been sworn to at this trial as a man living in that region of country.

Q. D. M. Clifford?—A. I so understand it.

Q. If you wrote those names, which you are not prepared to deny, why did you write them in a different and feigned hand, and not in your own?—A. There is very little feigning about it.

Q. Why very little?—A. They look much like the same hand, the whole six.

Q. Is that your opinion?—A. They look much like the same.

Q. Can you give any reason why you feigned the hand? I suppose you cannot, as you say they look like the same hand.—A. I cannot give any reason.

On page 4281:

Q. You said, at page 4207, that possibly you copied the six signatures to the Hall petition. Were you in the habit of copying petitions and signatures?—A. I never copied any other petition and signatures, so far as I know, and I am not certain that I did that.

Q. If you were not in the habit of copying petitions and writing signatures, and this was the only one, would you not recollect it and be able to say whether you wrote those names or not?—A. I do not recollect whether I did or not.

Q. Don't you think if this was the only case and you did act in that way that you would recollect it?—A. I do not recollect it.

Q. You are not willing to say that you did not write those names?—A. I have not yet said that I did not write them.

Q. You are not willing to say that you did not?—A. I do not propose to say so.

Q. You do not propose to say so?—A. I am in doubt as to whether I did or did not.

Q. Although it was the only case in which you ever did it, if you did it in that case?—A. I never did it in any other case. That is certain.

Q. You are willing to swear that you never did it in any other case?—A. I am willing to swear that I never saw a petition on which I did it, and have not seen a petition on which I did it.

Based upon these petitions that I have shown you here came an order from Brady, dated July 16, 1880 (19 H, page 1250):

From August 1, 1880, increase service four trips per week, and allow contractor and subcontractor \$28,666.66 per annum additional pay, being pro rata.

I have already explained to you, and when that matter comes to be argued before the court we will get a definite charge upon it; but I call your attention to it as we go along, and I say that the order was illegal, because he made an order increasing the trips and increasing the expedition at the same time. He multiplied by the former figures when he put these four trips on and made seven; he took in the order that was made for expedition before.

On the 2d of August, 1880, there was a subcontract made with John Carey, and the service was from Camp McDermitt to Doc Anderson's. Doc Anderson's is a ranch or stopping-place up above Camp Harney.

On the 15th of April, 1881, Miner wrote Carey to give some money to the postmaster at Alvord to stop him writing to the department at

Washington. This letter is 32 H, and found at page 1314. It has a very interesting little history—very interesting:

[The Northern Overland Mail Company, H. M. Vaile, president; L. P. Williamson, superintendent, Independence, Mo.; John R. Miner, secretary, Washington, D. C.]

WASHINGTON, D. C., *April 15, 1881.*

JOHN CAREY, Esq.,
Fort McDermitt, Nev.:

DEAR SIR: One S. H. Abbott, who was postmaster at Alvord, I find, by accident, is writing to the department that you do not pay your bills, and that there is no need of anything more than a weekly mail.

I wish you would see this man at once and satisfy him; pay him whatever is reasonable and report to R. C. Williamson, at The Dalles. I suppose that is what he is after. He knows nothing of the through mail, and probably a weekly is all he needs; but more likely he wants some money. He complained once before to the department that he had to make a special trip to Camp McDermitt to make his returns, and I sent him \$30 and it was all right. Now, I suppose, he wants a little more money.

Yours, &c.,

JOHN R. MINER.

Alvord you will find on your map, and is the place that had \$3 worth of mail. This postmaster, by accident, as Miner puts it, had written to the department that a weekly mail was sufficient, and Miner says in this letter that he knows nothing of the through mail—that is, that he did not know a thing about the seven trips and expedition. Miner knew that, and Miner suggests that probably he wanted more money. It was inconvenient to have this postmaster writing up to the department.

Now, Mr. Miner gave us a specimen of his ability as an oath taker. You know he told Moore, "We are all good affidavit men." I am going to give you a specimen of his own good affidavits, told to you on the stand. Of course it did not attract your attention at the time, but I will put it in such shape that possibly it will attract your attention now.

On page 4206, he says:

Q. Go on and explain.—A. The Canyon City and Camp McDermitt route was not started entirely through until about the 1st of January, 1879. The north end was started. This man Abbott, who was then postmaster at Alvord, sent a bill to the department for \$30.

Then there was some dispute among counsel.

A. [Continuing.] He sent a bill to the department for \$30 for the expense in going to Camp McDermitt to mail his quarterly report for the quarter ending the 30th of September, 1878. Mr. Turner handed that bill to me and I sent him the money, \$30, at the time I wrote this letter.

I call your attention to what he says here:

I sent him \$30 at the time I wrote this letter.

April 15, 1881.

Mr. HENKLE. That was corrected afterwards, your honor.

The COURT. Yes, I know.

Mr. MERRICK. Corrected in part only.

Mr. HENKLE. It was entirely corrected.

The COURT. I think it bears that interpretation.

Mr. KER. Then, on page 4282, at the bottom:

Q. Was that money sent to him in satisfaction of the demand that he seems to have made on Williamson, referred to in this letter?—A. There was no demand made on Williamson at all. He sent a bill to the department, and I sent him a draft for the amount.

Q. Was that all that was ever paid to him?—A. That was all that was ever paid to him.

Q. What, then, in this letter do you mean by saying:

"I wish you would see this man at once and satisfy him."

A. I meant precisely what I said.

Q. How was he dissatisfied?

The WITNESS. How was he dissatisfied?

Mr. MERRICK. Yes.

A. I have nothing further to say than what is in the letter itself.

Q. I ask you to tell me how he was dissatisfied. How did you intend he should be satisfied?—A. The language is very clear.

Q. It is not to me. I want you to explain it to the jury.—A. I have no explanation to make.

Q. You have no explanation to make?—A. None whatever.

Q. You have no explanation to make?—A. I said that I have not.

Q. Do you mean that you decline to make any, or that you cannot make any?—A. I mean to say that the letter explains itself. It is perfectly clear, and if I were to talk about it an hour I could not make it any clearer.

Q. There are different ways of satisfying men. How did you intend he should be satisfied?—A. Further on I directed him to pay him what he wants, or what is reasonable. You will find it in the letter plain enough.

Q. Pay him for what? For his expenses in going around?—A. [After a pause.] The letter is perfectly clear that this man was making a row and trouble there; that he had been postmaster, and that he was not now postmaster; and Mr. Carey was directed to see him and pay him whatever was reasonable, and keep him quiet.

Q. It was not to pay him for his journey?—A. Certainly not. That had already been paid for a year and a half before.

Q. He was to pay this man to keep him quiet?—A. The letter is perfectly clear. It does not require any explanation at all. He was not an official.

Q. Then all the explanation that you gave to your counsel when he examined you in reference to this letter related to some other payment?—A. It related to a portion of the letter that refers to the other payment.

Q. You said in your explanation this, in explaining the payment to him—A. [Interrupting.] No payment ever grew out of this letter.

Q. It did not?—A. No. I was explaining the previous payment of a year and a half before.

Q. You say:

"He sent a bill to the department for \$30 for the expense in going to Camp McDermitt to mail his quarterly report for the quarter ending the 30th of September, 1878. Mr. Turner handed that bill to me and I sent him the money, \$30, at the time I wrote this letter."

A. That is a mistake.

Q. That is what you said.—A. Let me see the record, please. I think it is badly punctuated.

Q. You can punctuate it as you choose.—A. That was not the idea that I intended to convey.

Q. You say:

"I sent him the money at the time I wrote this letter."

A. I did not intend to convey any such idea as that.

The COURT. Adjourn the court.

Thereupon (at 4 o'clock and 5 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

WEDNESDAY, APRIL 25, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. WILSON. If your honor please, before Mr. Ker proceeds I wish to call attention to a point he made at page 4627 of his remarks yesterday. I do it now because it involves a question of fact about which it is very evident that there is a dispute or some misunderstanding between counsel as to the testimony. I would like to make the point now, so that if it becomes necessary we can address the proper application to the court to supply what apparently, from his remarks, is an omission in the testimony. It is in regard to the route from Eugene City to Bridge Creek.

First, there was a route from The Dalles to Baker City; then we will say there was a route running off in this direction [indicating] and then there was a route from Eugene City to Bridge Creek running off and connecting with that route. Then there was another route running around by way of Pendleton. Mr. Ker said this:

Gentlemen, you will see by the map that Mitchell is just below Bridge Creek. It is the next station on the map. I would like to have you look at it. There is no mail route passing out of Mitchell to go anywhere. Bridge Creek was on the line of The Dalles and Baker City route. Brady cut off Bridge Creek and made this route terminate at Mitchell. There is no explanation why he did that. There does not seem to be any reason for its being done, and I have been totally unable to ascertain why such an order was made, because when the mail reached Mitchell it must have been carried from there in some other way. It must have been necessary to make another route from Mitchell up to Bridge Creek. The only theory that I can offer to you for this change that was made without any explanation on the jacket is that they had a postmaster at Bridge Creek who would not stand any nonsense, and insisted upon making correct returns, or else the postmaster at Bridge Creek was making returns they did not like, and in order to get rid of that they arranged the route so that he would have no returns to make at all, and so that it could not be seen how the mail was carried on the other route from The Dalles to Baker City. At any rate they chopped this post-office off, and left this end of the route without any communication with the outside world.

I have no doubt that Mr. Ker understands the testimony to have been left in exactly that condition. It is impossible to run through this vast amount of testimony and settle just now how that is, but I wish to state to the court—and I have interrupted my brother Ker for this reason—that I understand the fact to be, and if it is not improper, I will say the fact is, that Mitchell was on the route from The Dalles to Baker City. My recollection is that one of the witnesses, I am not sure whether it was McBean or some one else, stated that Mitchell was incorrectly laid down on the map. Mitchell was on the route from The Dalles to Baker City, and this route from Eugene City to Bridge Creek happened to run over about twenty miles of that very route, and, therefore, the distance between Bridge Creek and Mitchell was cut off, saving the carriage of twenty miles.

The COURT. Because that distance was on another route.

Mr. MERRICK. No, sir; there was not any route there.

Mr. WILSON. It belonged to another route.

Mr. MERRICK. Not from Bridge Creek to Mitchell.

Mr. WILSON. I want the court to understand what my point is, and I want the counsel to understand it, and then we will see whether we can sustain it by the evidence.

The COURT. You say that Mitchell was on the route from The Dalles to Baker City.

Mr. WILSON. If your honor will allow me to pass you a little rough diagram I have here, you will see the point that I make. [Submitting diagram to the court.] In short, as the routes were originally let they covered the distance between Bridge Creek and Mitchell twice. When that was ascertained, then the distance between Bridge Creek and Mitchell was cut off from the Eugene City and Bridge Creek route.

The COURT. I understand that.

Mr. WILSON. And when it was cut off then the Eugene City and Bridge Creek route terminated at Mitchell, but terminated on The Dalles and Baker City route. That is the whole of it; but lest there might be some confusion as to the testimony, I thought it not improper to call the attention of the court to it at this point. Instead of leaving it up in the air, so to speak, without any connection with the outside world, it was simply making a connection between these two routes without twice traversing the same territory.

Mr. MERRICK. What part of The Dalles and Baker City route do you say Mitchell was on?

Mr. WILSON. Mitchell is laid down improperly on your map.

Mr. MERRICK. Mitchell is fifteen or twenty miles from that route.

Mr. WILSON. No; it is right on the route.

Mr. MERRICK. It is fifteen or twenty miles from The Dalles and Baker City route, as I understand it.

Mr. WILSON. It is right on the route; that is the very point.

The COURT. It is not so laid down on the map.

Mr. MERRICK. I understand the proof to be as I state. I may be mistaken about it.

Mr. WILSON. Send over and get one of the post-office maps, and if that does not show it as I state I will give up the point. My recollection is that one of the witnesses, when his attention was called to the fact, said that Mitchell was not laid down properly on this map. I would like very much to send to the Post-Office Department and get a map.

The COURT. We will give you that opportunity.

Mr. MERRICK. I will send for a map showing the Canyon City route and the Bridge Creek route.

Mr. WILSON. Just get a postal map of Oregon.

Mr. MERRICK. We will get a postal map of Oregon and see how it is.

Mr. WILSON. Let us get it right.

Mr. MERRICK. All we want is to get it right. I know brother Wilson wants that also. We appreciate that that is what he wants.

Mr. WILSON. Yes; that is the reason I called attention to it.

Mr. MERRICK. I have always understood that Mitchell was some distance off that route.

Mr. WILSON. No; it is right the other way.

Mr. MERRICK. We will see when the map comes. The route from The Dalles to Baker City, in the advertisement, is as follows:

From The Dalles by Des Chutes, Bake Oven, Antelope, Bridge Creek, Monument, Camp Watson, Dayville, Canyon City, Prairie City, Penola, Sumter, and Auburn, to Baker City.

Mitchell is not on the route as advertised at all.

Mr. HENKLE. Monument was intended for Mitchell. Mr. Williamson says so.

Mr. MERRICK. We do not care what Mr. Williamson says. You did not swear him and put him on the stand. We do not care about the talk of a man who is interested and was not put on the stand.

The COURT. Proceed now, Mr. Ker.

Mr. KER. Gentlemen, I was explaining to you Mr. Miner's statement as to why it was that he wrote a letter to Carey to go to the postmaster at Alvord and keep him quiet. Mr. Henkle, counsel for Miner, seems to think that Miner made some very satisfactory explanations about that. I have read to you most of his testimony on that subject. There is a little more on page 4284:

A. I either did not state that, or did not intend to connect the last five or six words with the other, because the transaction that I was describing was of the 30th of September, 1878, and this letter was written in 1880.

Mr. HENKLE. 1881.

A. [Continuing.] I never intended to convey that idea.

Q. You made a number of corrections to the record this morning?—A. I did; four.

Q. After careful examination. Why did you not correct that?—A. Because I did not correct anything in that pamphlet, and I have not yet seen it.

Q. Was not your answer made after what had been said by counsel, "I want to show the circumstances under which the letter was written?"—A. The explanation

that I made was about the circumstances connected with the writing of the letter. Those circumstances were that two years and a half before this man had sent a bill to the department, and we had paid it. From that circumstance I concluded that he was making a row and wanted some more money, and I directed M. A. Carey to pay him what was reasonable in order to keep him quiet. That is all there is of it.

He simply wanted to have some money paid to keep the man from writing letters to the department. On this route Vaile drew the pay. Vaile testifies, on page 4060:

Q. Mr. Vaile, was not the route from Fort McDermitt to Canyon City expedited before service was commenced upon it?—A. I can't say.

Q. What?—A. I can't say; I don't know.

Mr. INGERSOLL. The record will show.

Mr. BLISS. Not necessarily.

Q. Was service commenced over the whole of that route before the 1st of January, 1879?—A. I think not. Of course all of this, or very much of my knowledge, comes through others. But I have to say that I think on one end, from Camp Harney to McDermitt, it did not commence until about the 1st of January.

Q. Then if expedition was ordered upon that route on the 23d of December, 1879, was it not so ordered before any knowledge existed here of the commencement of the service over the whole route?—A. I can't say what knowledge others had.

Then, on page 4071:

Q. The Canyon City and Fort McDermitt route paid you a handsome profit after expedition, did it not?—A. Yes, sir.

Q. About \$20,000?—A. I do not recollect the amount now, but it paid us a good profit.

Q. Was it not about \$20,000?—A. I think that is it.

Q. During the continuance of those contracts did you come here as often as once in three months, generally?—A. That was my intention; about collection time.

Q. About the time your money was coming due?—A. Yes, sir; that was my purpose.

Q. You took in the money in that way?—A. I did.

Q. When you came here did you make any inquiries or get any knowledge of the condition of the service?—A. Well, I cannot say whether I did or not. I of course sought to keep the run of the service on the line.

Q. You knew what amount each route was producing?—A. Well, I don't know as I did. We used to get accounts-current from the department every quarter after the settlement was made that would show just what it was.

Q. You knew when you were coming here about how much you expected to get, did you not?—A. I could not say that. I expected to get all we were entitled to.

Q. Undoubtedly. But you knew about what your contracts, with the expedition and increase obtained by orders added to them, would amount to for each quarter, did you not?—A. I probably did, about that.

Q. You knew during each quarter whether there were increases or decreases, did you not?—A. Certainly.

Q. Were you in the habit of making any comparisons between the two?—A. I think not. I have no recollection of doing it.

You know, gentlemen, they had no books. They produced no books, and would not let us know what the condition of their business was; but Vaile makes the admission here that on this route he knew he had a profit of about \$20,000. He drew a part of the pay and Miner drew a part of the pay. All the orders in this case were witnessed by Rerdell. You know it was one of Peck's routes.

The oath of Peck, which has been read to you, states that on the present schedule, three trips, it would require five men and eight animals, making thirteen, and expedited it would require twelve men and twenty-two animals, making thirty-four. Mr. McBean carried the mail on one-half of this route; he carried it from Canyon City to Doc Anderson's. On his half of the route McBean used four men and eight animals, making twelve. Brown, who carried on the other half of the route, used three men and nine animals, making twelve. Those added together make twenty-four. Twenty-four was the full number of men and animals that were used upon the route in carrying the mail when the service was increased and expedited. The oath of Peck, that was

put in, called for thirty-four, which was ten more than were actually used. That ten made all the difference in the world in making the calculation, for it brought the price that the Government was paying up to a very high figure. The testimony was that the largest mail weighed one hundred and fifty pounds, and that consisted of dry goods, shoes, and such things as those. From one to five letters went from the lower end of the route up as far as Alvord. Camp Harney, which was of course the main point on this route, was discontinued in the fall of 1880. You will remember that on the 16th of July, 1880, Brady made an order increasing this service four trips and allowing the contractor \$28,666.66, and a month or two after that the entire camp was discontinued, and there was nothing at all left upon the route but the miserable little office at Alvord. The mail from Harney to Canyon City was very light. You will remember that I showed you the revenues there stated on the jacket, which showed that the entire revenue coming from that military camp was \$210, while the balance of the revenue on the route was \$3, coming from Alvord, making \$213 the entire amount that was received upon this route. The original pay was \$2,888. It was increased to \$50,166.66.

The route, as I told you, was divided in two. There were two carriers. McBean received \$10,000 and Brown received \$10,000, making a total of \$20,000. Gentlemen, the profit on this route coming to the contractors over and above the amount they paid to the subcontractors and everything else was the sum of \$30,166.66. Just think of that! A clear profit of \$30,166.66; and there were only two offices on the route, one paying \$210 and the other only \$3. I want to give you the entire revenue upon the whole route, taking the terminal offices as well as the intermediate offices. As I stated before, the terminal offices ought not to be counted, because they received their supply elsewhere. The entire amount in 1879 from every office was \$681.14, including Bridge Creek and Mitchell. In 1880 the revenues were \$1,370.24. In 1881 the entire revenue from every office was only \$935.42.

Next, gentlemen, I will call your attention to the acts of the different individuals on this route. Peck was the contractor; Miner wrote the body of the proposal, Rerdell filled in the amount, and S. W. Dorsey signed Peck's name to the proposal. Miner wrote the body of Peck's oath. The petition 14 H was erased, and the words "ninety-six" written into it by Miner. The petition 20 H was written by Miner. It is what is called the "Utah" petition, from the fact that the names upon it are those of people residing in Utah. Upon the petition 29 H the names of Hall and five other people were forged by Miner. You will also remember that Miner wrote to Brown, and got him to circulate the petitions which were afterwards sent in. I think, as far as the overt acts show upon this route, you will have no difficulty in agreeing with me that we have substantially proved the allegations contained in the bill of indictment—that there were false petitions, that there was a fraudulent oath put into the department, an altered, changed, false, and fraudulent oath, that the orders made by Brady, based upon that oath, were fraudulent, were made without any necessity existing, and that the expedition and the increase that were ordered were not needed and were not necessary. And taking that in connection with the statement made by Walsh, that Brady said he "received 20 per cent. of every increase," we have the reason why Brady made these increases.

40104, MINERAL PARK TO PIOCHE, ARIZONA.

This route was two hundred and thirty-two miles long. There was

one trip a week, and the time was eighty-four hours. John W. Dorsey was the contractor, and the pay was \$2,982. Miner wrote the body of the proposal, Rerdell filled in the amount, and John W. Dorsey took the oath in blank before Boone. This is one of the routes that was taken by Dorsey in the division. The official orders are:

June 18, 1878, change of address.

August 6, 1878, letter from postmaster at Pioche.

August 12, 1878, letter from Postmaster Meyers.

August 28, 1878, letter from postmaster at Mineral Park.

September 3, 1878, letter from postmaster at Pioche.

October 21, 1878, letter from Delegate Stevens.

November 26, 1878, date of the oath of Peck.

November 26, 1878, proposition to carry the mail.

November 27, 1878, letter of Peck to sublet.

November 29, 1878, order from Brady.

December 20, 1878, oath of Dorsey filed.

December 20, 1878, proposition filed.

December 20, 1878, petition for increase filed.

December 24, 1878, order for increase and expedition.

December 31, 1878, Vaile's subcontract filed.

May 5, 1879, letter of John W. Dorsey.

May 5, 1879, subcontract with Vaile withdrawn.

May 8, 1879, Rerdell filed a subcontract.

May 15, 1879, Rerdell's subcontract withdrawn.

July 1, 1879, subcontract with Isaac Jennings.

July 21, 1879, letter from Sidney Dillon.

July 23, 1879, another order for increase.

August 15, 1879, letter from postmaster at Pioche.

August 25, 1879, letter from Horace D. Beene.

January 22, 1880, order to reduce the service.

January 28, 1880, order to rescind that order.

June 29, 1880, subcontract made with McKibbin.

June 29, 1880, Rerdell withdrew subcontract.

August 12, 1880, subcontract with McKibbin withdrawn.

August 20, 1880, subcontract with Salisbury made.

March 17, 1881, Jennings's subcontract filed.

To return to the papers as they have been placed in evidence :

On the 18th of June, 1878, there was an order from Brady to change the address to box 714. That was Miner's box.

August 6, 1878, the postmaster at Pioche wrote that the service had not commenced.

August 12 the postmaster at Pioche again wrote that there was no service on the route.

August 28, postmaster at Mineral Park wrote : "Service began this day."

September 3, 1878, the postmaster at Pioche wrote that the service began on the 31st of August, 1878.

October 21, 1878, Delegate Stevens wrote for service twice a week.

November 26, 1878, there was an oath of John W. Dorsey's made for three trips in sixty hours. Miner wrote the body of that oath; he wrote all but the signature. John W. Dorsey and all the witnesses testified that was not John W. Dorsey's signature, but they did not know who did write it. At that time John W. Dorsey was in Montana or Dakota. The jurat is signed by W. F. Kellogg at Washington. Kellogg was Dorsey's private secretary. Miner testifies, on page 4187 :

Q. I pass you 12 K. What is that paper?—A. It is an affidavit on the Mineral Park and Pioche route.

Q. In whose handwriting is it?—A. The body of it is in my handwriting.

Q. By whom does it purport to be signed?—A. J. W. Dorsey.

Q. Mr. Dorsey has testified that that is not his genuine signature.—A. He has testified correctly.

Q. I want to know if you wrote that signature?—A. I certainly did not.

Q. You did not write it?—A. I did not.

Q. Do you know who did?—A. I do not absolutely know who did.

Q. Are you acquainted with the handwriting of Rerdell?—A. Well, I can give you the history of that paper if you want it.

The COURT. That is not an answer to the question.

A. [Continuing.] I am somewhat acquainted with it. I would not be certain as to his handwriting in all cases.

Q. What do you say as to that particular case?—A. I do not see any particular resemblance to Rerdell's handwriting in it. It is not John Dorsey's, though.

Q. Do you know whose it is?—A. As I said before, I do not absolutely know whose it is.

Accompanying that oath was a proposal of John W. Dorsey to carry the mail three trips in sixty hours for \$19,318 per annum additional. Miner wrote that proposal. John W. Dorsey did not sign his name to that proposal; they do not know who signed it. They say that it is not John Dorsey's signature. They all admit that, but nobody really knows who did sign it.

Then, on the 27th of November, 1878, there was a letter from Peck asking permission to sublet the route. Gentlemen, Peck had nothing to do with this route; it was John W. Dorsey's route; and Peck was not here and had nothing at all to do with it. Miner wrote this letter asking permission to sublet the route, and signed Peck's name to it.

Then, on the 29th of November, 1878, Brady made an order permitting Peck to sublet the route. Brady says, on page 3552, "I signed it as a matter of course; it was *pro forma*."

On the 20th of December, 1878, the oath of Dorsey was filed; that is, if you take the writing upon the back of it. On the same day the proposal of Dorsey was filed.

On the 20th of December, 1878, there was a petition for increase to three trips in sixty hours. That is 17 K. Gentlemen, the familiar term known among contractors for this route was the "Lookingglass route." Now I hand you 17 K, and if you will hold it up to the light I think that you will see something like a looking-glass there; it is all scratched and erased. Accompanying that was another petition, 18 K, and that is also fixed in looking-glass shape. One of these petitions is upon one route, and the other is upon another. With reference to 17 K, Rerdell says:

At Miner's request I erased and wrote in the words: "3 trips on a schedule of 60 hours" instead of "84 hours."

You will find those words on that petition. In the other petition, 18 K, Miner erased it and wrote "Ehrenberg," "forty," "eighty," and "sixty." From Mineral Park there was another route that ran to Ehrenberg. You see these petitions were not signed at Mineral Park, they were signed below, and evidently the petitions were intended for the route from Ehrenberg to Mineral Park, so they erased the words in one and put it in as a petition on this Mineral Park and Pioche route. One is still retained for the Ehrenberg and Mineral Park route. But they were both erased and fixed up so as to do duty upon different routes.

You know that these petitions were examined, and the witnesses were interrogated about them. Mr. Wright says, in his testimony, that some

are the names of people residing at Signal, one hundred miles south, and he does not think the signatures are genuine. You know the names are all the same on both petitions. If you look at them you will see that they were written by one person, with a few exceptions. Mr. Wright said that he recognized some of the names; some two or three he thought were genuine names. The others he said he did not think were genuine. Signal is a little place away down on the other route.

Miner says, on page 4191, in speaking of his action in this matter:

Q. Is that in your handwriting?—A. The word "Ehrenberg" is in my handwriting. Mr. MERRICK. All right. I have no objection to that.

By the COURT:

Q. The rest is not in your handwriting?—A. Ehrenberg must have been inserted there.

By Mr. HENKLE:

Q. How did you come to put that word in there?—A. I do not know. It seems to be written in over where Ehrenberg had been before. The people on it are proved to have lived on that route.

If you will hold it up to the light, the one on the Mineral Park and Pioche route, you can make out the "berg" in one of the lines, showing that Ehrenberg had been erased and the other word inserted in its place.

In the 24th of December, 1878, Brady made an order (10 K, page 1633):

From January 16, 1879, increase service two trips per week and reduce running time from eighty-four to sixty hours, and allow contractor \$19,318 per annum additional pay, being less than pro rata, but in accordance with his written agreement.
BRADY.

In the first place, gentlemen, the order is unlawful, because I read to you the law yesterday, and I have stated to you repeatedly that he must designate in every order the amount he allowed for trips. But he lumped this order and put for trips and expedition all in one order. The pro rata price would have been \$22,737.75. Their offer was \$19,318—a vast difference. Brady testified, in regard to his acts in connection with this matter, on page 3398, in his examination-in-chief:

Q. Testimony has been given here in regard to the route between Mineral Park and Pioche. If you have any recollection in regard to that route, please state what it is.—A. I only have a general recollection that we were very anxious to get up a continuous daily mail service from the southernmost point of the Utah Southern Railroad, I believe it was called, on through to the Southern Pacific Railroad. If the service had been properly performed it would have made a very much shorter connection for the mails from San Francisco and from the east; also, down into the Mineral Park and Prescott regions of Arizona. It was a good thing to have done, if we could have gotten it properly performed. The service was not properly performed, and was reduced.

Q. You cut it down to how much?—A. I believe in the first place I cut it down to once a week.

Q. State just what happened afterwards. Let the jury know all about it.—A. It was represented to me that I had done a great injustice to the contractors; that although the service might not have been properly performed, that still they ought to have a chance, after being told by the department that it was not properly performed—that they ought to have a chance to perform the kind of service we wanted. Under the influence of this argument we were induced to put it back to three times a week.

Q. Instead of seven?—A. Instead of seven, and they were given an opportunity to make the route what it ought to have been.

Q. I will ask you to state in that connection whether there was an application afterwards made to you to increase it again and to restore the seven trips a week, and whether you did it.—A. Constant and persistent efforts were made to restore it to seven times a week again. Shall I state what influence was used?

Mr. WILSON. Inasmuch as papers are already in the case coming from the Executive Mansion, I do not think you ought to have any delicacy in stating the facts about it.

I think you had better state all you know about it, so that the jury may understand exactly how it was.

The WITNESS. I would prefer not to state who the parties were who brought the matter to my attention. I do not think it concerns this case at all.

Mr. WILSON. Very well. I will leave it there.

Now, gentlemen, let me ask you to remember that Brady here says, or at least Mr. Wilson says, interrogating Brady, that there were papers from the Executive Mansion, and Brady says, "I do not want to make a statement;" or, to use his words:

I do not think it concerns this case at all.

When the time comes I will show you the papers that he thus alludes to in order to make the jury believe that there was some powerful influence brought to bear upon him from the Executive Mansion. On page 3544:

Q. Do you remember whether any Senator or Member interested himself in the route from Mineral Park to Pioche?—A. I think so.

Q. Do you remember who?—A. Their names appear upon those petitions.

Q. Well, do you remember independently of the petitions?—A. I do.

Q. Who?—A. I prefer not to say.

Q. I would like to know what member of Congress interested himself on the route from Mineral Park to Pioche?—A. Well, I do not decline to say as to who interested themselves in the first action of the department, the first increase and expedition.

Mr. BLISS. I am going into that; that is what I say, the increase and expedition?

A. I have no objection to stating the first orders that were made; I have no objection to stating what I know about that. My impression was that your question referred to those subsequent orders.

Gentlemen, he draws a broad distinction between the first order and the subsequent order. On page 3545:

Mr. BLISS. No, sir. My question is what Member of Congress or Senator interested himself in the orders which were made for increase and expedition upon the route from Mineral Park to Pioche?

A. My impression is that some of the Members and Senators from Nevada did so, and also the Delegate from Utah.

Q. That is your impression?—A. That is my impression.

Q. Do you not know that the names of the Nevada Senators and Members do not appear in any paper on file as recommending anything on that route?—A. I do not. I have not examined the papers for a great while. My impression is that there were some papers from those gentlemen among the records. My impression is there ought to be a letter from Senator Jones among those papers.

Q. Senator Jones?—A. I think so.

Q. Do you not know that the Delegate from Utah did not interest himself in procuring the original orders of increase and expedition?—A. No; I have been laboring under the impression that he did.

Q. Do you not know that it was not until a subsequent application, which you did not grant, that the Delegate from Utah intervened?—A. That has not been my impression.

He made the order on the 24th of December, 1878, and made it upon these petitions that I have handed to you; and you can see whether they are indorsed by anybody, or whether anybody interested himself or not. You can also see whether they are genuine petitions, such as a person ought to regard, or whether they are of that fraudulent character that is spoken of in this indictment, and about which we complain.

On the 24th of December, 1878, he allowed them \$19,318. That was one day before Christmas, and I submit to you, gentlemen of the jury, that it was a very nice Christmas gift for Brady to make out of the public Treasury. He was a Kris Kingle to Vaile and Miner and Dorsey, and all the people that were engaged in this conspiracy. And you will find that this was not the only time in which he turned himself into a sort of Kris Kingle, because I have read to you numbers of orders, made at

the same time, or about the same date—23d of December and 24th of December.

On the 31st of December, 1878, Vaile filed his subcontract, and Miner signed as attorney for John W. Dorsey. Vaile was early on hand to reap the benefit of this increase, and he put in his subcontract so that he could draw the pay.

On the 5th of May there was a letter from Dorsey to change the address to care of Rerdell. Rerdell wrote and signed the letter.

On the same day Vaile wrote to withdraw his subcontract. Rerdell wrote the body of the letter, and Miner signed John W. Dorsey's name to it. Now, gentlemen, I make this reference to Miner signing John W. Dorsey's name and Rerdell writing the body of the letter, in order to connect that with the oath that preceded it, to show that Miner was engaged in the business of signing John W. Dorsey's name. He could not say positively who it was that signed the name of John W. Dorsey to the oath, but I think, from his subsequent action, the inference is irresistible that he was the man himself who wrote John W. Dorsey's name to the oath.

On the 8th of May, 1879, Rerdell filed his subcontract, and on the 15th of May he withdrew it.

On the 1st of July, 1879, there was a subcontract made with Isaac Jennings. John W. Dorsey's name was signed to it by Rerdell. Rerdell wrote the body of the subcontract, and in it is a provision for the different number of trips and expedition, the same as has been explained to you before. For three trips it was to be \$12,600; for six trips, \$25,000; and for seven trips it was to be \$28,000. It provided for three, six, and seven trips.

On the 21st of July there was a letter from Sidney Dillon, asking for an increase from Pioche to Prescott. That is 23 K, on page 1641:

Hon. THOS. J. BRADY,
Second Assistant Postmaster-General :

I will read you only one paragraph from it :

I therefore respectfully ask that the service between Pioche and Prescott be increased to a daily, thus giving us a continuous daily service from the Union Pacific Railroad to the Southern Pacific Railroad at Maricopa Wells.

[Referring to map.] Gentlemen, here is Pioche, away up here in Nevada; here is Mineral Park, in Arizona. The railroad is up here, and there is another one down here in this direction. Prescott is away below Mineral Park. It has nothing at all to do with Mineral Park, good, bad, or indifferent. It is a little branch of the Southern Pacific Railroad, away below Mineral Park. This letter of Sidney Dillon's was a general letter, speaking of the entire country, and he thought it would be a good thing to have daily mail from Pioche down to Prescott—not to Mineral Park, but all the way down to Prescott, to connect the two railroads together. Acting upon the strength of this letter of Sidney Dillon's Brady made his order. I have shown you that it started with one trip.

The COURT. The distance from Mineral Park to Prescott was about ninety miles, was it not?

Mr. KER. It was about ninety miles. I think they said ninety miles. Below the actual line of the railroad was Prescott, and then from that to Mineral Park made it somewhere in the neighborhood of ninety miles. That is my recollection of the testimony.

This started with one trip. On the 23d of December he increased it two more, making it three trips. Then came the letter of Sidney Dil-

lon, and, acting upon the strength of that letter, on the 23d of July, 1879, Brady ordered (21 K, page 1640):

1st. From August 1, 1879, increase service four trips per week, and allow contractor \$29,733.33 per annum additional pay, being pro rata.

2d. Increase pay of subcontractor in like amount.

On the 15th of August, 1879, the postmaster at Pioche, wrote, stating that the special service of seven trips had not commenced. This is one of the letters that Brady says gave the reason why he reduced the service, "because the carrier did not perform his duty."

On the 25th of August, 1879, was a letter from a gentleman named Horace D. Beene. It is 27 K, and is found on page 1646:

WARD, NEV., August 25, 1879.

SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

SIR: I readily understand the position in which a citizen places himself when he approaches a department of Government for the purpose of complaining of an abuse merely because it is such. I know the odds he encounters and the care with which he should make assertions. I appreciate the fact that his communication does not always accomplish its purpose, and that its design is subject to a misinterpretation.

In view of these things I have not undertaken this letter hastily, nor is it my intention to forsake the subject of it until every avenue of redress is exhausted.

The subject to which I refer is postal route No. 40104, from Mineral Park, Ariz., to Pioche, Nev.; distance, about two hundred and thirty miles, daily.

I call your attention to these facts: that an average of less than six letters a day goes over this route either way; that the population of Saint Joseph is less than twenty; that of Saint Thomas less than thirty; and that of Mineral Park very small. I do not know the exact number.

Another thing worthy of note is, that the business of Mineral Park and its surrounding country goes to San Francisco more directly in another direction.

I do not know the causes that led to the establishment of this route. It was not done by petition from the Pioche end of the route. I am sure it would not have been done by the advice of any official who knew the facts and advised without personal interest.

There is, in fact, no real reason why that route should have been established as a daily, and none whatever for its continuance as such.

Its effect is that the Government pays largely for a service that is useless, and that accomplishes no purpose except that of enriching parties directly interested.

As a citizen, I request that this thing be investigated and remedied.

And to that end, if this letter fails of its purpose, I shall use a copy of it as a preface to other communications to be sent through surer channels to the highest authority.

Yours, truly,

HORACE D. BEENE.

Indorsed on the back:

Letter from Horace D. Beene, esq., recommending the discontinuance of route No. 40104, and threatening to appeal to the highest authority. Received September 3, 1879.

September 3. 40104. Arizona.

Brady said he had no objection to telling you about the first increase, but he did not want to mention the second—four trips a week. The single letter of Sidney Dillon caused him to put on those four trips. And then he received a letter from Horace D. Beene, a prominent lawyer out in Nevada, who has since died, I believe, or I have heard so in some way. But he received that letter from Mr. Beene, giving him the exact state of the route.

On the 22d of January, 1880, acting upon that letter and the threat contained in it, Brady made an order (24 K, page 1643):

Reduce service from seven trips per week to one trip per week, and increase running time from sixty hours to eighty-four hours, decreasing contractor's pay \$49,051.33 per annum * * * without one month's extra pay.

You see what good effect a letter from an honest man had upon Brady. On the 28th of January Brady made another order. He says that there was some influence brought to bear upon him from the White House; he wants you to understand that.

The COURT. He did not say the White House.

Mr. KER. The Executive Mansion.

Mr. MERRICK. No; he wanted to intimate that, but I do not think he said it.

Mr. CARPENTER. He said he received some communication.

Mr. MERRICK. Did he say from the White House?

Mr. CARPENTER. Yes.

Mr. WILSON. If your honor please, let us get it right now.

The COURT. That is not my recollection.

Mr. MERRICK. It is not mine, either.

Mr. WILSON. Let us get it right; that is all I want.

The COURT. Mr. Ker has the evidence there, I suppose.

Mr. MERRICK. [To Mr. Ker.] Read it.

Mr. KER. [Reading from page 3399:]

Mr. WILSON. Inasmuch as papers are already in the case coming from the Executive Mansion, I do not think you ought to have any delicacy in stating the facts about it. I think you had better state all you know about it, so that the jury may understand exactly how it was.

The WITNESS. I would prefer not to state who the parties were who brought the matter to my attention. I do not think it concerns this case at all.

Mr. WILSON. Very well. I will leave it there.

The papers are here, with the stamp of the Executive Mansion upon them.

The COURT. Are they in evidence?

Mr. KER. Yes, sir; I will not speak about anything excepting that which I can show.

The COURT. I remember only his testimony in which he declined to say who the parties were.

Mr. MERRICK. That is all I recollected.

Mr. WILSON. I did bring his attention to it, because the papers are in evidence, and he did say that he preferred to say nothing about it. That is all there was about it, so far as his testimony is concerned. Now, in order that there may be no sort of misapprehension about what are the exact facts as disclosed in the testimony, may I be permitted to state that after the reduction——

Mr. MERRICK. [Interposing.] Oh, no.

The COURT. You cannot state any facts that are not in evidence.

Mr. WILSON. I am not going to state anything that is not in evidence.

Mr. MERRICK. I know that, but pardon me. I say he may correct Mr. Ker if he makes a mistake, but he cannot superadd to what Mr. Ker says is evidence.

Mr. WILSON. Your honor will bear me out in saying that I did not interrupt him at all.

Mr. MERRICK. No, no; that is true.

Mr. WILSON. The court called his attention to an inaccuracy.

The COURT. Then your interruption——

Mr. WILSON. [Interposing.] No; I thought perhaps it would not be improper, because I think it will conduce now to a proper understanding of this, to bring the exact facts out as testified to.

The COURT. Mr. Ker's attention is called to that; let him state what the facts are.

Mr. KER. I did not make any inaccurate statement. I have read the paragraph to the jury in which the Executive Mansion was mentioned.

The COURT. The words "Executive Mansion" there, as I understood it, were contained in the question that was put to the witness.

Mr. MERRICK. Yes, sir.

The COURT. And the witness did not reply upon that subject at all.

Mr. MERRICK. He made no reply.

The COURT. He said he preferred to say nothing about it. There are papers, as you say, in evidence, with the stamp of the Executive Mansion upon them. I do not know what they are.

Mr. WILSON. They come directly from the Executive Mansion, and they so show on the face of them.

Mr. KER. I will show all that, and show it very clearly.

The COURT. Now, you are on the track.

Mr. MERRICK. You are on the right track now.

Mr. KER. On the 22d of January, 1880, Brady reduced it down to one trip, what it had been. Six days after that, on the 28th of January, he made another order (26 K, page 1645):

1st. Rescind order bearing date January 22, 1880 (No. 633).

2d. From February 1, 1880, reduce service four trips per week, and deduct from contractor's and subcontractor's pay \$29,733.33 per annum, being pro rata, without one month's extra pay on service dispensed with.

The other order said to deduct \$49,051.33, and this says to deduct \$29,733.33, leaving a difference of nearly \$20,000 standing, and leaving it three trips with expedition. Mr. Brady is entitled to his explanation. It is found on page 3545:

Q. On the 22d of January, 1880, you made an order on the jacket marked 24 K which reads:

"The mail bills received by the inspection division showing little mail matter passing over this route, as per files of said division, and that the service is most irregularly and inefficiently performed: Ordered, That service on said route be reduced from the 1st day of February next to what it was at original letting, both as to trips and speed, without one month's extra pay.

"From February 1, 1880, reduce service from seven trips per week to one trip per week, and increase running time from sixty hours to eighty-four hours, decreasing contractor's pay \$49,051.33 per annum, being amount allowed by orders bearing date December 31, 1878 (No. 11446), and July 23, 1879 (No. 6834), for increase of trips and expedition of running time, without one month's extra pay on service dispensed with.

"BRADY."

was that order made on the application of any person?—A. I believe the facts connected with that order are stated on the jackets, with the exception, possibly, of some personal influences, or arguments rather, to show that injustice had been done to the contractors.

Q. This is the order taking off the increase. Did any Member or Senator interest himself, so far as you know, in procuring that order?

The WITNESS. That is, the order reducing the service?

Mr. BLISS. Yes.

A. No, sir; I believe not. The facts are simply as stated on the jacket.

Q. That order was made on the 22d of January, 1880. On the 28th of January, 1880, you made, by 26 K, another order:

"An order was issued bearing date January 22, 1880, to reduce the service from seven to once a week. In view of the fact that this route forms a part of the direct line of communication between the Central and Southern Pacific Railroads, it is deemed advisable to maintain three times a week's service.

"1st. Rescind order bearing date January 22, 1880 (No. 633)..

"2d. From February 1, 1880, reduce service four trips per week, and deduct from contractor's and subcontractor's pay \$29,733.33 per annum, being pro rata, without one month's extra pay on service dispensed with.

"BRADY."

That order was made six days after the original order. What, if any, additional papers had you received in the mean time, during those six days?—A. As I was stating a while ago, that order was based upon the representations made to the depart-

ment that a great injustice had been done the contractors in the original order reducing it; and thereupon we undertook to give them an opportunity, by putting it back to three times a week, to make the route what we expected it to be, what it ought to have been, and what, if they had made it, it would not have been reduced.

Q. But the mail bills, to which you refer in your first order, show that in nineteen days there passed over that route only thirty-five letters?—A. Yes; I understand; that was—

Q. [Interposing.] Had you, in the mean time—

Mr. WILSON. [Interposing.] Let him finish his answer.

Mr. BLISS. Wait until I put my question.

Q. And had you in the mean time, between January 22, 1880, and January 28, 1880, any evidence that the mails had in fact increased upon that route?

The WITNESS. That is, between the dates of those two orders?

Mr. BLISS. Yes.

A. No, sir; as I stated a moment ago, the order was changed and the service put back to three times a week upon the representation that we had been doing a great injustice to the contractors, and that if they were given an opportunity they would not permit this delay at the Colorado River of twelve hours, which made the expedition practically useless before and prevented the mails going over that line; therefore it was determined to give them an opportunity.

Then, on page 3546:

Q. The only paper or application referred to upon the jacket being the letter of Sidney Dillon, president of the Union Pacific Railroad Company, what right had you, six days after you had made an order reciting that there was little or no mail carried on the route, to restore it, paying an additional sum of twenty thousand and odd dollars to prevent injustice to the contractor, as you say?

The answer is on page 3547:

A. We have the right, or rather the power, under the law and regulations of the department, to do those things.

Q. Who made the representations to you that injustice had been done to the contractors?—A. The contractors themselves, I believe, represented their wrongs. That phase of the question was presented with some stress by Senator Plumb, of Kansas, who represented that he was friendly to the contractor; that they had made known their case to him, and he believed I was doing an injustice to them; and because of his friendship for them he wanted to urge this question of doing justice, or rather not doing injustice, by making so sweeping an order. The fault, you see, had been entirely on the subcontractors in making the delay at Colorado River from evening until morning, I believe. Practically that did away with the good that was intended to be done by expedition. I made that order of reduction, under the circumstances, because I was angry at the manner in which the service had been performed. I think we recouped for what had been paid, at least a certain proportion of it, how much I cannot remember. Then they came to me, as I say, and represented that great injustice had been done to these contractors, and that they ought to have at least a chance to redeem themselves by putting it back to three times a week, and I gave them that chance.

Q. If you made that second order for the purpose of remedying an injustice done to the contractors, why did you not give that reason upon the jacket?—A. I cannot say now.

Q. The jacket recites that you made the order in view of the fact that this route forms a part of the direct line of communication between the Central and Southern Pacific Railroads, and therefore it was deemed advisable to maintain three trips a week service.—A. Those were among the reasons.

Q. But you knew at the time you made the original order reducing the service that it formed part of the route, did you not?—A. The reason, as I have stated frankly here, that probably moved me more than anything else was to give to the contractors another chance to make that service what it ought to be.

On the next page:

Q. What contractor or what agent of a contractor ever approached you between the 22d and 28th of January, 1880, to urge that the original order was unjust and to ask you to change it?—A. I do not remember now.

Q. Did anybody ever approach you on behalf of the contractors except, as you say, Senator Plumb and Mr. Rerdell?—A. I do not know that Mr. Rerdell ever did. I remember very distinctly a discussion I had with Senator Plumb, and I also talked with numbers of others about it; who all they were or what was said I cannot now remember.

Q. What had Senator Plumb, representing Kansas, to do with a route in Arizona?—

A. He probably could answer that question more correctly than I could. His statement to me was that the contractors were friends of his, and he believed I was doing them an injustice.

Q. He believed you were doing them an injustice; you then went on and restored the three-times-a-week service at an expense to the Government of \$29,000, though you had before you evidence that in nineteen days but thirty-five letters went over that route, had you?—A. I have explained the reason why probably so little mail went over that route.

Q. I am asking the fact: Having that evidence that so little mail was going over that route, you went on and made that order?—A. It appears by the order itself that I did.

Q. And the mail bills to which you referred, showing that at that time but thirty-five letters went over the route in nineteen days, you still deemed yourself justified in making this order to prevent injustice to the contractors, did you?—A. With the knowledge that if the service was made what it ought to be it would be a very important mail.

Q. I see that in neither of these orders did you allow a month's extra pay; why was that?—A. As punishment to the contractor, I suppose; it was putting it down practically for cause.

Then, on the 24th of June, 1880, a subcontract was made with McKibbin. Rerdell signed as attorney for John W. Dorsey.

Then, on the 28th of June, 1880, Rerdell withdrew his subcontract. This is the second time he withdrew that subcontract. The first time it did not seem to work very well, and he had to go back and do it again.

On the 12th of August, 1880, the subcontract of McKibbin was withdrawn, and Rerdell signed the letter of J. W. Dorsey.

Then, on the 20th of August, 1880, a subcontract was made with Monroe Salisbury. Rerdell signed as attorney for John W. Dorsey.

On the 20th of August, 1880, there was a letter from Jay Gould, asking for daily service. It is 321 K, defense, page 3296. Stephen W. Dorsey testified in his examination, on page 3919:

I generally wrote to Sidney Dillon and Jay Gould for passes.

You know he got free passes and gave them to the people he sent out to establish the mail routes. He says he generally wrote to Jay Gould and Sidney Dillon when he wanted passes, and now Jay Gould writes to Brady to have this route made daily.

On the 20th of August, 1880, there was a letter from Rerdell to the Auditor about Vaile (102 K, page 1661):

WASHINGTON, D. C., August 21, 1880.

To the SIXTH AUDITOR:

SIR: H. M. Vaile was subcontractor on route 40104 during the first quarter of 1879.

In the first settlement for that quarter Vaile was paid for certain expedited service—it was subsequently discovered that the expedition thus paid for was never performed—the department, therefore, and very properly, too, charged back to the route the amount thus paid for expedition never performed, viz, some \$2,800.

Meanwhile Vaile, who alone was in fault, had ceased to have any connection with the route; the charging back, therefore, fell on the wrong man, the man who was in no way responsible for the non-performance of the expedition, except so far as he stood between the department and the subcontractor.

It is true that this payment was made by the regular contractor to the subcontractor, but it is equally true that it was, in a measure, a compulsory payment. By the rules of the Post-Office Department it is made obligatory on the regular contractor to pay the subcontractor before the department will settle with him; it is not, therefore, a payment as between two individuals. The receipt is on the form prescribed by the Post-Office Department, and is witnessed by (the then) Postmaster Edmunds, as the rules prescribe. It is on file in the Post-Office Department, and I maintain that our covenants were fulfilled when we put the receipt on file. If Vaile had performed the service as he agreed he would do, and for to do which he received this money, we should have been reimbursed by a *certificate of service* from the contract office. Now, will you permit Vaile to take advantage of his own wrong, and thus enable him to defraud another man out of his money.

I refrain from discussing the question as to what would be the duty of the depart-

ment if Vaile, who had received the money wrongfully, had ceased to have any connection with the department, because it is not pertinent to this issue; if it were, I could cite you to many authorities and precedents to the effect that even then it would be your duty to refund the money to me. But this is not necessary, because Vaile is still doing business with the department.

He is subcontractor on route 44156 for the full contract pay, which is \$22,000 per annum, hence the department will have no difficulty in reimbursing itself for what was, in simple truth, an overpayment.

I think you will agree with me when I ask that this money be refunded to the subcontractor on route 40104 and charged to route 44156, because it is simply correcting an error. You have the same authority to charge it to one as you have to charge it to the other, and you have already charged it to me.

The law-merchant would experience no difficulty in adjusting a difficulty of this sort. The merchant who would refuse to correct an error of this character would be justly called a lame duck, and would be scouted from "Change." Vaile was erroneously paid for the performance of a service which he never did perform. Therefore I ask that he be compelled to render unto Cæsar the things that he ceasers.

Respectfully,

M. C. RERDELL.

Acting for himself and for the regular contractor on route 40104.

Vaile made a reply to that, which is found on page 4060:

Q. Do you remember writing a letter to Mr. McGrew on the 9th of July, 1880, with reference to what is called the Jennings case?—A. I recollect writing the letter, but—

Q. [Interposing.] You do not remember the date?—A. No.

Q. Do you remember its being in evidence on the other trial?—A. Yes, sir.

Q. Do you remember declaring in that letter that upon route 40104 you were trustee for J. W. Dorsey, S. W. Dorsey, and others?—A. Yes, sir.

Then, on 4064:

A. I think that is the letter I wrote.

Mr. BLISS. Then I will read it:

“WASHINGTON, D. C., July 9, 1880.

“Hon. J. M. MCGREW:

“SIR: In reply to yours of July 8th, relating to the Jennings case, I would state that I did not receive the money in manner and form as stated by one M. C. Rerdell, nor was the draft of J. W. Dorsey, on said route 40104, for the quarter named, to get an advance of money for myself or for my own use.

“At the time I receipted for my pay as subcontractor on said route I did not, in fact, receive any money, but did so receipt that J. W. Dorsey might negotiate his draft on said route, and for no other purpose.

“Although I was subcontractor of record on said route at the time named, I was not a subcontractor in my own behalf, but as trustee for J. W. Dorsey, S. W. Dorsey, Isaac Jennings, and others, to collect said money and pay it over as said parties should direct. I further state that all money that ever came into my hands from said route I did pay over to the parties named as trustee, as by them directed.

“Acting as trustee of said Jennings, and believing that he had performed the mail service on said route as by him agreed, and in accordance with the laws and regulations of the Post-Office Department, I did pay said Jennings, on the 1st day of April, 1879, the sum of \$1,257.73, the sum of money he was entitled to provided he had carried the mail three times per week on the schedule required, which I fully believed at that time he had done, and for a long time after.

I further state that I am informed that said Jennings is not responsible; that it would be utterly impossible for me to receive back the \$2,800, or any part thereof; that in fact this sum of money sought to be collected of me, if collected for said Jennings's benefit, or go into his hands in addition to the sum he now has unlawfully, doubly remunerating him for his neglect of duty.

I further state that all the money collected on said route not paid to said Jennings was paid to liquidate the debts of J. W. Dorsey, S. W. Dorsey, and others previously contracted, and not one dollar ever remained in my hands.

I further state I believe both J. W. Dorsey and S. W. Dorsey are irresponsible, and it would be impossible for me to collect any part of said money from them. As above stated, said money came into my hand only as their agent or trustee, and at once paid out as they directed; that my subcontract was put on file simply to enable J. W. Dorsey to negotiate his draft on said route, when in fact said Jennings was the real subcontractor. Said Jennings agreed to perform the service on said route strictly in ac-

cordance with the laws and regulations of the department, for the annual sum of \$12,600.00, the duplicate of which contract was delivered over to S. W. Dorsey by myself, and which I believe is now in the hands of M. C. Rerdell, and which, or a copy thereof, I demand shall be filed with you in this case, that you may see what said Jennings agreed to do.

This is certainly a strange claim. Jennings agreed to perform mail service on said route. I believed he had done it, and paid him accordingly. It turns out long after he did not properly perform the service, but was attempting a swindle, and a deduction is ordered for not performing the service properly. Then this man, the guilty party, having got money from me, as trustee, wrongfully, as well as from the Government, and asks that the Auditor compel me to pay him the sum of \$2,800.00, when, as I am informed, he is seeking to get this same deduction remitted.

Surely if he succeeded in all this he will make a good thing out of his rascality and I a good victim without remedy. I state again I did not hypothecate said draft for myself, did not receive one cent as subcontractor, but became the payee of said draft that said J. W. Dorsey might negotiate it, and I to dispose of the proceeds as he should direct, all of which I did. Therefore I request you not to compel me to pay the sum of money asked, but if I am liable at all let the parties seek their redress at law, where all the facts can be obtained and justice rendered me. And it is also well known that I am a man of means, and any judgment rendered against me could and would be collected, dollar for dollar.

I am, very respectfully,

H. M. VAILE.

This letter was not written by Vaile; he only wrote the last part of it:

And it is also well known that I am a man of means, and any judgment rendered against me could and would be collected, dollar for dollar.

H. M. VAILE.

It gives you an idea, however, of how Vaile and Stephen W. Dorsey were acting. Vaile says:

I held it as trustee.

And this was during 1878, when Dorsey was still in the Senate, and on up to 1879. Now, on page 4067:

Q. Now I show you a paper already in evidence, marked 102 K, and printed on page 1661 of the record of the present trial, and ask you if that is not the statement of Mr. Rerdell referred to in this letter?—A. I see it mentions my name.

Q. Look it through; do not be in too much of a hurry. [After a pause.] Can you say?—A. Well, I should think I would write such a letter in answer to that.

Q. Does not reading that recall it to you?—A. I think that is it.

The reason for asking him about that was that there is a little difference in the date of the letters. Vaile's letter is dated July 9, 1880, whereas Rerdell's letter was written in August. But inasmuch as Vaile did not write the heading in his own letter and somebody else did it for him, I presume there was a mistake made in the date. I think the letter was testified to be in the handwriting of Miner, but I am not sure about that. If it was I do not think we need wonder at all about the difference in date, for a date made no difference to John R. Miner.

On the 18th of November, 1880, there was a letter from the Executive Mansion. It is 319 K, defense, on page 3296:

EXECUTIVE MANSION.

Murray, Eli. H., governor; Hunter, John A., chf. jus.; Cannon, Geo. Q., Delegate. Salt Lake City, Utah. Recom'd an increase of mail service on route from Pioche, Nevada, to Mineral Park, Arizona.

Respectfully referred to the Postmaster-General.

By direction of the President:

Nov. 18, 1880.

W. K. ROGERS,
Secretary.

Inclosed in that letter was one from George Q. Cannon, which is marked 320 K, defense, and found on the same page:

SALT LAKE CITY, Oct. 15, '80.

Hon. THOS. J. BRADY,
2d Asst. P. M. Gen., Washington, D. C. :

SIR: I recommend an increase of mail service to a daily on U. S. mail route No. —, between Pioche, Nevada, and Mineral Park, Arizona; this will give a daily mail between Palisade on the Central Pacific, and Maricopa on the Southern Pacific roads. This route passes through a country rapidly increasing in wealth and population, and developing mining interests of great value, and the nature of the business and the needs of those engaged in it are such as to require daily mail communication.

Very respectfully,

GEO. Q. CANNON.

The other paper inclosed is marked 322 K, defense, and is also on the same page:

SALT LAKE CITY, UTAH, Oct. 15, 1880.

Hon. THOS. J. BRADY,
2d Asst. P. M. Gen. :

D'R SIR: We recommend an increase of mail service on U. S. mail route No. —, between Pioche, Nevada, and Mineral Park, Arizona, so that a daily mail may be carried between those points. There is a daily mail from Palisade to Pioche, and from Mineral Park, by way of Prescott, to Maricopa, on the Southern Pacific R. R., and this increase of service would complete a daily mail from the Central to the Southern roads, and greatly increase the benefits of the daily mail on the routes where it is now established. This general route passes through a country rapidly increasing in wealth and population, and rapidly developing mining industries of great value, and the nature of the business and the needs of those engaged in it are such as to require daily mail communication over the entire route.

Very respectfully,

ELI H. MURRAY,
Gov. U. T.
JOHN A. HUNTER,
Chief Justice, &c.

Gentlemen, those are the two letters that came with the paper I handed to you (319 K, defense), and both of those are communications addressed to Thomas J. Brady. You remember that the lawyer, Horace D. Beene, of Ward, Nevada, had written a letter telling, Brady that he would go to a higher source if the wrong was not righted. Then Brady made the order first putting it down to one trip a week and then rescinding that and making it three trips a week; and in order to head Beene off, I have no doubt but Dorsey and the people engaged in this scheme got these two petitions and sent them up to the Executive Mansion, although directed to "Hon. Thomas J. Brady," and from the Executive Mansion they were very properly referred back to the man that they ought to have gone to. The whole thing was done to give color to the claim that this increase was asked for from the Executive Mansion. The petitions sent to the Executive Mansion were addressed to Thomas J. Brady, and those petitions came from men who had no more to do with that route from Mineral Park to Pioche than you or I had, for they lived in a different place altogether, were not dependent upon it for mail, and had nothing to do with it at all. They were in a different Territory.

Mr. WILSON. Will my Brother Ker allow me to interrupt him for a moment? I know he does not want to get anything wrong. The statement I was about to make awhile ago I would like to be permitted to make now.

Mr. MERRICK. Has Mr. Ker said anything that is not correct?

Mr. WILSON. Yes.

Mr. MERRICK. What has he said that is not correct?

Mr. WILSON. These petitions, as I understand it, have not the slightest relation to any order that had previously been made

Mr. MERRICK. That is a matter for discussion.

Mr. WILSON. Allow me to make my statement, and you will all understand the matter then. After the service had been reduced to one trip it was then increased to three trips, and then the parties undertook to get it back to six trips, as it was before. The petitions to restore it to six trips were sent through the Executive Mansion to the Post-Office Department, and Brady refused to grant that request. That is the whole of it.

The COURT. Mr. Ker has not said anything inconsistent with that.

Mr. MERRICK. He has not said anything inconsistent with that, but I am glad brother Wilson has brought up the subject, because——

Mr. WILSON. [Interposing.] He said this was done for the purpose of heading off Beene.

Mr. MERRICK. So it was, manifestly.

The COURT. That is a subject of comment.

Mr. MERRICK. What business had anybody to be sending to the President petitions that were addressed to the Second Assistant Postmaster-General?

Mr. WILSON. You might just as well ask what business Mr. Beene, who lived a hundred miles from this route, had to be writing letters to the Post-Office Department.

Mr. MERRICK. We do not know where Beene lived.

Mr. WILSON. The letter states.

Mr. MERRICK. What business had anybody to send to the President letters that were addressed to the Second Assistant Postmaster-General?

Mr. WILSON. I do not know.

Mr. MERRICK. All the President had to do with them was to coldly say, "Refer them to the proper authority, and don't bother me about the trash," as he did.

Mr. WILSON. I have not said anything about that. I am only telling what the evidence shows.

The COURT. Go on, Mr. Ker. This is not a contradiction of you. If a man lives within a hundred miles of a route out in that country he is pretty near to it for the purposes of petition.

Mr. WILSON. I suppose he was the attorney of a contractor on some other route.

Mr. MERRICK. I think that is fully justified by the fact developed in this case that every fellow was grabbing.

The COURT. Beene was some crabbed old lawyer, probably.

Mr. MERRICK. I guess he was interested in the matter, and wanted to steal from somebody.

Mr. WILSON. He was working for some other contractor, I presume.

Mr. KER. [Resuming.] Gentlemen, we did not introduce these papers. They were introduced on the part of the defense. They were brought here and offered as a part of their case, in order to convince you that Thomas J. Brady had acted in a proper, honest, and legal manner when he made these orders. It is a part of their case, and not a part of ours. They were brought here to influence you, and to induce you to believe that the President of the United States had joined in the request to have this route made a daily. That was the object.

Mr. WILSON. No.

Mr. KER. Why did you introduce them? Do not shake your head and say "no." We did not bring them. We left them out.

Mr. WILSON. You asked me the question, and I will answer it. We introduced them for the purpose of showing that although they had asked General Brady to increase this route to six trips, and although, as you say, he was engaged in a conspiracy to put money in his own pocket, he refused to do it. That is what they were introduced for, as stated at the time.

Mr. MERRICK. Brady was trying to cover his tracks, as a matter of course, as far as he could.

Mr. CARPENTER. Your time will come by and by.

Mr. MERRICK. Keep Wilson quiet, and keep quiet yourself.

Mr. CARPENTER. And let you talk all the while.

Mr. KER. That was the reason why Judge Wilson asked Brady the questions he did on his examination-in-chief. He wanted to lay the ground-work for argument hereafter. Let me read you one of the questions:

Mr. WILSON. Inasmuch as papers are already in the case coming from the Executive Mansion, I do not think you ought to have any delicacy in stating the facts about it. I think you had better state all you know about it, so that the jury may understand exactly how it was.

He did not want Brady to have any delicacy about it; but Brady knew a little more on the subject than his counsel, Judge Wilson, and he had a considerable amount of delicacy; because when you come to look at it, and when the orders are brought before you, you will see just how it was, and you will agree with Brady in what he said when he made answer to Judge Wilson's question:

The WITNESS. I would prefer not to state who the parties were who brought the matter to my attention. I do not think it concerns this case at all.

We can all agree with him very fully in that respect. That it came from the Executive Mansion did not concern this case at all. It was a dodge resorted to by his coconspirators in order to head off Mr. Beene, and in order to make it appear that the President had interfered in the matter, and in order that Brady might stand up to the order he had made. You know the allowance had gone up to a very liberal sum, and he had received 20 per cent. of it, and it went against the grain to return a dollar of it, as he would have had to do when he cut the expedition off. That is the full explanation of all the matter that my friend brought in so gingerly in order to base a terrific argument upon it.

Vaile drew the pay, Stephen W. Dorsey drew the pay, Bosler drew the pay, and Rerdell and Salisbury had a hand in taking the warrants and drawing the pay. There was some testimony about the route. Krider, the postmaster at Mineral Park, said, "The first mail came in on the 25th of December," one day after Brady made the order. That was Christmas day. He said, "I took possession and opened the bag." I asked him if he had been commissioned, and he said, "Oh, no; I just took the key and opened the bag." He received his commission as postmaster long afterward; but that was the first mail that came in. Then he said, "Scarcely any mail came over the route from Pioche to Mineral Park. The bulk of the mail from Mineral Park was sent by way of Prescott on the railroad." They did not think of sending it up across this country into Nevada, but put it on the railroad and sent it where the railroad went, and where the railroad could take it in one-tenth of the time. He said, "There were no letters from Signal passing through Mineral Park." That is the fact he stated in referring to the petition from Signal that I showed you, that was altered and erased. Then,

again, we had Mr. Wright upon the stand. Caldwell Wright said, "The mail was sometimes nothing," and he went off into this remarkable assertion: "We often bet two to one that there would be nothing in the bag." I incidentally tried to find out from him who won, but his honor did not seem to think it was relevant to the case. However, I have satisfied myself by looking over the mail bills, and I will show you how it was in a short time.

The COURT. We will take our recess now.

At this point (1.03 p. m.) the court took its usual recess.

AFTER RECESS.

Mr. KER. Gentlemen, I explained to you before recess that Mr. Wright testified that bets were made whether there would be any letters in the mail or not. There were mail bills on this route. I will read some of them. On page 2938:

Route No. 40104, from Mineral Park to Pioche, Nev. Post-office at Mineral Park. Date, Nov. 26, 1879. Mail, consisting of this bill only, was dispatched this day at 6 o'clock a. m.

Post-office at Pioche, Nevada. Date, Nov. 30th, 1879. The mail accompanying this mail bill, consisting of 1 letter and 1 parcel from St. Thomas, Nev., was received this day at — o'clock — m.

Route No. 40104, from Mineral Park to Pioche, Nev. Post-office at Mineral Park, A. T. Date, Nov. 27, 1879. Mail, consisting of 3 letters, was dispatched this day at 6 o'clock a. m.

Post-office at Pioche, Nevada. Date, December 1st, 1879. The mail accompanying this mail bill, consisting of 1 letter, was received this day at 6.30 o'clock p. m.

Route No. 40104, from Mineral Park to Pioche, Nev. Post-office at Mineral Park, A. T. Date, Nov. 28th, 1879. Mail, consisting of one letter, was dispatched this day at 6 o'clock a. m.

Post-office at Pioche, Nevada. Date, Dec. 2, 1879. The mail accompanying this mail bill, consisting of three letters, was received this day at 6 o'clock p. m.

Route No. 40104, from Mineral Park to Pioche, Nev. Post-office at Mineral Park. Date, Nov. 29th, 1879. Mail, consisting of this bill, was dispatched this day at 6 o'clock a. m.

Post-office at Pioche, Nevada. Date, Dec. 3, 1879. The mail accompanying this mail bill, consisting of six letters from St. Joseph and St. Thomas, Nev., was received this day at 6.45 o'clock p. m.

Route No. 40104, from Mineral Park to Pioche, Nev. Post-office at Mineral Park. Date, Nov. 30, 1879. Mail, consisting of this bill, was dispatched this day at 6 o'clock a. m.

Post-office at Pioche, Nevada. Date, Dec. 4th, 1879. The mail accompanying this mail bill, consisting of one letter and three postal cards, from St. Thomas, Nev., was received this day at 7 o'clock p. m.

On the next page:

Route No. 40104, from Mineral Park to Pioche, Nev. Post-office at Mineral Park. Date, Dec. 3rd, 1879. Mail, consisting of this bill, was dispatched this day at 6 o'clock a. m.

Post-office at Pioche, Nevada. Date, Dec. 7th, 1879. The mail accompanying this mail bill, consisting of this bill only, was received this day at 6.15 o'clock p. m.

This route costs the P. O. Department over twenty-five thousand dollars per year.

Route No. 40104, from Mineral Park, A. T., to Pioche Nev. Post-office at Mineral Park, A. T. Date, Dec. 5, 1879. Mail, consisting of this bill, was dispatched this day at 6 o'clock a. m.

Post-office at Pioche, Nevada. Date, Dec. 6th, 1879. The mail accompanying this mail bill, consisting of two letters, was received this day at 6 o'clock p. m.

This is a sample of the statement of the mail bills all the way through.

On this route the original pay was \$2,982. There was an offer to carry it for \$19,318, and that brought it up for three trips to \$22,300. When it was paid for at that rate Jennings was carrying it for \$12,600.

The profit that was derived from the route at that time was \$9,700. Stephen W. Dorsey says, on page 3942:

Q. How large a profit?—A. There were two routes that I thought there was a profit on; one of them turned out not very profitable, and it was sold for a small sum; Mineral Park to Pioche; there was an apparent profit, it seems to me, of \$10,000 a year, or something like that on that route.

Then it was increased to seven trips and there was an additional allowance of \$29,733.33. That was upon the letter of Sidney Dillon. The total pay on this route was \$52,033.33. Jennings's pay for seven trips was \$28,000, leaving a clean and clear profit of \$24,033.33; and this was on a route where the mail bills showed that sometimes there was only the mail bill, without a letter at all, sometimes one letter, and, as I read, the highest was six letters carried over the entire route.

We have some overt acts in this case. I exhibited to you the petitions that were altered by Rerdell and that were altered by Miner. I showed you, when I began the route, that Miner wrote the proposal, Rerdell filled in the amount, and John W. Dorsey took the oath in blank. I have also shown you that Stephen W. Dorsey helped to draw the pay, as did Vaile, Bosler, Rerdell, and Salisbury. The order upon which the allowance was made is stated in the indictment as of the 23d of July, 1879. Now, Mr. Foreman, just look at it [exhibiting order] and see if that is not the correct date, as stated in the indictment. Across the jacket is written in blue pencil, "Do this.—Brady."

40113, TRES ALAMOS TO CLIFTON, ARIZONA.

[Maps distributed.] This route begins at Tres Alamos and runs up to Fort Grant. There is a blue line that runs on to Goodwin. It was shown that the route did not run that way. That was the old way. Goodwin was an old fort that is now abandoned.

After going up to Fort Grant, the carrier retraced his steps down around the mountain [indicating] and came to Safford, and from Safford the mail was carried on a buckboard over to Camp Thomas, the rest of the mail being sent the other way to Clifton. Subsequently the route was altered by starting it at Wilcox. The railroad came around there, and so they made it begin at Wilcox, which lessened the distance to Fort Grant. There was also another mail route that went over the same road. The other route ran off in this direction.

This was one of the routes taken by Dorsey in the division. It was one hundred and ninety-seven miles long, was one trip a week, and the time was eighty-four hours. John W. Dorsey was the contractor, and the pay was \$1,568. Miner wrote the body of the proposal, Rerdell filled in the amount, and John W. Dorsey took the oath in blank.

The official orders are:

June 18, 1878, John W. Dorsey wrote to change the address.

March 10, 1879, letter from postmaster Dunbar.

April 21, 1879, oath of John W. Dorsey made.

May 7, 1879, letter of John W. Dorsey transmitting the oath.

May 10, 1879, letter of John W. Dorsey transmitting petitions.

May 23, 1879, letter of John W. Dorsey transmitting more petitions.

June 3, 1879, order for increase and expedition.

November 11, 1879, S. W. Dorsey filed subcontract.

December 6, 1880, letter withdrawing Dorsey's subcontract.

January 4, 1881, order to change service to begin at Wilcox.

February 11, 1881, increase of four trips ordered.

Now, to go back and take these papers with the others. On the 18th of June, 1878, the address was changed to box 714, which was Miner's box. On the 10th of March, 1879, there was a letter from Postmaster Dunbar. It is 15 O, at page 1800. In that letter it states that there was some doubt as to whether John W. Dorsey would be able to carry that mail at all, and asking for instructions. On the 21st of April, 1879, the oath of John W. Dorsey was made. It is 4 O, on page 1797. Here it is [exhibiting it]. You have had the same date before. If you look at that oath you will find that it has been erased and written over. Rerdell wrote the body in May, after it was sworn to. He says, on page 2345 :

Q. I hand you paper marked 4 O, purporting to be the oath on route 40113, from Tres Alamos to Clifton, and ask you in whose handwriting that is?—A. The body of it is in my handwriting, the signature by John W. Dorsey. The officer taking the jurat, and 21 April, I do not know by whom.

Q. Who is the signature by?—A. The signature is by John W. Dorsey.

Q. It is his signature?—A. Yes, sir.

Q. Were the amounts in there when that signature was affixed?—A. They were not.

Q. Do you know when they were put in?—A. They were affixed afterwards, some time in the month of May.

Q. Was the jurat there before they were inserted?—A. It was.

John W. Dorsey was not interrogated about this oath by either side, and therefore we have no testimony from him as to how or why he made it. I call your attention back to the statement that he made in the other case, where there were two oaths of the same date. He said he received one early in the morning, and swore to it, and then got a letter that there was a mistake in it, and in that letter there was another oath which he swore to and sent off in the mail. There were four oaths dated on that same day, and this is one of the four. You know, according to the testimony, that Rerdell went out West on the 17th day of April, 1879. On the 21st of April he was in Nebraska.

The COURT. Colorado.

Mr. KER. On the 26th of April he was at Denver, Colorado. On the 7th of May, 1879, there was a letter of John W. Dorsey transmitting the oath. Rerdell wrote the letter and signed Dorsey's name to it. Rerdell says that he returned to Washington about the 5th of May, and on the 7th of May he sent the letter. Rerdell also tells you that he found, when he returned, a number of blank affidavits which he used to fill up. On the 10th of May, 1879, there is another letter from John W. Dorsey to Brady. It is 7 O, on page 1798 :

WASHINGTON, D. C., May 10, 1879.

Hon. THOS. J. BRADY,

Second Assistant Postmaster-General :

SIR: I have the honor to transmit herewith two additional petitions, numerously signed, asking for increased mail facilities on route 40113, from Tres Alamos to Clifton, Ariz., and to request that they be placed on file with the other papers in this case.

Very respectfully,

JOHN W. DORSEY.

That letter was written and was signed by Rerdell.

Then, on the 23d of May, 1879, there was a letter of John W. Dorsey to Brady transmitting more petitions for increase. That is 5 O, found on page 1797 :

WASHINGTON, D. C., May 23, 1879.

Hon. THOS. J. BRADY,

Second Assistant Postmaster-General :

SIR: I have the honor to transmit herewith a petition, very numerously signed,

asking for an increase of mail service on route No. 40113, Tres Alamos to Clifton, Ariz., and to request that it be placed on file with other papers of a similar nature.

Respectfully,

JOHN W. DORSEY.

That was John W. Dorsey's letter transmitting more petitions. In that letter was a petition, 9 O. It is found on page 1798. Here it is, gentlemen. [Exhibiting it.] Rerdell says, in speaking of this petition, on page 2345, at the bottom :

Q. I hand you a petition on this route, marked 9 O, and ask if you know in whose handwriting the body of that petition is?—A. The handwriting of S. W. Dorsey.

Q. In saying it is in the handwriting of S. W. Dorsey, do you speak from your knowledge of the handwriting solely, or from any other knowledge; and, if so, what?—

A. I saw S. W. Dorsey write this petition.

Q. When?—A. It was in April, 1879.

S. W. Dorsey did not say that that was not so. He gave no testimony all in regard to the petition, and therefore it should stand as an undisputed fact. Petition 11 O was written by John A. Sibbald, who was a gentleman in the employ of Mr. Dorsey as a clerk. 12 O was written by James W. Donnelly, who was also in the employ of Stephen W. Dorsey. Donnelly was examined as a witness upon the stand. Rerdell says, on page 2346, in speaking of these petitions :

Q. I hand you petition marked 11 O, and ask in whose handwriting that is?—A. It is in the handwriting of John A. Sibbald.

Q. I hand you petition marked 12 O, and ask in whose handwriting that is?—A. That is in the handwriting of a gentleman named James W. Donnelly.

Q. Who is he?—A. He is now an employé in the United States Land Office.

Q. In this city?—A. In this city.

Q. Do you know how he came to write that?—A. I cannot remember his writing that particular petition. He was doing some work there at one time. He was assisting in writing petitions.

Q. Where?—A. At Mr. Dorsey's.

Q. Which Mr. Dorsey's?—A. S. W. Dorsey's; at his office.

On the strength of these petitions Brady, on the 3d of June, 1879, made an order. It is 3 O, on page 1797 :

1st. Increase service two trips per week from June 16, 1879, and allow contractor \$3,136 per annum additional pay, being pro rata.

2d. Reduce running time from eighty-four to forty hours from June 16, 1879, and allow contractor \$9,408 per annum additional pay, being pro rata.

I will read you what Brady said, on page 3420, in speaking of this order. You know we ought to give him the benefit of what he testified to :

Q. Do you remember the route from Tres Alamos to Clifton?—A. Yes, sir; I know there was such a route.

Q. Do you remember whether you made any orders of increase or expedition upon that route?—A. I think I did.

Q. Do you remember upon whose application you made them?—A. I do not. I will tell you if you show me the papers.

Q. You have no recollection independently of the papers?—A. I have not.

Q. The contract price for one trip a week upon that route was \$1,568, which, at pro rata, would have given six trips for \$9,408. You ordered expedition from eighty-four hours to forty hours, and added two trips at a cost of \$14,112, costing the Government, therefore, \$4,704 more than six trips a week. Is your answer as to the reason why you did that the same as you made to the same question as to the other routes?—A. It is.

Q. Did you upon that route consider the question of productiveness?—A. I presume not. I can tell you better after I look at the papers.

Q. You say you presume not. It was one of the routes on which you did not care about the productiveness, was it not?—A. I judge it was. Productiveness was not an element to consider in the increase of the routes throughout that country.

Q. You did not consider it at all?—A. It might have had some weight, but very little.

Q. When you made that expedition and increase did you know the number of offices on the route?—A. I cannot say now that I did. If you let me look at the papers I can tell you.

Q. You have no recollection independently of the papers?—A. I have no recollection.

Q. Had you any knowledge at that time, or did you seek to obtain any knowledge as to the amount of mail matter passing over the route?—A. Well, I presume there were some representations about that in the petitions and letters, or representations made by the parties who may have called upon me about it.

Q. Had you any knowledge except that derived from the parties who were urging the increase?—A. I presume not.

Q. Was it your practice to derive your information upon those subjects solely from the parties who were interested in procuring the increase?—A. Yes, sir; almost solely. The parties interested in the increase were the representatives of the people in Congress urging these things. Their words went a great way about those matters with us.

Q. You did not consider it your duty to see whether their representations were correct?—A. I did not. I assumed, as a matter of course, that the representatives of the people in Congress would tell the truth.

Q. But they might have been intending to tell the truth and yet be in error. Did you endeavor to verify their statements at all?—A. Not at the outset. Subsequently by mail bills here—

Q. [Interposing.] Did you before making your orders?—A. No, sir; subsequently by mail bills—

Q. [Interposing.] You did not, then, before making your orders, seek to ascertain whether the statements contained in the petitions and letters before you were correct, if on those petitions and letters were the indorsements of Members of Congress or Senators. Is that the fact?—A. Very nearly so. If Mr. Teller, for instance, had come to me and represented a certain thing to be absolutely needed out in his country, I would take his word for it.

Q. You would take his word and his statement?—A. And his statement.

Q. Suppose an application was made to you with regard to which no Member of Congress or Senator appeared, and there were statements made in the papers. Did you seek to verify them?—A. Not always. For instance, out in Colorado there—

Q. [Interposing.] Did you generally—

Mr. WILSON. [Interposing.] Let him answer.

Mr. BLISS. Go on.

A. [Continuing.] For instance, out in Colorado, if Mr. John L. Routt, who was my predecessor in the Second Assistant's office, would send up a letter saying he thought a certain thing ought to be done, I would do it. He was an old Assistant Postmaster-General, on the ground, and I would take his word for it.

Q. Suppose the application was from a person who had not been in any such position at all, and the papers did not bear the indorsement of any Member of Congress or Senator, or any person who had been in such a position as that, did you seek to verify the statement?—A. Suppose they were—

Q. [Interposing.] Just answer the question.—A. I do not know that I ever sought to verify statements contained in any petitions at all. I have no recollection now.

Q. And letters?—A. And letters. I have no recollection now of ever having sought to verify before making an order statements made in any petitions that came to me properly, or letters that came to me from responsible sources.

Q. You assumed that the statements in them were true, and made the orders, did you?—A. I assumed that gentlemen in position or petitioners of that kind would usually speak the truth.

On the 11th of November, 1879, S. W. Dorsey filed his subcontract, dated April 1, 1879. On the 6th of December, 1880, there was a letter sent withdrawing the subcontract of S. W. Dorsey. Rerdell wrote the letter and signed the name of John W. Dorsey to it. On the 4th of January, 1881, Brady made another order, which is 35 O, defense, on page 3294:

From January 20, 1881, change service so as to embrace and begin at Wilcox, omitting Tres Alamos, decreasing the distance 30 miles, and deduct from contractor's pay \$2,149.03 per annum, being pro rata.

In his testimony-in-chief, on page 3398, Brady said:

Q. Do you remember anything in regard to the route known as the Tres Alamos and Clifton route, and the curtailment of the service at Wilcox and the carrying of the mail by the railroad company for the contractors prior to the time of its being carried as railroad service, and if you know anything on the subject, state what do you remem-

ber in regard to it?—A. Well, we had some difficulty in getting the railroad company upon its first construction to carry the mail. They claimed that they were only running construction trains, and did not wish to carry the mail until they put on their regular passenger trains. The terminus of the route was subsequently changed to Wilcox under a general regulation, or law, enabling us to change the terminus of a route upon a railroad from one point to another to better the service. It was changed from Tres Alamos to Wilcox.

Q. Did you personally do anything with reference to getting railway service between Tres Alamos and Wilcox before it was finally expedited; and, if so, state what you did?—A. Yes, sir; we had some correspondence with Mr. Huntington about it, and I believe once, when in New York, I spoke to Mr. Huntington personally about it.

Q. Who was Mr. Huntington?—A. He was the principal man, the president or manager, I do not know which, of the Southern Pacific Railroad. They did not wish to carry the mail, as I said, until they were running their regular trains. We finally made a peremptory order and by that means forced them to carry it.

Gentlemen, I think the railroad company could have made a better bargain with the contractors under Brady than to have taken the service at the regular railroad mail-service price.

On the 11th of February, 1881, Brady made another order, which is marked 36 O, defense, and found on page 3295:

From February 20, 1881, increase service four (4) trips per week, and allow contractor \$15,950.62 per annum additional pay, being pro rata.

The order in this case, I submit to your honor, under our construction of the law, having first been an order to increase the trips and then granting expedition, and finally increasing the trips again, based upon the old increase, and allowing this large sum, was an illegal order, because it carried with it the amount given for expedition. The increase was made on five petitions, filed in June, 1879, and a letter from Ray P. Eaton, assistant superintendent of the railway mail service, which is marked 33 O, defense, and found on page 3293:

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Camp Grant, Arizona, Dec. 28, 1880.

Hon. THOMAS J. BRADY,
Second Asst. P. M. General:

SIR: The mail route 40113, from Tres Alamos to Clifton, should be curtailed to embrace and begin at Wilcox, omitting Tres Alamos, decreasing distance 28 miles.

There is great need of a daily mail on this route from Wilcox as far as Camp Thomas, a distance of sixty-seven miles.

I ask you to bear in mind the position of Wilcox and Camp Thomas.

The route supplies a very fine stock country, in which are a great many ranches, besides the military posts, whose mail is large and important, and should by all means be extended to Globe, by San Carlos Indian Agency, daily.

On former occasions I have urged the establishment of service from Camp Thomas by San Carlos to Globe, a distance of 70 miles, and I now respectfully renew the recommendation.

The business of Globe and San Carlos is principally with the East, and the mail for those points should leave the railroad at Wilcox, saving in distance at least 100 miles, and over one of the best natural roads in the country, instead of being packed over the mountains from Florence.

Norton & Stewart run a tri-weekly line of four-horse coaches from Wilcox to Camp Thomas via Camp Grant, and a buckboard from Thomas to Globe, but will put on coaches the entire distance if service be ordered.

Globe is an old mining camp and contains nearly 3,000 persons; has fifteen large stores, one bank, and two weekly newspapers, but until recently has not kept apace with the times, partly because of lack of proper mail facilities and of the great and rapid development of the Tombstone district.

Recently, however, Eastern capitalists have turned their attention to Globe, the result of which is largely increased business and the consequent demand for increased mail facilities.

This should and will be the important route into the Globe district, and whatever may be the merits of the Tucson or Florence routes there can be no question but this, in point of business importance and in economy of service, is vastly superior.

It would be more advantageous to the department if the whole line could be operated as one route with a schedule of 28 hours' running time; but if not that, a schedule of 14 hours from Thomas to Globe should be required.

I am, very respectfully, your obedient servant,

RAY P. EATON,
Asst. Supt. R. M. S.

Gentlemen, the order in this case was introduced by the defense, and this letter was introduced by the defense, because the letter was in the jacket upon which Brady made his order. Now, let me explain it to you, so that you will understand it. He speaks in the letter of a mail from Wilcox up to Camp Thomas. Camp Thomas was a post having four or five companies stationed at it, and a company in the United States service generally amounts to about forty or fifty men. He says that there ought to be a mail to Globe. Look on your map and you will not find Globe there. He was speaking of the other route I told you about, that ran over the same ground from Tres Alamos to Camp Grant, and then cut off to the left again and went to the mining camp called Globe. Over here to the right, where Clifton is, is a range of mountains. Down that range of mountains Indians come, periodically, and go right straight through into Mexico, as they are doing at this very day. Mr. Steele, who was brought here and examined, never saw a man who had come from Clifton. There never was a man who had come from Clifton that was down on his end of the route, because it was as much as a man's life was worth to go up beyond Safford. That is the statement that was made upon the stand. This railway mail officer was telling Brady how to arrange the other route, that was practicable and was safe; but that had nothing to do with this route. The letter was put into the jacket on which this order was made, and it was made by Brady the basis of his increase in ordering the four additional trips. He ought to have known, and he could have known, because there are no better maps in the country than the maps of the Post-Office Department, that Eaton was not talking about this route from Tres Alamos to Clifton. Clifton was a Mexican mining camp, away over to the right, as I have described. There were a number of petitions inserted in that jacket from people residing in Clifton. I think it is stated that one petition was signed with one hundred names in one instance, and probably the same number in other instances; but at all events, as Mr. Steele testified, and as the records will show, between Wilcox and Grant there was only one family, and after leaving Grant there was not a soul until Safford was reached, and after reaching Safford they went on to Camp Thomas with a buck-board. The best way to find out the value of the route is to ascertain what amount of mail matter is carried over it. What did the Government receive? If Clifton was a rising mining district, into which people were pouring by thousands, certainly those people would want to write some letters to their friends, and would want to receive letters; and as Clifton was on the other side of the mountain, it is a question whether they did not get their mail by another route. [Exhibiting map.] Here is a red line drawn across from Clifton, which shows that there was one trip a week from that point somewhere. I turn to the statement of the revenues on page 2759, and I find that the Government received from Clifton \$76.05. That was the gross amount of revenue. The net revenue from Clifton was \$50.82. I judge Clifton by the amount of the revenue that was received. If the amount was only \$76.05 gross, and after taking off the expenses the net amount was only \$50.82, I would not think it was a very great place. We could not get anybody who had been there, and I do not know that it would be safe for anybody to try to go there.

On that route Vaile drew the pay, Stephen W. Dorsey drew the pay, and finally Bosler took all the warrants. The original pay was \$1,568, and it was increased up to \$27,913.59. We have no means of showing you how much they paid the subcontractors, for there was no subcontract on file. We see by the papers that there must have been a subcontractor, but we do not know the amount that the subcontractor received. We do know that this route was jumped from \$1,568 to \$27,913.59. Mr. Brady has told you in his testimony: "I did not regard the revenues. The Tres Alamos and Clifton route was rather a small affair." I will give you the total and entire revenue on this route. The entire revenue, in 1879, of every office on the route was \$403.42. I have not taken off the intermediate places, because that is not worth while. In 1880 the entire revenue was \$513.41. In 1881 the entire revenue was \$789.12, including Wilcox, Camp Grant, Camp Thomas, Safford, Clifton, and every office upon the route. And yet, for receiving that amount of money into the Treasury of the United States Brady brought the allowance up to \$27,913.59.

I call your attention to the overt acts that are alleged in the indictment. Here is the oath. [Exhibiting it.] It is marked on the back May 8, 1879. It was used in the jacket on which Brady made his order on the 3d of June. There it is [exhibiting it], accompanying the affidavit. In that jacket were the petitions that I have shown to you. One was written by Stephen W. Dorsey. Rerdell saw him write it. One was written by Mr. Sibbald, and the other was written by James W. Donnelly. These were the papers upon which Brady based that order reducing the time and increasing the trips; and subsequently upon the letter that I have read to you, coming from Mr. Eaton, a railway-mail inspector, calling his attention to the fact that there ought to be mail service out the other way to Globe, he made the other increase of January 4, 1881. There it is, Mr. Foreman, and the correct date is mentioned in the indictment. [Exhibiting order.] I only want to satisfy you that there is no mistake about the dates, although, as I told you, the date does not make any difference, providing the act was done after the 20th of May, 1879.

38140, TRINIDAD TO MADISON, COLORADO.

[Maps distributed.] This route originally ran straight across from Barela to Trinidad. Afterwards it was altered, and went around so as to embrace Raton.

This was another route taken by Dorsey in the division. It was 45 miles long, there was one trip a week, and the time was thirteen hours. John R. Miner was the contractor, and the pay was \$338. The official orders are:

June 6, 1878, order to embrace Raton.

September 18, 1878, letter from Postmaster De Busk.

November 13, 1878, order by French.

April 21, 1879, letter of Chaffee.

April 22, 1879, order for increase of service.

April 26, 1879, oath of John W. Dorsey.

April 28, 1879, letter of J. W. Dorsey.

May 5, 1879, letter to change address.

May 9, 1879, order for expedition.

May 10, 1879, letter with additional petitions.

November 11, 1879, subcontract of S. W. Dorsey filed.

December 6, 1880, S. W. Dorsey withdrew his subcontract.

Now, to go back again and take the papers. On the 6th of June, 1878, Brady ordered Raton embraced on the route without increase of distance or pay. That is 3 E, found on page 1028. On the 18th of September, 1878, Postmaster DeBusk wrote a letter to Brady about having a supply from the railroad. It is on 2 E, on page 1027:

RATON, LAS ANIMAS COUNTY, COLORADO.

September 18, 1878.

To the POSTMASTER-GENERAL:

DEAR SIR: A post-office was established at this place in March last and I was appointed postmaster. This office was established to accommodate the lowermost section of a rich valley thirty-five miles in length, extending eastward from the town of Trinidad, but no mail service has yet been ordered.

The community to be accommodated has for two years past received their mail from Trinidad, twenty-two miles distant, in a private sack at great inconvenience.

The people here (cattle men mostly) have business transactions to the extent of certainly not less than \$50,000 annually. They have one school and church building, costing \$2,000; one high school, fifty-one pupils enrolled; one resident clergyman; well improved farms, with Government title, etc.

The newly finished branch of the Atchison, Topeka and Santa Fé Railroad passes within ten miles of Raton post-office. Pulaski post-office is twelve miles distant from Raton, was directly on this line of railroad.

The object of this communication is to petition for mail service twice a week, if not from any central point to Raton, at least from Pulaski post-office, on the Atchison, Topeka and Santa Fé Railroad, to Raton, a distance of twelve miles.

Very respectfully,

S. W. DEBUSK.

Postmaster.

CENTRAL CITY, COLO, September 23, 1878.

Respectfully requested that prayer of this petition be granted and the service increased as asked for.

H. M. TELLER.

You see the petition asked to have Raton connected with Pulaski on the railroad. Brady made an order to embrace Raton on this route without increase of distance and without increase of pay. On the 13th of November, 1878, French made an order. It is 10 E, found on page 1031:

Modify order of June 6, 1878, number 4215 so as to increase distance twenty-three miles, and contractor's pay \$172.75 per annum, being pro rata.

This was French's order allowing them pay, after Raton had been put on the route without pay. The next in order is a letter on the 21st of April, 1879, from J. B. Chaffee. It is 8 E, on page 1031. Gentlemen, it seems to me we will never get done with letters from Mr. Chaffee. I showed you one he sent from New York that was marked at the head "April 23," and was filed in the Post Office Department April 22, a day before it was written. I have shown you other letters from J. B. Chaffee. Here comes still another one on this route. This letter was written by John A. Sibbald, the man whose name I mentioned in connection with the other routes, who was writing petitions.

The COURT. The letter is in the handwriting of Sibbald.

Mr. KER. Sibbald. We do not say Mr. Chaffee did not sign it, because we do not know; but we do know that it was written by Sibbald, and that is the third or fourth letter from Chaffee that has appeared in the case. They are all about the same date, the 21st, 22d, and 23d of April. On April 22, 1879, Brady ordered:

Increase service two trips from May 1, 1879, and allow contractor \$1,021.50 per annum additional.

You see Mr. Chaffee's letter was of some use. It brought two addi-

tional trips. That made the total number of trips three. On the 26th of April, 1879, the oath of John W. Dorsey was made. It is 6 E, found on page 1029. [Exhibiting it.] Miner was the contractor, and John W. Dorsey signed the oath as subcontractor. I want to recall to your attention the fact that Rerdell at that time was out in Denver, Colorado. I think there can be no mistake about that, because I have shown you that he wrote letters that Governor Pitkin signed on the 28th of April. Kellogg wrote the body of that oath. Rerdell wrote in the word "twelve" after it was filed in the Post-Office Department. I will read you what he says on page 2336:

Q. I hand you 6 E, and ask you in whose handwriting that is. That is an oath?—
A. Yes, sir. The body of this was written by W. F. Kellogg. The signature of it is that of John W. Dorsey. The figures "38140," the word "three," the words "one," "four," "three," "three," "eleven," and the word "subcontractor," were written by S. W. Dorsey. The word "twelve" was written by myself.

Q. Were those things written in by Dorsey written before or after the signature of John W. Dorsey, do you know?—A. No, sir; I can't testify to that. The word "twelve" that I wrote in was written afterwards, and after it was filed in the Post-Office Department.

Q. After it was filed in the Post-Office Department—how came that?—A. The schedule that was contemplated was a longer schedule than twelve hours, and they were told that they had to bring it down to twelve hours.

Mr. INGERSOLL. I object to that.

Q. Who told you that?—A. Mr. Turner.

Q. You were told that at the Post-Office Department; what then was done?—A. He handed me this and I erased. I think, the word "fifteen" and put in "twelve."

Q. Where was that done?—A. That was done in room 22, Post-Office Department.

Q. Is there more than one room 22 in the Post-Office Department?—A. I forget what floor it is on, but it is on the same floor where the contract offices are generally located; it is the second story above the street, I believe.

S. W. Dorsey testified in regard to this, on page 3944:

Q. Trinidad to Madison. I had that affidavit, had I not?—A. No.

Mr. MERRICK. There is one of these routes upon which he was subcontractor or contractor; I have forgotten which.

The WITNESS. That is the one which you have just had. There was a subcontract in his name, but it was not filed.

Q. There was a subcontract in his name, but it was not filed?—A. I think so.

Q. You say that subcontract was not on file?—A. I think not, though I don't know.

Q. Did you not have a subcontract on that route yourself?—A. Perhaps I did.

Q. Who was the contractor?—A. I think Mr. Miner was. It was a matter of great surprise to me when these proceedings began—in fact, I never did understand it—to find an affidavit signed by John W. Dorsey. I think, upon inquiry, Rerdell told me that he was subcontractor.

Q. You got the benefit of the affidavit, did you not?

The WITNESS. What benefit?

Mr. MERRICK. The benefit of the increase that was allowed on it—expedition?—A. I got my part of it, I suppose, if there was any benefit.

John W. Dorsey says in speaking of this, on page 4142:

Q. Let me show you another paper. [Submitting 6 E.] I want to refresh your recollection about these things. Did you sign that?—A. Yes, sir; that is my signature.

Q. This is an affidavit, as follows:

Then the affidavit was read.

What interest had you in that route at that time?—A. I don't know, sir, that I had any. I know I did not have any.

Q. Were you subcontractor?—A. That I don't know.

Q. And did not know then, did you?—A. No, sir.

Q. Did not you yourself transmit that affidavit to the Post-Office Department?—

A. No, sir; I never transmitted one there, and never corresponded with the department nor wrote them a line in my life.

Q. Is that affidavit true in reference to the number of men required at the time to perform the service on existing schedule?—A. I believed it was so, or I would not have sworn to it.

Q. What ground had you for your belief?—A. I don't know as I can state the ground. I believed it was correct. I had no object in swearing any different from the truth, so far as I knew or believed it to be true.

Q. Had you any object in swearing that that was true about which you did not know anything at all?—A. If I had confidence in another man I would accept his statement.

Q. Who was the other man?—A. Mr. Rerdell.

Q. You accepted his statement?—A. I accepted his judgment in the matter. If I made a mistake it was my fault, that is all.

Q. Look at the signature to the paper now handed you (5 E), and state whether Rerdell told you to swear to that?—A. I presume he asked me to.

Q. What is your recollection about it? I do not ask your presumptions.—A. That is my recollection, that he sent them all to me.

Q. Sent them all to you?—A. Yes, all that I swore to up in Vermont and those here, I think. I have no recollection of anybody else, unless my recollection could be refreshed.

Q. Did you not send affidavits in blank as he asked you?—A. I don't think I did.

Q. Have you any recollection about it?—A. He told me last summer I did not.

Mr. MERRICK. I am not asking about that. You have been told not to speak of what he told you.

The WITNESS. I beg pardon

Mr. MERRICK. I move that that answer be struck out.

The COURT. Yes, it is improper, of course. But still, if the witness's own recollection has been revived by any circumstance, then he may swear now what the fact was.

Mr. MERRICK. Unquestionably he can state the fact from his revived recollection, but not the circumstance that revived it.

Mr. INGERSOLL. If the court please, I do not see why he would not have the right to state what was told him about this business during the last trial.

The COURT. He may state that in consequence of a conversation he had with somebody his recollection was revived, and may swear to the fact now. But he has no right to say what the other party told him.

Mr. DAVIDGE. Independent evidence.

Q. Have you any recollection at all about that paper.

The WITNESS. What one?

Mr. MERRICK. The one I just handed you, marked, I think, 6 E, and I will hand it to you again. I do not want your recollection of what somebody may have told you, but your own recollection of that paper?—A. No, sir; I cannot say that I have.

By the COURT:

Q. You say you have no recollection?—A. I have no recollection of any particular case. I never expected my attention to be called to it again, and after I signed them I supposed that was the last of it.

By Mr. MERRICK:

Q. Do you swear that you signed that at Rerdell's request?—A. I don't say that. Let me look at it again. [The paper was handed to the witness again.]

Mr. MERRICK. That was signed before Kellogg.

The WITNESS. I would not say in regard to that.

Q. Can you say that you swore to it of your own knowledge?—A. No, I don't know that; I won't say that.

Q. Did you have any knowledge?—A. As I said before, I do not claim to have any particular knowledge in regard to it.

Q. Did you swear to it at the request of S. W. Dorsey?—A. I don't remember that he ever asked me to swear to it.

Q. At whose request did you swear to it?—A. Well, sir, I could not say.

Q. Were you swearing at the suggestion of various people?—A. Mr. Rerdell is the only man I recollect of having anything to do with that. He had the whole control and management of the business here, and I did not suppose he would ask me to do anything but what was right.

Q. No matter about your suppositions. Where was Rerdell in April, 1879?—A. I don't know, sir.

Q. You were here, were you not, in April, 1879?—A. I think so. I suppose he was here.

Q. Were you here?—A. I was here part of the time, and I don't know but I was all the time. I can't tell now about it anyway. I went home and back and home again, and I can't tell, just the dates, anything about it.

Q. What were you doing passing back and forward between here and your home?—A. I was waiting to have this thing closed up.

Q. Was it not closed up before the 26th of April?—A. Yes; and I came back here and expected to go West and see about some routes, but finally did not go as I expected, as it was not closed up, and went home again.

Q. You had got out of business, had you not?—A. Yes; but they wanted me to go out and sublet some routes that were going to be put back on their hands the 1st of July.

Q. Who did?—A. My brother.

On the 28th of April, 1879, there was a letter from J. W. Dorsey transmitting the oath. It is found on page 1029, 5 E:

WASHINGTON, April 28, 1879.

Hon. T. J. BRADY,

Second Assistant Postmaster-General:

SIR: I have the honor to submit my proposition to carry the mails upon a faster schedule from Trinidad to Madison. The roads over this route, like most mountain roads, are very rough and the mails heavy. There is a very heavy mail passing over this route, and I believe it ought to be made daily.

Yours, truly,

JOHN W. DORSEY.

[5 E was handed to the jury.]

In this it says:

I believe it ought to be made daily. Yours, truly, John W. Dorsey.

Stephen W. Dorsey signed that letter and Stephen W. Dorsey wrote that letter.

On page 2336:

Q. I hand you 5 E, relating to the route from Trinidad to Madison.

Mr. MERRICK. Whose testimony is that?

Mr. KER. This is the testimony of Rerdell:

Q. I hand you 5 E, relating to the route from Trinidad to Madison.—A. All of this, including the signature of John W. Dorsey, was written by S. W. Dorsey.

Q. When you say it was written by S. W. Dorsey, do you speak from your knowledge of his handwriting or from your knowledge of the fact?—A. It is from my particular knowledge of his handwriting and the circumstances connected with it.

Q. When you spoke just now of the signature of Peck to the proposal being written by S. W. Dorsey, did you state it from your knowledge of his handwriting or from any other fact?—A. From my knowledge of his handwriting and from the manner in which he signed Peck's name in my presence.

Mr. Boone also testified in the same connection.

The COURT. Mr. Ker, was S. W. Dorsey's attention called to that?

Mr. KER. No, sir.

Mr. MERRICK. I did not call his attention to it myself, your honor recollects, because——

Mr. KER. [Interposing.] Was his attention called to this writing?

The COURT. Yes.

Mr. KER. No; his attention was not called to it. I understood that the agreement of counsel was that where Mr. Dorsey denied nothing we were not to waste time to interrogate him.

The COURT. Of course it was the duty of the other side.

Mr. MERRICK. Certainly.

Mr. WILSON. I did not understand, your honor.

The COURT. I say that if the testimony of Rerdell in regard to this paper was to be contradicted it devolved on the other side to do so. I simply wanted to know whether they had called his attention to it.

Mr. MERRICK. No, sir; he was not asked about that at all.

Mr. KER. On the 5th of May, 1879, there was a general letter from Miner to address communications to care of Rerdell, box 706.

On the 9th of May, 1879, Brady made an order (4 E, page 1028):

From May 9, 1879, reduce running time from 19 $\frac{3}{4}$ hours to 12 hours, and allow contractor \$2,758.05 per annum additional pay.

The explanation of reducing it from nineteen and three-quarter hours to twelve hours is this: You know it had started at thirteen. Then Raton was placed upon the route, without increase of distance or pay. Then French made an order to increase the distance and increase the pay. Then there was a schedule changing the time, and they allowed nineteen and three-quarter hours to carry the mail. Along comes this order from Brady to reduce it from nineteen and three-quarters down to twelve, so that practically it was brought one hour below what it started at. Brady testified in regard to this, at page 3416:

Q. Having made that order putting Raton upon that route and increasing it twenty-three miles, when the paper upon which it was made showed that it could be connected with another route more conveniently by an increase of only ten or twelve miles, though that order was made by Mr. French in the following May, how did it happen that by order 4 E you granted expedition over that extended route instead of detaching Raton from the Trinidad and Madison route, and placing it upon the route where Senator Teller asked that it should go?—A. It seems that Senator Chaffee and Mr. Belford asked for this.

Q. They asked expedition; but how did it happen that you left Raton upon that route, when it appeared affirmatively that the original idea was wrong that no increased pay or distance would be made thereby, but that twenty-three miles of increase was made, and you made an expedition which gave increased pay over that twenty-three miles also?—A. In all probability Raton got a better supply this way than it would have got by what was asked by the postmaster.

Q. Do you know that as a fact?—A. I presume that to be the fact.

Q. Do you not believe that when the postmaster asked for service in a particular way he knew how they would get it the best?—A. I do not know that he would; he ought to.

On the next page, 3417:

Q. You do not remember much about it?—A. No.

Q. Upon that route from Trinidad to Madison, six trips a week could, under the contract, have been given at \$2,068; you made it three trips, and reduced the time from nineteen hours to twelve hours, at an expense of \$4,290, thereby paying \$2,222 more than would have been necessary for six trips a week?

Mr. INGERSOLL. I object to that kind of a question unless the witness has time to make a calculation.

Mr. BLISS. I have no objection to his having all the time he wants.

Q. Can you give any reason for that?—A. To make it fast instead of frequent trips. The same reason would obtain with all these. Very frequently it would be much better to make a fast service than a frequent service, and it seems to have been asked by Belford and Chaffee that it should be made fast.

Q. Before you put Raton upon that route and extended the time, the time was only thirteen hours; then you put on Raton and extended the time to nineteen hours—

The WITNESS. [Interposing.] What has that got to do with it?

Mr. BLISS. Wait a minute until I finish my question.

Q. [Continuing.]—and then made a service to reduce the time to twelve hours?

The WITNESS. Had not the distance been increased twenty-three miles?

Q. Why did you not transfer Raton to the route that the postmaster and Senator Teller asked, and then leave the route as a thirteen-hour route without expedition, and save this \$4,200?

Then there was some objection made by Mr. Ingersoll and Mr. Wilson, who came to Brady's assistance in the matter.

Mr. WILSON. Leave that out and read on.

Mr. KER. The question was asked over again:

Q. Why did you not transfer Raton to the route that the postmaster and Senator Teller asked, and then leave the route as a thirteen-hour route without expedition, and save this \$4,200?

A. As I said at the outset, I remember very little about this matter. The probability is that Raton having been added, the twenty-three miles were there, and the expedition was asked for afterwards, and urged, it would appear, with considerable persistence, and it was granted—granted for the reasons stated in the petitions, and upon the recommendations of Senator Chaffee and Mr. Belford. The original reasons for putting Raton on the route, instead of doing as the postmaster suggested, I do not know, unless it was to give direct communication with the county seat. After it was

once on a route increased twenty-three miles, if they wanted faster time, the fact that Raton had been put on would not militate against reducing the time again.

Q. If you had taken Raton off you would have left the time a fast time without paying \$4,000 for doing it?—A. Yes; but it seems we did not take Raton off.

Q. You did not do that. Do you know why?—A. I do not. Probably that way of doing it never suggested itself to us.

Mr. BLISS. I think it very probable, because it was a way of saving money.

Then, on page 3433:

Q. On this route from Trinidad to Madison, so far as you know, you made the order which you had in your hand just now, upon the affidavit of a person whom you did not know was even a subcontractor, did you?—A. I did not say that. I say that the jacket there appears to be regular, and there is a statement on the jacket that John W. Dorsey was the subcontractor.

Q. And you accepted that?—A. Certainly. It was made by Turner, and Turner was a very careful corresponding clerk, and I would accept any statement he would make on a jacket.

It seems that he did.

On the 10th of May, 1879, Miner sent a letter to Brady with additional petitions for increase. That is 63 E, defense, and is found at page 3251. One of these was dated May 5, 1879. I will read 63 E to you:

WASHINGTON, D. C., *May 10th, 1879.*

Hon. THOS. J. BRADY,
2d Ass't P. M. Gen'l:

SIR: I have the honor to transmit herewith additional petition asking for increase of service on route 38140, from Trinidad to Madison, Col., and to request that it be placed on file.

Respectfully,

JNO. R. MINER.

In that was 65 E, page 3251:

TRINIDAD, COLO., *May 5th, 1879.*

Hon. T. J. BRADY,
2d Asst. P. M. General, Washington, D. C.:

DEAR SIR: I have this day forwarded a pition to you throug Hon. S. W. Dorsey for an increase of mail service between Trinidad, Colorado, and Madison, N. M. For one hundred miles SE. of Madison, the people have to goe to that point for their mail, and when it onely arrives once a week it inconveniences the settlers very much. The country along the line is settling up very fast and the public demand it.

I suppose you ar bothered so much with patitions that it takes a grate deal of your time.

I hope you will consider this one and favor us as we ar an isolated people and can onely appeal to you for assistance. With the wishes of mny for your prompt action in the matter,

I remain, respectfully,

W. G. RIFENBURG.

You see his petition was to come through S. W. Dorsey. You remember that Brady, in his testimony, in speaking about the reason why he reduced the time upon this route, spoke about the strong recommendation that Mr. Chaffee had given, and I called your attention to the fact that the "strong recommendation" of Mr. Chaffee was one of a series that had been prepared by Mr. Sibbald. Now, along comes a letter, through the mediuin of S. W. Dorsey, dated the 10th of May. Miner wrote that letter and signed it.

On the 11th of November, 1879, a subcontract of S. W. Dorsey was filed, dated April 1, 1879. Rerdell signed as a witness.

Then, on the 6th of December, 1880, S. W. Dorsey withdrew his subcontract.

On the 8th of February, 1881, there was a letter from Miner to Burgner, with his pay, and on the 30th of July, 1881, Miner sent another

letter to Burgner with his pay. These letters not having been denied by Miner when he was on the stand, he not having taken the trouble to state whether they were or not his letters, and as his name is attached to them, I suppose there can be no difficulty in assuming that they are his. If a man is charged with a matter, and does not take the trouble to deny it, we can certainly assume it. Gentlemen, here is the letter of John R. Miner, dated in 1881, although, as he says, the route was taken by Dorsey.

Vaile drew the pay, Stephen W. Dorsey drew the pay, and J. W. Bosler drew the pay. Miner signed the drafts. He says he signed them previous to May 5, 1879, but they answered all the way through the contract term.

Now, I want to call your attention to some of the testimony in the case, and to our claim about Raton. We claim that putting Raton on this route was illegal, because the law says that there can be no office added to a route costing a greater sum than two-thirds of the salary of the postmaster. The pay of the postmaster was \$12 a year. DeBusk testified that when expedition was ordered he made no close connection with any mail at the terminal points. When Raton was added the time was thirteen hours; then the time was brought up to nineteen and three-quarter hours, adding on Raton. You will remember that the request was not to put Raton on this route, but to give it connection with the railroad. The pay for adding Raton was first \$172.75 a year, which was considerably over what the postmaster received; then the schedule was reduced to twelve hours, and the pay for the reduction was \$2,758.05, which, added to the \$172.75, makes \$2,930.80. Gentlemen, the cost of carrying the mail to Raton was to the Government exactly \$2,930.80.

The pay on this route originally was only \$338; it was increased to \$4,290.30. The subcontractor received \$1,550. And that left Vaile, Dorsey, Miner, and those who were in this conspiracy, the sum of \$2,740.30 clear profit. And Mr. Brady said, as I have read to you: "I do not think I considered the amount of mail, the productiveness, or the revenue, to any extent." Let us see what the entire amount was.

Trinidad was on the railroad. In 1879 the entire receipts, including Trinidad, were \$3,718.18; throwing off Trinidad, which was on the railroad, the entire receipts were \$168.09. That was in 1879.

In 1880, throwing off Trinidad, the entire receipts were \$120.66.

In 1881, throwing off Trinidad, the entire receipts were \$137.35.

Gentlemen, the letters stated "the country is rapidly settling up." I will show you, on the theory I offered to you the other day, that the "settling" portions were only a drain upon the others. In 1879 the receipts were \$168.09. In 1880 the receipts were \$120.66. There was a falling off. And in 1881 the receipts were \$137.35. That is less than they were in 1879.

46132, JULIAN TO COLTON, CALIFORNIA.

[Maps handed to the jury.]

This was one of the routes that Vaile and Miner took in the division. It was one hundred and twenty-one miles long; there was one trip a week, and the time was fifty-four hours. John M. Peck was the contractor, and the pay was \$1,188. Miner wrote the proposal; John W. Dorsey wrote "District of Columbia;" Rerdell filled in the amounts; and Stephen W. Dorsey signed Peck's name to it. A good beginning. The official orders are:

October 1, 1878, letter from Brady to Hayes.

November 2, 1878, letter to withdraw subcontract.

December 12, 1878, Auditor notified of Hayes's withdrawal.

December 30, 1878, date of Peck's oath.

December 30, 1878, letter of Peck with proposal.

April 11, 1879, oath and proposal filed.

May 24, 1879, Vaile filed his subcontract.

June 24, 1879, Brady ordered increase and expedition.

To go back and take the testimony upon the route:

On the 18th of May, 1879, there was a subcontract made with J. Chauncey Hayes.

On the 9th of July, 1878, there was a letter from Miner, Peck & Co. to Hayes. That is 20 P, and is found at page 1822.

The COURT. Have you a copy of the advertisement for proposals?

Mr. MERRICK. There was one here this morning.

Mr. WILSON. There are two in evidence.

Mr. KER. [Reading:]

[Miner, Peck & Co., mail contractors. John R. Miner, John M. Peck, John W. Dorsey. Branch office, Washington, D. C. Care lock-box 714.]

DENVER, COLO., July 9, 1878.

J. CHAUNCEY HAYES, Esq.,
San Luis Rey, Cal.:

DEAR SIR: Yours 29th ultimo received. We replied to former letter with regard to change of contract immediately upon its receipt. We wish to do all that is fair and just. Had we been asked to consent to the change in the contract when sent to us we should have declined, as we had offers for Descanso route at loss of only \$12 per annum, while you ask us to lose \$45 per annum.

With regard to increase of 40132, our contract specifies rate of pay. In case of increase we do not care to go on making new bargains for four years, and are surprised that you as a business man should ask it.

Truly, yours,

MINER, PECK & CO.

John R. Miner wrote that letter.

On the 3d of August, 1878, there was another letter from Miner, Peck & Co. (21 P, page 1822):

[Miner, Peck & Co., mail contractors. John R. Miner, John M. Peck, John W. Dorsey.]

WASHINGTON, August 3, 1878.

J. CHAUNCEY HAYES, Esq.,
San Luis Rey, Cal.:

DEAR SIR: Yours 23d received. Increases can only be obtained by our joint efforts. They are based upon petitions from the citizens along the route, but it requires active work here to consummate them; therefore, according to the terms of the contract, the benefits are to be shared.

We are willing to increase your compensation \$12 per year, which is just what it would have cost us had your error been made known to us in time. This is really more than could be claimed, as the change made in your copy of the contract was without our knowledge or consent.

As we shall keep an office in this city no delay will occur by corresponding through us, and as you are not known on the records of the department it is necessary to so correspond.

Truly, yours,

MINER, PECK & CO.

That is signed by John R. Miner, and this was Peck's route. And he says:

Increases can only be obtained by our joint efforts.

Miner testified in regard to that, on page 4274 :

Q. Look at 21 P, and tell me if that is in your handwriting ?—A. It is.

Mr. HENKLE. What is it ?

Mr. MERRICK. It is a letter addressed to Hayes, bearing date August 3, 1878.

The WITNESS. I don't think it is 1878.

Mr. MERRICK. 1878.

The WITNESS. Possibly.

Q. What do you mean in this letter to Hayes by saying :

"Increases can only be obtained by our joint effort. They are based upon petitions from citizens along the route, but it requires active work here to consummate them."

What do you mean by "active work here?"—A. I mean what I said.

Q. You mean active work, and that is all you have to explain?—A. That is all.

On September 9, 1878, there is a letter written by Scipio Craig (48 P, defense, page 3300). I am exceedingly obliged to my friends for putting that in. We could not have done it. It was their defense, and, as I wish to be entirely fair in the matter, I am giving you both sides.

COLTON, SAN BERNARDINO COUNTY, CAL., Sept. 9, 1878.

Gen. T. J. BRADY,

2d Asst. P. M. Gen'l, Washington :

Inclosed find blank sent me in reference to proposed change of schedule on route 46132, which has been properly filled up and signed.

I also send you petitions for an increase of service from *one* to *three* times a week, and strongly and conscientiously recommend it. There are between 1,500 and 2,000 people who will be benefited by the change.

Please give the matter as early a hearing as possible.

Respectfully,

SCIPIO CRAIG, P. M.

You know that Scipio Craig was a friend of Hayes, and had also been a schoolmate with Brady.

On the 19th of September, 1878, there is another letter of Miner, Peck & Co. (22 P, page 1822) :

WASHINGTON, D. C., September 19, 1878.

J. C. HAYES, Esq.,

San Luis Rey, Cal. :

DEAR SIR: Yours 1st and 4th received. Increased speed is very seldom ordered, and never without special labor here and considerable expense. Your ideas as to how things are managed are very erroneous. You seem to fancy that everything is done on the route and nothing here, which is quite a mistake.

No change in distance affects pay unless by the establishment of a new office or the removal of the site of an office, increasing the distance, in which case certificates of the increase in distance should be made by postmasters each side of new office, or by postmaster where site is changed. The only office established since contract was made is Powell's Store, next after Julian. No office has been discontinued.

Truly, yours,

MINER, PECK & CO.

This was also written by John R. Miner, and his testimony in regard to it is found on page 4274 :

Q. Look at 22 P, and tell me if that is in your handwriting.—A. That is in my writing.

Q. What do you mean in this letter, which is a letter to Hayes of the 19th of September, 1878, by these words :

"Increased speed is very seldom ordered, and never without special labor here and considerable expense."

A. I meant precisely what I said.

Q. "Never ordered without considerable expense here?"—A. I meant precisely what the letter said.

Q. Precisely what it said?—A. Yes, sir. If you want to know the circumstances under which that letter was written I can tell you.

Q. You can make any explanation you want. I want to know what you meant by

saying "considerable expense?"—A. I can explain the whole matter. Mr. Hayes had a postmaster out there by the name of Scipio Craig, who was a schoolmate of "Tom Brady," as he called him, and he thought that anything he asked, whether reasonable or not, could be done.

Q. And you wanted to satisfy him that it could not?—A. I wanted to satisfy him that it required the indorsements of his members of Congress from California, and there is another letter in the case that so states.

Q. Is that your only explanation?—A. That is all.

Q. What did you mean by considerable expense?—A. I was at the expense of living here.

Q. You meant that?—A. I did.

Q. Then if you were at the expense of living here, and you meant that only, why did you refer to the expense in connection with increased speed, and say that increased speed required special labor here and considerable expense?—A. Because his letter that that was a reply to related only to increased speed.

Q. That is your explanation, is it?—A. That is my explanation, sir.

Q. That is your explanation of why you told him that increased speed required considerable expense here?—A. Yes, sir; and furthermore, Mr. Hayes was of the opinion that if any expedition was ordered on that route he ought to have it all, and I was trying to make a good trade with him.

Q. You wanted to make him believe you were at heavy expense in order to appreciate your services and to depreciate his?—A. I did, sir.

Q. That is, you wanted to deceive him, did you?—A. It would so appear.

Q. Is it a fact?—A. I think it is.

Q. Then when you said that it required expense here you told him a lie, did you?—A. Well, sir, I was not under oath when I wrote that letter.

Q. You will lie when you are not under oath, will you?—A. I have not said that I would.

Q. You have said that you told that lie and that you were not under oath.—A. I generally make the best trade I can.

Q. When you are under oath as well as when you are not, don't you?—A. No, sir; I think there are a good many other people that make the best trades they can also.

Then, on the 1st of October, 1878, there was a letter from Brady to Hayes telling him that his subcontract was put on file. Brady wrote to the friend of his old schoolmate telling him that his subcontract had been put on file. As it is rather a formal letter, it is not worth while reading it. He did not want to encourage his old schoolmate, so he wrote a very formal and stiff letter.

October 9, 1878, there was a letter from Miner, Peck & Co. to Hayes (23 P, page 1823):

"WASHINGTON, October 9, 1878.

J. CHAUNCEY HAYES,
San Luis Rey, Cal.:

DEAR SIR: Yours 29th received, with inclosures.

Your informant is mistaken, or rather you got an incorrect idea from him. An increase of service, that is, from weekly to tri-weekly, increases contractor's pay pro rata. An expedition of service, that is, making the schedule time two days instead of three, is paid for in proportion to the increased number of men and animals employed. Expedition is not ordered except on important routes. Shall be pleased to answer all the questions you care to ask.

Truly, yours,

MINER, PECK & CO.

That is also in the handwriting of and signed by John R. Miner.

Then, on the 2d of November, 1878, we have 24 P, page 1823:

WASHINGTON, November 2, 1878.

J. C. HAYES,
San Luis Rey, Cal.:

DEAR SIR: Paying direct—

There is a word torn out here—

department makes them extra work and delays settlement. Please sign and return inclosed application, and we can pay you more promptly.

Yours, &c.,

JOHN M. PECK.

This was also written and signed by Miner.

Then, on the 2d of November, 1878, there is a letter from Peck and Hayes to withdraw Hayes's subcontract. Miner signed Peck's name to that letter.

At last Miner had accomplished what he was working for. He got Hayes, who had a subcontract entitling him to receive the pay for expedition, to release that contract, withdraw it from the department, and enter into a new one. You see Miner was anxious at the beginning of the term to get service on, and made a bad bargain with Hayes, but at that time he had done the best he could. He was now only waiting to get Hayes out of the road, so that he could get increase and expedition. When they got Hayes's subcontract off the files, got that subcontract annulled, then they could make a new subcontract with Hayes that would be satisfactory to the coconspirators.

Then, in November, 1878, Vaile steps forward and makes a new subcontract with Hayes, and with his usual shrewdness, it provided for one trip at \$1,069.50; three trips on shorter schedule \$4,455.

On the 11th of November, 1878, there was a letter from Miner to Hayes (25 P, page 1823:)

WASHINGTON, November 11, 187—.

J. CHAUNCEY HAYES, Esq.,
San Luis Rey, Cal.:

DEAR SIR: Yours 26th October—

There is another word torn out here—

received. Petitions have not been acted upon yet. I fear that your friend's influence with Tom Brady, as you call him, is not strong enough, and that strong pressure and influence of California Congressmen and Senators are necessary to get increases. The fact is that all parts of the country are always pressing for more mail service, and few get it.

You have many mistaken ideas. Congress, as a body, has nothing whatever to do with the number of trips on a route. The department alone contract that.

Truly, yours,

JOHN R. MINER,
Secretary.

That is also one of Mr. Miner's letters.

Then, on the 5th of December, 1878, there was another letter, (26 P, page 1823:)

WASHINGTON, D. C., December 5, 1878.

J. CHAUNCEY HAYES,
San Luis Rey, Cal.:

DEAR SIR: Yours 24th received. I inclose a form merely suggestive for petitions on route 46132. You will please enlarge it, stating all the favorable facts you can. Get as many signatures as you can speedily and return to me, then write and have all the influential people you know write to your Representative and Senators (Sargent is quite ill just now), stating the necessity for increase and expedition, and ask them to have it done. Whatever is done this year (fiscal, ending June 30) must be done speedily. 46132 is the best for you and for me. So let us work at that.

Yours, truly,

JOHN R. MINER,
Secretary.

H. M. Vaile has the management of our routes. You can learn his standing from John G. Capron, San Diego.

This letter was written and signed by Miner. They had Hayes's subcontract out of the road, and Miner sent him forms, as he says, "merely suggestive for petitions," and gave him the directions that you have heard read in that letter about stirring up the members of Congress so as to demand an increase upon this route, and he says: "46132 is

the best for you and it is the best for me." I will show you, when I come to the end of it, that it was a considerably good thing for Mr. Miner.

On the 12th of December, 1878, the Auditor was notified of the withdrawal of Hayes's subcontract.

December 30, 1878, is the date of Peck's oath (7 P, page 1813). [7 P was handed to the jury.] It calls for three trips and twenty-six hours. The time was then fifty-four hours. I will ask you to look at the "twenty-six" where that occurs, and hold it up to the light so that you can see where they scratched out and wrote in the "twenty-six." Miner wrote the interlineations in that oath.

December 30, 1878, there was a letter from Peck proposing to carry the mail, one trip, twenty-six hours, for \$1,782 additional, or three trips, thirty-six hours, for \$7,722 additional. (6 P, page 1813.)

Gentlemen, the thirty-six that was originally written in here was scratched out and twenty-six put in. [6 P handed to the jury.] Miner wrote that letter and signed Peck's name to it.

Mr. MERRICK. [To the jury.] You will have to hold that paper up between your eyes and the light in order to see the alterations.

Mr. KER. I ask you to notice them, because I assure you it was not done when that oath and proposal were written, but afterwards, and I will show you the time, right out of Miner's own mouth and under his own hand.

Miner says, on page 4232 :

Q. Here is another affidavit. [Handing 7 P to witness.] This is on the route you spoke of, from Julian to Colton. That was one of the routes that fell to you, was it?—A. It was.

Q. Will you look at that affidavit and tell me in whose handwriting it is?—A. It is in my own, except the signatures.

Q. Whose are the signatures?—A. J. M. Peck and J. S. Taylor

Q. All the rest of it is in your handwriting?—A. All of it.

Q. Was it all written at the same time?—A. There is nothing on the face of the paper to indicate that it was not all written at the same time, so far as I can see.

Q. Do you recollect whether it was all written at the same time?—A. I recollect nothing about it.

Q. You recollect nothing about this affidavit?—A. I do not.

Q. You do not?—A. Nothing except that I find it in my handwriting.

Q. That is all?—A. That is all.

Q. I see that one word is erased. Can you tell me whether that erasure and the word over it—the word that is erased and the word above it—were not written at a different time?—A. They may or may not have been. There is nothing on the paper to indicate.

Q. Do you recollect erasing that word?—A. I do not.

Then, on page 4234 :

Q. You got an affidavit for the purpose of having it increased on the 30th of December, 1878. You wrote the affidavit in your own hand, and by some means or other it came into the possession of Peck, and he swore to it, and by some means or other it came back into your possession?—A. I have not said it came into my possession.

Q. It must have come to you, must it not?—A. Mr. Peck may have sent it direct to the department. I do not remember.

Q. Did it not come back to you or to Vaile?—A. I cannot say that it did. I don't know whether it did or not.

Q. By some means or other it appears in the department, and its effect is exclusively to benefit you five or six thousand dollars, and yet you do not know who sent it to the department?—A. Mr. Peck may have sent it to the department himself.

Q. Do you mean to swear that Peck may have sent it himself?—A. I do mean to swear that Peck may have sent it himself.

Q. Do you believe that he sent it?

The WITNESS. Do I believe that he sent it?

Mr. MERRICK. Yes; do you believe that he sent it? I will ask you that on cross-examination.

A. I do not believe that he sent it.

Q. Why, then, did you say that he might have sent it? Was it to deceive the jury?—A. Because he might have sent it.

Q. By a possibility?—A. He might.

Q. Do you not know that Peck never sent any affidavit to the department?—A. I do not know that he did not.

Q. Do you not know that every affidavit sent to the department on his routes was sent either through you or some other member of your combination?—A. I do not know that.

Q. Do you know of any affidavit that he ever did send?—A. I do not.

Q. Do you not know that his health was broken down at that time?—A. I have no knowledge as to his health, except that he died in 1881, and that I have not any knowledge of, except that I have been so informed.

And on page 4235:

Q. Let me refresh your recollection by the letter.

The letter was then read:

You wrote that letter and signed Peck's name?—A. I did.

Q. Did you write it at Chico Springs?—A. I did not.

Q. What did you head it at Chico Springs for?—A. Because I chose to do so.

Q. That was right. You did pretty much what you chose, did you not?—A. I did whatever I thought was lawful and proper.

Q. Is not that the letter that transmitted the affidavit?—A. I do not know. Is there any reference to the affidavit in the letter?

Q. There is one peculiarity about that letter. Was it all written at the same time?—

A. There is nothing to indicate that it was not.

Q. This letter was filed April 11, the same date as the affidavit. I observe in the letter that there is a word struck out.—A. That often occurs in letters.

Q. It does?—A. Yes, sir.

Q. I am not disposed to question that. That is the way you account for this—that it ordinarily occurs with letters?—A. I said it often occurs.

Q. Let us see if we can go a little further. This letter says:

"Colton to Julian once a week on a reduced schedule of twenty-six hours."

Twenty being written over the thirty which was there originally. The same thing occurs in the affidavit, twenty being written over thirty. It often occurs that you make a mistake in a letter. It seems here that you made a mistake in the affidavit and the letter both at the same time?—A. Yes, sir; they are both dated the same day.

Q. Both dated the same day?—A. Yes, sir.

Q. And you made the same identical mistake in writing each?—A. It so appears.

Q. Don't you think it would be a more reasonable way to account for it to say that you changed the affidavit after it was written, and made the letter conform with the affidavit?—A. That is possible.

Q. Did you write that affidavit at the same time?—A. I do not know.

Q. I want to call your attention to a fact. Will you observe the peculiarity of the ink in which the "thirty" is written, and the peculiarity of the ink in which the "twenty" is written, and tell me if that refreshes your recollection?

Mr. HENKLE. Do you want him to reason about it?

Mr. MERRICK. No; only to refresh his memory.

Mr. HENKLE. Ask him what the fact is.

Mr. MERRICK. I am trying to refresh his recollection, which is failing.

Mr. HENKLE. But you are willing to take his deductions?

Mr. MERRICK. I do not want his deductions. It is bad enough to have the deductions of his counsel.

A. On the affidavit I do not see the difference. On the letter the ink of the "twenty" seems to be a little paler than the other.

Mr. MERRICK. Now, I want to hand that paper to the jury, that they may look, in connection with his testimony, at the ink in which the "thirty" was written, both in the affidavit and the letter, and the ink in which the "twenty" was written. [Submitting paper to the jury.]

Q. Did you not at the time you wrote that affidavit and sent it to Peck send that letter along with it, and did you not have the "thirty" at the same time in both, and did you not alter the "thirty" in both at the same time afterwards when they came back?—A. I have not said I ever sent the affidavit to Peck. I have no recollection that I ever did.

Q. You wrote it?—A. I wrote it.

Q. To whom did you give it?—A. I do not know.

On the 11th of April—both those papers being dated on the 30th of December, 1878—on the 11th of April, 1879, the oath and proposal

were filed. That is the date that is marked on the back. Now, gentlemen, I want to show you how it was that the oath was altered after it was signed. On the 23d of June, 1879, Miner telegraphed to Hayes (29 P, page. 1825):

Start Julian to Colton, three trips, thirty-six hours.

That is the 23d of June, 1879. - There had been no order made for a reduction of time to thirty-six hours when he sent that telegram. He was anticipating it. The order for reduction was made on the 24th of June, the day after. Yet Miner telegraphed to Hayes to start it on thirty-six hours. And I submit to you, gentlemen, that when the order came to be made on the next day, and Miner found that it was to be twenty-six hours, then he sat down and scratched off the thirty-six that was in the oath and in the letter and altered them to twenty-six, because he had sent a telegram to Hayes to start it in thirty-six hours. Miner knew the service was to be granted, and he anticipated it by telegraphing to Hayes the day before the order was made.

On the 24th of June, 1879, Vaile's subcontract was filed. Miner signed as attorney for Peck and Rerdell signed as a witness. Vaile put in his subcontract on that day in order that there should be no dispute about it and that he should be on the record when the order for increase was made.

Mr. MERRICK. When I told the jury to hold that up to the light I thought it was one of the erased affidavits. It seems that the word was struck out by a line and another inserted.

Mr. Ker's time is up, your honor.

The COURT. I have been looking for his peroration.

Mr. MERRICK. The peroration will come day after to-morrow.

The COURT. We will adjourn now.

Thereupon (at 4 o'clock p. m.) the court adjourned until to-morrow morning at 11 o'clock.

THURSDAY, APRIL 26, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. KER. Gentlemen, I was telling you about the telegram on route 46132, from Julian to Colton. The telegram is 29 P, and found on page 1825. The oath says twenty-six hours. The proposal says twenty-six hours and thirty-six hours; the thirty is erased up at the top and twenty written in, so that it reads thirty-six and twenty-six. On the 24th of May, 1879, Vaile filed his subcontract. I have already told you about that. It was put in evidently with the intention of having it there at the time the order was made. Miner signed this contract as attorney for Peck, and Rerdell signed as a witness. Vaile says, in speaking of this matter, on page 4037:

Q. The record shows that your subcontract on the Julian and Colton route was dated April 1, 1878. As you did not go into the business until October, 1878, how did your subcontract happen to be dated back to April 1, 1878?—A. It was antedated. I think all, or nearly, the subcontracts were antedated; that is my impression.

Q. What was the object in antedating them?—A. There were two objects, if I recollect now. One was that, after the subcontract law passed, the department recognized the subcontracts that had been made prior to its passage, but did not permit any to be sublet after the subcontract law passed. Another reason grew out of the

difficulty between Mr. Dorsey and myself. My purpose was to get my subcontracts in advance of any other, so that if controversy came up between mine and any others of equal authority—Mr. Miner's or anybody else's—and mine was prior in date, I thought that would give me a little better chance. Those were probably the two reasons that induced the antedating of those contracts.

Again, on page 4061 :

Q. On the Julian and Colton route did you antedate your subcontract?—A. I do not know what date it is.

Q. You do not know whether it was antedated?—A. I do not know anything now about the date of it.

Mr. HENKLE. Show it to him and he will see.

Q. Were not all your subcontracts antedated?—A. As I have said, I cannot say. They may not all have been.

Q. Is it not your best recollection that all of them were?—A. Most of them were, if not all of them.

Q. What was the object of antedating the subcontract on the Julian and Colton route?—A. The same as on the others. I mentioned it to you, I believe.

On the 24th of June, 1879, Brady made an order. It is 5 P, and found on page 1813 :

First. Increase service two trips per week from July 14, 1879, and allow contractor \$2,376 per annum additional pay, being pro rata.

Second. Reduce running time from fifty-four hours to twenty-six hours, and allow contractor \$5,346 per annum additional pay, being less than pro rata, but in accordance with his written agreement, from July 14, 1879.

Increase pay of subcontractor in like amount.

The amount that they bid was \$7,122. Pro rata would have been \$9,504. There was a difference of \$1,782 between the offer and what would have been received under the oath. Mr. Brady, in speaking about this order on page 3434, says :

Q. Was your attention directed to the affidavit upon the route from Colton to Julian, No. 46132 (being 7 P), to the changes and interlineations in the affidavit?—A. I do not remember that it was. The interlineations would not attract any particular attention; they are very natural interlineations. The interlineations are simply the number of men and animals necessary to convey the mail on route 46132, Colton to Julian, and the interlineations come in in this way: "three times a week on the present schedule" is interlined. That is a very natural interlineation.

Q. And the alteration below is from thirty-six hours to twenty-six hours, is it not?—A. Yes, sir.

Q. It would take more animals and men to run the route in twenty-six hours than in thirty-six?—A. I presume that it was a mere clerical error in writing thirty instead of twenty, and so twenty was put above it.

Q. It would take more men and animals to carry the mail in twenty-six hours than in thirty-six, would it not?—A. I should think so; that would be my theory.

Q. That is, to shorten the time you must increase the number of men and horses?—A. Yes, sir.

Q. Did you examine any of these affidavits with any care as to their appearance?—No; not as to their appearance. They generally came to me through the regular channels, you may say, and I took it for granted that they were correct; that is, as correct as they make them. I was not going to assume that a man was a scoundrel simply because he was a contractor.

Q. But you did assume that his statements were not to be investigated because he was a contractor, did you?—A. No, sir.

Q. Where did you draw the line? You did not investigate his statements?—A. I did not draw the line; there was no line to be drawn.

Q. Did you investigate his statements?—A. I assumed that they were honest men.

Q. And you accepted these statements as conclusive evidence to you?—A. I accepted their statements as conclusive, so far as they knew.

Q. And upon those you made orders?—A. With my own rule besides as a guide.

Again, on page 3436 :

Q. Still, you made the order for thirty-three hours?

Mr. WILSON. That is what he said.

A. Certainly, I made the order for thirty-three hours.

Q. And you made it upon this affidavit?—A. It seems so. You say that is the only one there.

Mr. BLISS. I have shown you all the papers and asked you to look for yourself.

The WITNESS. The affidavit is just as good, even if it was made in January, as if it had been made in June.

Mr. MERPICK. A singular coincidence.

The WITNESS. Very.

Q. Do you remember the route from Julian to Colton?—A. I do.

Q. Did you make an order for increase or expedition upon that route?—A. I think so.

Q. I hand you all the papers in the case and ask you to look at them. Please tell me whether you made an order for expedition there?—A. I did. It was reduced from fifty-four hours to twenty-six.

Q. Your order on jacket marked 5 P is dated June 24, 1879?—A. Upon the recommendation of Mr. Wigginton, member of Congress, and Senator Booth, Senator Farley, and others.

Q. Did Mr. Wigginton, Senator Booth, and Senator Farley recommend twenty-six hours?—A. I do not know.

Q. Please look and see if, in point of fact, every paper now before you does not specify either thirty-six or thirty-eight hours.

By the COURT:

Q. What is the length of that route?—A. One hundred and twenty-one miles. The original schedule time was fifty-four hours, and it was reduced to twenty-six hours.

By Mr. BLISS:

Q. Now, I ask you, do not all the papers there relating to expedition specify either thirty-six or thirty-eight hours?—A. I do not care to read all these papers through to find out that fact. I do not know whether they do or not. The service was expedited from fifty-four to twenty-six hours; that made about five miles an hour.

Q. You stated that Governor Booth and Mr. Farley recommended that increase to be made. Please look at that letter and tell us if that is the letter by which they recommended it?—A. They recommended the increase and expedition. They may not have recommended that it be twenty-six hours, but they recommended that it be faster. You say thirty-six hours. I do not care whether it is thirty-six or twenty-six.

Mr. MERRICK. I do not suppose you do.

The WITNESS. Certainly not. If I was going to expedite at all I would expedite properly, and that would be twenty-six hours.

Q. Have you found any paper which specified twenty-six hours? Have you any such paper before you?—A. I have not.

Q. How did you get at twenty-six hours?—A. I cannot say.

Q. It was not in accordance with the four-miles-per-hour schedule; how was it you got at it?—A. I cannot say as to that.

Q. You do not know?—A. No.

Q. If a schedule of four miles an hour was sufficient upon the other routes, why was it necessary on that route to have five miles an hour?—A. I do not know of any special reasons for it now. There were probably special reasons brought to my attention at the time; what they were I could not say now.

Q. All the papers on file specifying thirty-six and thirty-eight hours, and Mr. Wigginton and Mr. Booth—

Mr. INGERSOLL. [Interposing.] I object to that.

Q. [Continuing.] All the papers on file specifying thirty-six or thirty-eight hours, and the order having been made on the 24th of June, 1879, for twenty-six hours, can you tell me how it happened that John M. Peck, in New Mexico, on the 30th day of December, 1878, knew that you wanted an affidavit which specified the number of men and horses that would be required on a twenty-six-hour schedule?—A. I cannot. That is the affidavit where the interlineations occur.

Q. But you said the interlineations did not amount to much.—A. I do not think they do, so far as that is concerned, because this is a very natural one.

Q. Well, how is it?—A. I say I don't know.

Q. You used that affidavit to make your expedition upon?—A. If that is the affidavit in the case, I presume it is the one upon which it was based.

Q. Upon that you made an order for twenty-six hours, which is the precise time named in the affidavit?—A. Yes; it seems so.

You see by the testimony of Brady, and as I showed you yesterday, the petitions called for thirty-six and thirty-eight hours. You will see that the oath of Peck, that Miner said he wrote and sent down to Chico Springs, dated the 30th day of December, 1878, has twenty-six written in, and you see that this proposal has twenty-six written into it. I told you yesterday that I would show you conclusively by Miner's

own testimony and by the papers in the case that these two papers were altered after the date specified here, the 30th of December, 1878. Remember they both bear the same date, as if they had been written on the same day, the proposal and the oath. I called your attention to the telegram that Miner sent on the 23d of June. The order was made on the 24th. On the 23d of June, the day before the order was made, Miner sent a telegram to the contractor, J. Chauncey Hayes. Gentlemen, there is the telegram [exhibiting it]. It is 29 P. Here is the order, dated the 24th of June, one day after that telegram was sent. [Exhibiting order.] But we have still another piece of evidence that fixes this matter conclusively. Miner wrote to Hayes on the 25th of July, 1879. That letter is 28 P, and is on page 1824. I will read it to you :

WASHINGTON, D. C., *July 25, 1879.*

J. CHAUNCEY HAYES,
San Luis Rey, Cal. :

DEAR SIR: Yours of 14th received. The telegraph got my message mixed, it seems, as it was written twenty-six. We tried hard to have schedule made thirty-six hours as petitioned for, but could not prevail on the department to make it so. We therefore had to accept twenty-six hours. We are willing to pay you four thousand per annum for three-trip service, twenty-six-hour schedule. If not satisfactory we will make some other arrangement.

Respectfully,

JNO. R. MINER.

Gentlemen, does not that explain the whole matter? He puts the blame upon the telegraph, saying the telegraph made it thirty-six instead of twenty six. The petitions called for thirty-six, the oath originally was thirty-six, and the proposal was thirty-six. When he sent that telegram off he no doubt expected that twenty-six hours was the time to which it would be expedited. But after he had gone to the department, and it had been arranged between Brady and himself, or whoever was acting for Brady, that thirty six would look too bald for such an increase, he made it twenty-six hours, and he did not notify Hayes of it until he received Hayes's letter, and then he put the whole blame upon the telegraph, and stated in addition that he tried hard to have it made thirty-six, but that the department would not have it so, and insisted upon twenty-six. As I showed you, he had made a sub-contract with Hayes providing for expedition, and he was obliged to make Hayes an additional offer. He did make him an additional offer. He said :

We are willing to pay you \$4,000 per annum for three-trip service, twenty-six-hour schedule. If not satisfactory we will make some other arrangement.

Burgman, who was a carrier on this route, testified, on page 1817, that "the twenty-six-hour schedule disconnected the mail;" with a twenty-six-hour schedule he made no connection at the point he left and the point at which he arrived. Hayes says, on page 1826, "the schedule was changed, and then we failed to make the connection."

The pay in this case was drawn by Vaile, and Peck signed the orders upon which Vaile drew the pay for the entire term. The oath that was put in on this route says, that on the present schedule it takes four men and five animals, making nine, and that reduced to twenty-six hours it would require nine men and eighteen animals, making twenty-seven. Burgman says he commenced on the 14th of July, 1879, with three trips at twenty-six hours, and it took three men and ten animals, making thirteen, and he had two extra animals, making fifteen. The oath of Peck was twenty-seven. Burgman says it only required fifteen. Hayes says, "On three trips, twenty-six hours, it took four men and

twelve animals," making sixteen, one more than Burgman took. But there is a great difference between sixteen that Hayes took and twenty-seven as stated in that oath. Remember, gentlemen, that Burgman, with fifteen men and horses, and Hayes, with sixteen men and horses, both carried passengers and freight.

The original pay on the route was \$1,188. It was increased to \$8,910. Hayes received for three trips \$4,455, giving the contractors here in Washington a profit of \$4,455. Brady said the general rule for pay was \$25 to \$35, or in the neighborhood of \$30 a mile in that Western country. On this route, instead of paying from \$30 to \$35 a mile, it cost over \$72 a mile.

I will now give you the revenues received from this route, including every office upon the route. In 1879 the amount was \$524.03. In 1880 it was \$399.52. In 1881 it was \$479.75. So you see, gentlemen, that in 1880 the revenues on the entire route fell off from \$524.03 to \$399.52, a very good indication of the wants and needs of the people in that section of country, when the revenue received from the mail fell off so greatly. I am giving you the revenue of every office upon the route. In 1881, when the expedition was the highest, the amount received by the Government was \$479.75, and at that time the Government was paying out \$8,910 to carry the mail.

There are some overt acts on this route. Gentlemen, you have seen the oath. It is marked "Filed April 11, 1879." I want you to see that the date mentioned in the indictment is the same date as that mentioned upon the bottom of the jacket containing the order, June 24, 1879, and across the jacket, in blue pencil, is written, "Do this.—Brady." In that jacket was the petition I have shown you, as were also the letters and the oath. Those papers were used by Brady as the basis for his order.

ROUTE 46247, REDDING TO ALTURAS, CALIFORNIA.

This is another route that was taken by Dorsey. It was one hundred and seventy-nine miles in length; there were two trips a week, and the time was one hundred and eight hours. John M. Peck was the contractor, and the pay was \$5,988. The official orders are:

June 3, 1878, Brady ordered an increase of one trip.

September 18, 1878, Peck's oath was made.

December 3, 1878, offer to carry the mail.

December 3, 1878, oath filed.

December 3, 1878, Brady made an order for increase and expedition.

May 20, 1879, subcontract made with Major & Culverhouse.

April 17, 1880, Postmaster-General reduced the service.

August 26, 1880, service was increased again.

February 11, 1881, service was increased to seven trips.

Now, let us return and take the official papers with the others we have received. On the 1st of May, 1878, Moore made a subcontract with Major & Culverhouse providing for increase of trips. Boone says that that is one of the subcontracts he helped to get up, and that he inserted the clause for expedition by direction of Stephen W. Dorsey. The route was originally let at two trips. On the 3d of June, 1878, Brady made an order, which is 13 G, on page 1236:

Increase service one trip from July 1, 1878, and allow contractor \$2,994 per annum additional.

That brought the service up to three trips. The increase was made upon eleven petitions. Here they are, gentlemen. [Exhibiting them.]

If you will examine these petitions you will find that they are perfect copies, each one of the other. There is not a syllable of difference between them. You know Moore was to get up petitions, and you know Mr. Donnelly was engaged in preparing petitions and getting them ready. Here are eleven petitions put in, and each one is precisely like every other one. This fact was so fully admitted that they were not all read to you. There were only two of them read to you. It was admitted all around that there was no use in wasting time by standing up and reading the same thing to you over and over again, because there would have been ten repetitions of the first one. On the 18th of September, 1878, the same date that has been so often mentioned, there was an oath made by Peck.

The FOREMAN (Mr. Crane). I understood you to say that the names were all the same. You did not mean that, but that the form was the same in each case.

Mr. KER. The wording of the petitions is the same. I did not speak about the names. It was hardly worth while to send way off to the Pacific Ocean, where it is bordered upon by Southern California, to find out whether there were any people with those names there. The map will show you that it was the jumping-off place, right down by the ocean. I think Mr. Greene asked one of the witnesses if the railroad ran around by the sea-shore, and the witness said, "Yes; right along the sea-shore."

Accompanying the oath in this case, dated September 18, 1878, was the proposal, and that, for the first time, bears a different date. Miner wrote that oath. You can see that there are erasures in it. On page 4188 Miner testifies, in his examination-in-chief, in regard to this oath:

Q. What is 9 G?—A. 9 G is the affidavit on the Redding and Alturas route.

Q. In whose handwriting is it?—A. The body is in my handwriting. The signatures are not.

Q. Who signs the affidavit?—A. John M. Peck.

Q. Is that his genuine signature?—A. I believe it is.

Q. Was it filled up before it was signed?—A. I could only say as to that as I did as to the other; I have no recollection of the particular pieces of paper.

Q. Did you fill it up after it was signed?—A. Not so far as I remember.

By the COURT:

Q. Before whom was it proved?—A. Taylor, in New Mexico.

Q. Do you know in whose handwriting the filling up is?—A. The handwriting is all mine.

That is for seventy-two hours. Then the offer, dated December 3, 1878, is for three trips at seventy-two hours, the price being \$26,946. Miner wrote the oath, and Miner signed Peck's name to the proposal. Miner says, on page 4248:

Q. Now, I want you to look at another affidavit. I am trying to refresh your recollection about that.—A. I will try to remember it.

Q. Do, please, will you? Look at 9 G, and tell me whether you ever saw that paper before?—A. I probably did, as it all appears to be in my handwriting except the signature.

Q. Do you recollect anything about it?—A. I do not.

Q. You do not recollect ever having seen it?—A. I do not.

Q. You do not recollect when you wrote it?—A. I do not.

Q. Was it all filled in at the same time?—A. The appearance of it would indicate that a portion of it was written at one time and a portion at another.

Q. Who wrote the portion at one time, and who wrote the portion at another?—

A. I wrote it all except the signature. There is a blank space—that is not certain.

Mr. MERRICK. There is nothing certain.

The WITNESS. There is a blank space before and after the words "eight" and "six," and the "eighteen."

Q. This affidavit (9 G) is as follows:

Then he read the affidavit to the witness.

Did you fill in those numbers?—A. I wrote all that affidavit except the signatures.

Q. Tell me, then, what words you erased in order to write the words "three" and "eight"?—A. I don't know.

Q. Did you not erase two words to write those?—A. I don't know.

Q. Do you recollect erasing anything?—A. I do not.

Q. How long after the body of that was written did you fill it in?—A. I don't know whether it was fifteen minutes or six weeks.

Q. It might have been six weeks?—A. I said I do not know.

Q. Do you not know that it was some little time after the body was written that you filled it in?—A. I do not know.

Q. Do you remember when you sent it to Peck?—A. I do not.

Q. Who was interested in the route from Redding to Alturas at that time?

The WITNESS. What is the date?

The COURT. September, 1878.

Mr. MERRICK. 18th of September, 1878.

The WITNESS. I remember now.

Q. You remember all about it, I have no doubt?—A. I looked at it two minutes ago.

Q. Who was interested in the routes at that time?—A. Mr. Peck, John W. Dorsey, Mr. Vaile, and myself.

Q. And it was your business to look after all the details here?—A. It was.

Q. And attend to all these affidavits?—A. Yes, sir.

Q. You do not recollect anything about it?—A. I do not.

Q. Do you know that on this affidavit of yours you wrote out and that Peck swore to, there was an increase of expedition of that route amounting to \$26,945?

The WITNESS. Of expedition?

Mr. MERRICK. Yes.

A. I do not know that fact; it is not correct.

Mr. MERRICK. No; it is for expedition and trips. I have not got them separated. The order put them together.

The WITNESS. I know that there was an increase on the route; just the amount I do not remember.

Q. When did you first ascertain that there was an increase on the route?—A. When I received the official notice of it.

Q. And not before?—A. Not before.

Q. You did not know that it was intended to bring about the increased expedition, did you?—A. I may have known it; I don't remember it now.

Q. You do not remember?—A. No.

Q. You do not remember whether at the time you got an increase in your annual income of some \$26,000 you then recollected about Peck's affidavit?—A. I do not now remember about Peck's affidavit. I probably knew at the time that one had been filed and it is probable that I filed it, but I don't remember that fact.

Q. Probably you filed it?—A. I naturally would, in the course of business.

Then, on page 4250:

Q. It seems that this affidavit which the jury have just been looking at (9 G) is headed "Chico Springs, N. Mex., September 18, 1878," in your handwriting, and it appears to have been sworn to on the 18th of September, 1878, the same day?—A. It was signed by a man who lived at Chico Springs.

Q. But it was written by a man who lived here?—A. Very likely.

Q. It was sworn to on the 18th, and it bears date on the 18th?—A. I do not see anything peculiar about that.

Q. You do not?—A. No.

Q. If you were here and headed it on the 18th, how could he swear to it in Chico Springs on the 18th?

Mr. DAVIDGE. He did not.

Q. You say you never were at Chico?—A. I never was.

Q. You say you probably were here?—A. I probably was.

Q. You wrote it here, did you not?—A. I did.

Q. And at the head it is dated 18th of September?

The WITNESS. Let me look at it, please.

Q. And at the bottom it was sworn to at Chico on the 18th of September, the same day. By what operation did you write that on the morning of the 18th, and transmit it to Chico so as to be sworn to on the evening of the 18th?—A. I don't think I ever did transmit it in that time. The date in the jurat appears to be in the handwriting of the notary.

Q. Then he was down there when he wrote the date in the jurat, the 18th, and you

were here on the 18th?—A. I am not certain that I wrote it on the 18th; it does not always follow.

Q. How did you fix the precise date of the 18th as the day upon which it would be sworn to?—A. I don't know that I fixed it.

Q. You filled up the date the 18th of September as the date upon which you wrote the affidavit?—A. I have not any recollection of that paper and I cannot answer that kind of a question.

Q. Here is a paper, which is certainly not in the ordinary course of business, and I am calling your attention to this to refresh your recollection about it.—A. I have no recollection about it.

Q. Did you intend that the department should be made to think that it was written at Chicot?—A. I don't know what my intention was at the time.

Q. Did you intend to deceive the department as to the place where it was written?—A. I don't know anything about my intentions at that time. There was nothing to be gained by deceiving the department as to where it was written.

Q. You do not know anything about it?—A. I do not know anything about it.

Whenever one of them was cornered he always said: "I don't know anything about it;" "I don't remember;" "I have no recollection."

On the same day (the 3d of December, 1878,) Brady made an order, which is 83 G, defense, found on page 3297. You see how our friends on the other side helped us out. When we could not get the testimony in they put it in for us. And again I have to express my obligations to them for it. The order was:

Increase service three trips from December 16, 1878.

Reduce time from 108 to 72 hours, and allow subcontractor \$26,946 per annum additional, as per agreement.

It started out at two trips. On the 3d of June it was made one more, and on December 23, 1878, it was brought up to six trips. This order I again call your attention to, gentlemen. You know, as I have told you repeatedly, that the law is that the Postmaster-General must express in the order the amount he allows for trips. But in this case Brady does not do it. He just says to increase the pay and reduce the time, and allow \$26,946 per annum additional. You know, gentlemen, Mr. Brady said, that when he made expedition he did not think it was expedition at all unless it was somewhere in the neighborhood of four miles an hour. I think he told you that repeatedly on the stand. At least I have read different questions and answers repeatedly, relating to that subject, and I think it was impressed upon your mind. If you make a calculation in this case you will find that Mr. Brady forgot his old rule, because this increase is made a little over two and a half miles per hour. Suppose that Mr. Brady had brought the time down to forty-five hours; in that case it would have been about four miles an hour. But he brought it down to seventy-two hours. We will see what he says about it at page 3423:

Q. You have already testified that you made some orders upon the route from Redding to Alturas, or at least you have referred to the route. Do you remember it?—A. Yes, sir; I remember the route.

Q. Do you remember whether you made any orders upon it?—A. I made some orders upon it, I think. I cannot say now from recollection what order I made.

Q. Under the terms of the contract the cost per trip was \$2,994, and for six trips the cost would have been \$17,964. You made expedition and increase, costing \$35,928, or \$17,964 more than more trips would have cost. Do you know why you did that?—A. If you will show me the papers I will answer.

Q. You do not know independent of the papers?—A. I do not remember now.

Q. You stated with reference to that route that when you made the order you had no idea of the actual time in which the mails were being carried over the route?—A. I believe I so stated.

Q. And that you had no means of getting that knowledge?—A. No, I did not say that.

Q. I took it down—your answer that you had no means. I may be wrong.—A. Of course I might have ascertained.

Mr. DAVIDGE. It cannot be wrong if you put it down that way.

Mr. BLISS. I think I put it down so.

The WITNESS. I may have said that. What I meant was this: That I had no means of knowing unless I would send a man out there especially to ascertain the matter. The matter had not been called to my attention and there was no ordinary routine means of knowing.

Q. Would the schedule of arrivals and departures show it to you?—A. I presume not.

On page 3426:

Q. Could you not have found out the time in which the mail was being carried over that route by correspondence with the postmasters?—A. I could; that is, I presume I could.

Q. When you got the petitions and the request for increase to a given time did you, in any manner, seek to ascertain how much time was then, in fact, being taken in carrying the mail over the route?—A. I do not remember that I did.

Q. Do you know whether you did or not?—A. I say I do not remember that I took any such steps.

Q. And yet you could have found it out by communication with the postmasters, could you?—A. It had never been suggested to me that I know of that it was being carried faster.

Then, on page 3472:

Q. I hand you paper marked 7 G. on the route from Redding to Alturas, and ask if from that paper you can tell how much less than pro rata the allowance was?—A. It seems the brief on the jacket states that expedition would be \$10,419.12, and three additional trips would be \$19,401.12, and the total increase \$29,820.24, and that the contractor submits a proposition to expedite the schedule and increase the service three trips per week for the round sum of \$26,946 per annum. The order, therefore, does not indicate, and I do not know that there is any necessity for it to indicate whether the saving was on the expedition or on the increase.

Q. But it does not indicate?—A. It appears not.

Q. Suppose you had made an order for expedition and increase of trips say from two to three, and then you came to make a further increase to six, would you there allow pro rata?—A. Usually if we thought that the service needed six trips, and were determined to put it on, there would be no method of compelling the contractor to do it for less than pro rata.

Q. In getting at that pro rata there enters in the previous amount that you have allowed for expedition when you increase it to three trips?—A. Certainly.

Q. And after increasing it three trips, you then increase it to six if you double the amount?—A. Certainly, unless we can get it for less, which is seldom the case.

Q. In such a case I understood you to say that you construed the law as requiring the full allowance?—A. I do, and that if we were determined of our own volition or for any other reason to make six trips a week out of a route having three trips a week, and to continue the fast schedule to which it had been expedited, it would be utterly impossible for all the power of the Government to compel that contractor to carry it for less than pro rata unless he wanted to.

Q. You could require the contractor to make the increased trips at a less rate of speed?—A. Yes, sir; my position in that respect, I believe, is not indorsed fully, but I think I could do it if I was there and wanted to do it.

Now, I have read this to you because it comes in connection with this route, and applies to routes that will follow. He says he could not compel the contractor to put on the service for any less than pro rata; he was totally at the mercy of the contractor.

I mentioned to you about the forty-five hour schedule—that if he had made it forty-five instead of seventy-two, as he did make it, that it then would be about four miles an hour. The reason I mentioned the forty-five hours to you is this: because I find, through the courtesy and kindness of my friends on the other side, that there was some talk or arrangement about forty-five hours. In the jacket they put in you will find that an oath of the contractor had been filed for forty-five hours. I suppose that they concluded that it would not do to make it forty-five miles an hour; that there might be some trouble with the subcontractor; and therefore they erased that portion of it and fixed up this affidavit that I have shown you for seventy two hours. You will find that what I say is correct by looking at 83 G, defense, page 3297.

Mr. WILSON. I want to be fair with you all the way through. You do not mean forty-five miles an hour, as you have said, but a schedule of forty-five hours.

Mr. KER. The judge wants to correct me. He says he wants to be fair all the way through, and reminds me that I have used the expression forty-five miles an hour. It should be forty-five hours. You see how closely he is watching me, and you see what close answers he will give to all these questions I have raised. I have given you the page, I have given you the paper and the date of it, and every circumstance connected with it. However, there was an arrangement made, and it was left on the record by some means for forty-five hours, and Brady acted upon the oath for seventy-two hours.

Gentlemen, let me remind you, in this connection, in speaking about Brady not knowing in what time the mail was being carried, you will remember the mail was always carried in about sixty hours. It was being carried in sixty hours even at the time when the schedule was one hundred and eight hours. J. N. Major says (page 1275) "I carried the mail in sixty hours in the winter and forty-two hours in the summer." He had a line of stage coaches. He was on the stand. Sixty hours in winter and forty hours in summer, and at that time the Government was allowing one hundred and eight hours. They, according to the record, prepared first the forty-five hour affidavit, then this affidavit and proposal, and Brady reduced the time down to seventy-two hours, and allowed them this immense sum of \$26,946. Seventy-two hours was then considerably longer time than the man was actually carrying mail in.

On the 20th of May, 1879, there was a second subcontract made with Major & Culverhouse. Rerdell signed as attorney for Peck, and John W. Dorsey signed as a witness.

On the same day, for it is dated the same day, there is a third subcontract made with Major & Culverhouse. John W. Dorsey signed as attorney for Peck, and Stephen W. Dorsey signed the guarantee.

On the 17th of April, 1880, the Postmaster-General made an order reducing the service three trips from May 1, 1880 (84 G, defense, page 3298). That was about the time the Congressional committee were at work, and the Postmaster-General made this order, and one or two others that I have told you of, and cut off the three trips that Brady had ordered, but not the expedition.

Then, on the 26th of August, French made an order:

From September 1, 1880, increase the service three trips.

There was a petition dated in June, 1879, in the jacket upon which French made this order. He restored it back to what it was.

On the 11th of February, 1881, Brady made an order, (28 G, page 1239):

From February 20, 1881, increase service to seven trips per week, and allow contractor \$5,988 per annum additional pay, being pro rata, and increase subcontractor's pay \$2,000 per annum, being less than pro rata, but in accordance with his written agreement.

This increase from six trips up to seven was made upon a petition that was signed by some of the postmasters upon the route. And so they brought it up to a daily mail, seven times a week.

I have read to you what Mr. Major testified—that he carried the mail in forty-two hours in the summer, and sixty hours in winter. Postmaster McCormick, of Redding, testified that "the mail was carried from July, 1878, in from forty to sixty hours."

Vaile drew the pay, Stephen W. Dorsey and J. W. Bosler drew the pay.

[55 G handed to the jury.]

You know that Peck died in September, 1881. Here is a warrant dated August 2, 1880. John M. Peck's name is signed on that warrant, and Stephen W. Dorsey wrote the name; there is no dispute about it. There it is, gentlemen. As you are looking at handwritings, you may as well see the different ways Dorsey took to write and sign names.

Mr. HERRIGAN. [A juror.] Mr. Ker, will you please say that again.

Mr. KER. The warrant is dated August 2, 1880. The testimony is that Stephen W. Dorsey signed Peck's name on the back of that warrant, otherwise it could not have been negotiated or the warrant would not have been paid; and I say there is no dispute about it.

Now, gentlemen, the original pay on this route was \$5,908 for two trips. It was increased to six trips, making \$35,928. Let Mr. Horrigan see the warrant, 55 G. I suppose that is the right one. I did not look at it.

Mr. MERRICK. You said Peck died in September, 1881.

Mr. KER. Peck died in September, 1881.

Mr. MERRICK. This warrant was dated August 2, 1880, and you said that S. W. Dorsey signed Peck's name on the back. This warrant passed before Peck's death?

Mr. KER. Oh, yes.

Mr. HERRIGAN. [A juror.] That is the point.

Mr. MERRICK. That is what Mr. Horrigan wanted to know.

Mr. KER. Peck died in September, 1881.

Mr. HERRIGAN. [a juror.] Peck must have been living at that time.

Mr. KER. Yes. It was negotiated before Peck's death, and I say Stephen W. Dorsey signed Peck's name to it.

Mr. MERRICK. Give him the proof.

Mr. KER. It is proved by Rerdell, on page 2341, and by Hooper, at page 2652.

At six trips a week the price was \$35,928; Major & Culverhouse received \$21,000, giving to the contractors here in Washington a profit of \$14,928. Then it was further increased to \$41,916. The pay of Major & Culverhouse, subcontractors, was \$23,000. That gave the people here, who were engaged in this conspiracy, \$18,916 of a clean and clear profit.

As to the revenues on this route: Take every office on the route in 1879, and the revenues were \$2,168.72. In 1880 they were \$3,484.27. In 1881 they were \$2,480.16. A falling off in 1881 from what they had been in 1880. Two thousand four hundred and eighty dollars and sixteen cents was received by the Government in 1881, when, at that time, by Brady's order, it paid for carrying the mail \$41,916.

The overt act—there it is, the 3d of June. [28 G handed to the jury.] February 11, 1881.

NO. 38113, RAWLINS TO WHITE RIVER, COLORADO.

[Map handed to jury.]

This was one of the routes taken by Dorsey in the division; one hundred and eighty miles long; one trip a week; time, one hundred and eight hours; John W. Dorsey, contractor; pay, \$1,700. The official orders were:

May 1, 1878, subcontract with J. A. Wright.

June 18, 1878, change address.

October 1, 1878, subcontract filed.
 December 3, subcontract withdrawn.
 December 28, subcontract with Rerdell.
 January 16, 1879, subcontract with Perkins.
 January 23, 1879, letter from White River.
 January 6, 1879, Rerdell's subcontract withdrawn.
 February 7, 1879, subcontract with Perkins filed.
 April 14, 1879, letter from J. W. Dorsey.
 April 16, 1879, oath of Perkins filed.
 April 16, 1879, petitions written.
 April 26, 1879, letter from J. W. Dorsey.
 April 26, 1879, second oath filed.
 May 1, 1879, order for increase and expedition.
 November 11, 1879, S. W. Dorsey filed a subcontract.
 October 15, 1880, subcontract with Eugene Taylor.
 March 3, 1881, order for increase.

Now, to go back and take the papers and the facts together: In the first place, we find that Miner wrote the body of the proposal, and that Rerdell filled in the amounts. This is the route, gentlemen, you remember, as to which Vaile and Miner testified that they had given it to Rerdell; that Rerdell was the subcontractor for the full amount, and that it was not taken into account in their division. I will show you the entire falsity of that statement.

May 1, 1878, J. W. Dorsey made a subcontract with J. A. Wright, at \$1,500 per annum.

June 18, 1878, Brady ordered change of address to box 714; that was Miner's box.

October 1, 1878, Wright's subcontract was filed.

December 3, 1878, there was a letter written withdrawing Wright's subcontract. Miner signed Dorsey's name to the letter.

December 20, 1878, Rerdell had a conversation with Vaile and Miner; it is found on page 2225:

Q. That is the conversation I want, between you and Vaile and Miner, if there was such a conversation?—A. Yes, sir; Mr. Miner stated to Mr. Vaile that he had been talking to me. Said he, "I have been talking with Rerdell about giving him employment, and told him that we would do the right thing by him, and we must fix a place for him to go to and give him employment." Mr. Vaile said, "Yes, I have been thinking of the same thing, though I didn't feel like telling Rerdell of it until the proper time came." Mr. Miner then said, "Well, Rerdell, we are going to fix you anyway. We will give you a good place, and a good salary." Mr. Vaile then asked me how I would like to take some mail service. That I didn't feel like doing, and so told him. Well, he spoke then of one or two routes. He says: "We can make a very good thing, and at the same time pay you a little salary in addition to it, and you will be out of Government employment and will be your own man, and you will be out in the western country where you have got some chance." I won't say that they told me positively that I should consider myself under employment from the first of the month, but, at any rate, I so acted—that I was in their employment from the first of the month, from the time Mr. Miner had first spoken to me about it.

Q. Did they say anything in that conversation in reference to the management of the routes and the probable profit that might be realized?—A. Yes, sir.

Q. What was said in that respect?—A. During that very conversation Mr. Vaile told me that with proper management the mail service that they then had ought to reach between \$600,000 and \$700,000 per annum.

Q. Profits, or gross?—A. Gross. The increases ought to make annual pay on it from \$000,000 to \$700,000. Following that conversation, we had another in reference to the White River route, 38113, when he said that route was a good route for me to take. He figured down for me how many men and horses it would take to carry it, and I went over the calculations with him so I could get to understand it. He said they would give me a part of the increases on that route in addition to a salary, and it was understood that I was either to go to Cheyenne, Rawlins, or Denver, so as to be at a central point to look out for their other service, and act as one of their superintendents.

Vaile says in answer to this, on page 4021 :

Do you remember having such a conversation with Mr. Rerdell at the National Hotel?—A. I do not; I have no recollection of any such conversation.

Q. At that time or at any time?—A. No, sir.

* * * * *

Q. I want to know whether you had any conversation with Rerdell in which you said any such thing as that?

Referring to what I have read.

A. I do not think I ever said any such thing. I would have been quite willing to have taken my money at that time and gone out. I don't think it is possible that I ever said any such thing.

Q. You think you never did have such a conversation?—A. I don't think I did.

Then another portion of the conversation was read to him :

Q. What do you say to that?—A. I don't think I ever had any such conversation as that with him. I think he is mistaken.

Then, on page 4023 :

Q. Now I want to ask you whether in the division of the routes which took place afterwards, in March, 1879, you took into consideration this route; and, if not, why not?—A. We did not. When we came to that route I remarked, "This belongs to Mr. Rerdell." "Yes," Miner said, "that is his." We threw it out entirely. It was not taken into consideration at all.

On the 28th of December, 1878, there was a subcontract made with Rerdell, and it was filed. Miner signed as attorney for John W. Dorsey.

On the 4th of January, 1879, Rerdell left Washington for the West (page 2226) :

Q. When did you go West after that conversation took place?—A. I think I left here on the 4th day of January, 1879.

Q. At whose instance did you go?—A. At the instance of Messrs. Miner and Vaile.

Q. Where did you go?—A. I went direct to Rawlins, Wyoming Territory.

Q. For what purpose did you go?—A. I went there for the purpose of putting service on the route from Rawlins to White River.

Q. What did you do when you got there?—A. The first thing I did was to look around Rawlins to see if I could find some man there that would take a subcontract, and failing in that, to make a subcontract there that I thought desirable. I employed a man, or hired a man and horse from Mr. Rankin, whom I saw on the stand here the other day, and sent him for Mr. Perkins, who was then carrying the mail under a temporary contract, I believe they call it, made with the postmaster. In the mean time I wrote out a number of petitions asking for increase and expedition. I left one in the post-office, and I think I got a gentleman by the name of Friend to circulate the other. The others I sent over the line to be circulated along the line.

Q. What expedition did you ask for in those petitions?—A. Eighty-four hours.

Mr. INGERSOLL. The petitions are here, and they will show.

Mr. MERRICK. I haven't possession of those petitions at this moment.

Q. What did you do in reference to getting those petitions signed, or getting letters written recommending increase and expedition on that route?—A. Well, sir, I believe I wrote three or may be four petitions asking for an increase to three trips per week and expedition to eighty-four hours. I put one of the petitions, as I said before, in the post-office there; another one I got a gentleman, I think by the name of Friend, to circulate, and another one, or may be two, I gave to Mr. Perkins, who, in the mean time, had come, and I had made a contract with him. I got some letters written there—

Q. [Interposing.] What representations did you make to any of those parties in reference to the probabilities of getting increase and expedition?—A. Well, I represented to Mr. Perkins that it would be increased right away.

* * * * *

Q. What authority did you have to make it, and upon what fact did you found your representation?—A. Mr. Vaile and Mr. Miner both told me that it would be, and to make subcontracts with that in view.

On the 16th of January, 1879, there was a subcontract made with C. F. Perkins, providing for three trips and increase. Rerdell signed that subcontract, as attorney for John W. Dorsey, who was then out at Bismarck; and as he tells you, he wrote these petitions. The petitions

that Rerdell wrote are 26 S, 27 S, and 28 S [handed to jury]. Here they are, gentlemen. There is nothing peculiar about them, excepting that Rerdell wrote them.

On the 22d of January, 1879, William H. Post, the postmaster at White River, sent a letter (35 S, page 1964):

WHITE RIVER POST-OFFICE,
SUMMIT COUNTY, COLORADO.

SECOND ASSISTANT POSTMASTER-GENERAL, *Washington, D. C.*:

SIR: Route 38113, from White River, Colo., to Rawlins, Wyo., is through a rough, mountainous region, in which the snow falls very deep, and already on some parts of the route it is now from fifteen to eighteen inches in depth, which makes it almost impossible for the carriers to get through on the schedule time.

I would suggest that the time, which is now five days, be increased to six days during the winter, and that in the future it be permanently fixed at five days for the months of May, June, July, August, September, and October, and at six days for the months of November, December, January, February, March, and April.

Very respectfully, yours, &c.,

WILLIAM H. POST,
Postmaster.

This was before there was any increase. This letter was handed to Mr. Brady when he was on the stand, and you remember how very angry he got about it. The time is one hundred and eight hours. The postmaster here writes about having it fixed at five days for the summer, and six days in the months he specifies. Mr. Brady says, on page 3407, beginning at the bottom:

Q. I find on paper marked 35 S, which was filed in the department in the contract office January 22, 1879, a letter from the postmaster at White River, in which he recommends that the schedule be increased to six days during the winter, and that in the future it be permanently fixed at five days for the months of May, June, July, August, September, and October, and at six days for the months of November, December, January, February, March, and April. Did you in ordering the expedition to forty-five hours consider that letter?—A. I do not remember of ever having seen this letter.

Mr. BLISS. It was in the jacket on which your order was indorsed.

A. I remember nothing about it particularly. It is evidently not very well prepared; he talks about five days and six days—

Mr. MERRICK. [Interposing.] We do not want your opinion.

Mr. BLISS. I do not want you to criticise the letter. I want to know whether you considered it?

The WITNESS. I want to state that the letter could not be considered—

Mr. BLISS. [Interposing.] State, it then.

The WITNESS. [Continuing.]—simply from the fact that it talks about five days and six days, when there is no indication that he means a day of twelve hours or one of twenty-four hours.

Q. Did you ever see any order upon which you acted that indicated whether the day was twelve hours or twenty-four hours?—A. I do not know that I did.

Q. Do you know of any letters or petitions that specify, when they speak of days, whether they mean days of twenty-four hours or days of twelve hours?—A. I presume there are hundreds of them.

Q. Can you recall them on the files of the department?—A. They usually speak of hours, not days.

Q. When letters or petitions speak of days, do they not always mean days of twenty-four hours; was not that always your interpretation?—A. I think they generally spoke of hours.

Q. But when they do speak of days?

The WITNESS. That they mean a mere day of—

Mr. BLISS. [Interposing.] Yes, when the letter speaks of days.

The WITNESS. A mere day of twelve hours?

Mr. BLISS. No, when it speaks of days.

The WITNESS. That it means twelve hours?

Q. Was not the interpretation of the department upon a letter or petition speaking of so many days, that it meant days of twenty-four hours?

The WITNESS. Of twenty-four hours?

Mr. BLISS. Yes.

A. No, sir; it is not so considered in the department.

Q. You consider that when a person makes a recommendation of—

A. [Interposing.] It depends a good deal upon who wrote the letter.

Q. If he spoke of five days, would he not mean five days of twenty-four hours each?—A. I should not consider it so.

Q. Did you consider that five days meant five days of twelve hours each?—A. I would consider that a man writing a letter of that kind did not know what he meant.

And he gave the letter a shoot out and dropped it on the floor. You know a day of twenty-four hours would be a little different from a day of twelve hours. Five twelves would be sixty, and the time is one hundred and eight hours. It is evident that the postmaster was speaking of days of twenty-four hours and not of twelve hours.

On the 4th of February, 1879, Rerdell returned to Washington, and on the 6th of February he sent in a letter withdrawing his subcontract. This was John W. Dorsey's route, and Miner signed Dorsey's name to the letter. Miner says in this connection, on page 4214:

Q. Look at 14 S, now handed you, and say in whose handwriting it is, and what it is?—A. This is a request to withdraw subcontract on route 38113.

Q. What route is that?—A. White River to Rawlins.

Q. What was the date of it?—A. February 6, 1879. It is signed John W. Dorsey, contractor, in my hand, and by M. C. Rerdell, subcontractor. I suppose his signature is his own.

Q. You wrote the signature of John W. Dorsey?—A. I did.

Q. Were you acting as the attorney of John W. Dorsey at that time?—A. I was.

Q. Whose subcontract was this that was to be withdrawn?—A. M. C. Rerdell's.

Q. Then on February 6, 1879, M. C. Rerdell's subcontract was withdrawn by direction of John W. Dorsey through you as his attorney?—A. Yes; and the request of Mr. Rerdell. If you want to know why I can tell you.

Q. What interest of record did Rerdell have after that?—A. He did not have any interest of record, so far as I know.

Q. Did not the route then fall back into the mass of routes?—A. That was withdrawn—

Mr. MERRICK. [Interposing.] Answer my question first.

A. It did, by the record.

Mr. HENKLE. Now let him explain.

Mr. MERRICK. Now you may make your explanation.

The WITNESS. It was withdrawn because Mr. Rerdell had sublet the route to another party, and that other party was not willing to take Mr. Rerdell as paymaster, and wanted to put the subcontract on file. In order that it should be put on file his had to be withdrawn.

Q. What was that?—A. I say Mr. Rerdell had sublet the route to another party; that other party was not willing to take him as paymaster. He telegraphed me from Rawlins or Cheyenne, or somewhere, to withdraw his subcontract. After he came home his subcontract was withdrawn, so that the other party's subcontract could be placed on file and he be paid direct by the department.

You know Miner said before, and so did Vaile, that this route was given over to Rerdell; that Rerdell had all to do with it from that time; that they had nothing to do with it, and did not take it into consideration in the division of the routes. Here you find that Rerdell's subcontract was withdrawn in February, 1879, and they divided the routes in the following March.

Then, on page 4215, Miner continues:

Q. Then when Rerdell's subcontract was withdrawn Rerdell's record interest ceased, and then he made a subcontract as attorney for John W. Dorsey with Perkins; is that what you say?—A. He made a subcontract with Perkins previous to the withdrawal of the subcontract.

Q. As attorney for John W. Dorsey?—A. The record so shows.

Q. Not for himself, but as attorney, eh?—A. He could not make it in any other way.

Q. Then Perkins put his subcontract on file, did he?—A. So the record shows.

Q. Then at the time of the distribution this was one of John W. Dorsey's routes, was it?—A. At the time of the distribution this was not taken into account.

Q. That is what I understand you to say; of course it was one of John W. Dorsey's routes, was it not?—A. He was contractor.

Q. And Perkins was subcontractor?—A. That is the record.

Q. And that is the fact, is it not?—A. That is the record.

Q. You knew that to be so, did you not?—A. Very likely I did.

Q. And then, although John W. Dorsey was contractor and Perkins was subcontractor, this route was not taken into consideration, you say, at all?—A. That is what I say.

On the 7th of February the subcontract with Perkins was filed.

March 6, 1879, there was a conversation between Rerdell and Miner and Vaile about the affidavit in evidence upon this route. He states that it was on the 6th of March, 1879. That was after the 5th of March, on which they claim that the routes were divided up. On page 2228 Rerdell says :

Q. Did you have any conversation with Mr. Vaile with reference to the affidavit for expedition on 38113, White River to Rawlins?—A. I did.

Q. As near as you can, fix the date within the same limits of a few months that you have heretofore?—A. Well, sir, Mr. Vaile left here immediately on my return, and was gone a few weeks and then returned to Washington; that is, that is my recollection now; that he left here about the 6th or 7th of February. I may be wrong as to the dates, but a very short time after my return from New Mexico he left and, I think, returned again in a few weeks. I cannot be positive about the time of his return; it was during the month of March, though, that I had a conversation with either he or Mr. Vaile. I won't be positive about who I had the conversation with. I know I received some instructions from either Mr. Vaile or Mr. Miner in regard to the affidavit on 38113.

Q. Did Vaile say anything in any of those conversations or in that conversation about the affidavit on 38113 in reference to Brady?—A. Before I answer that I will correct my answer there. The conversation was with Mr. Vaile, I remember. I have had something to recall it to my mind.

Then, on the next page :

A. There were two conversations; one of them was as to how they could get an affidavit of the number of men and animals in lieu of John W. Dorsey's affidavit as to the number of men and animals required in expediting the schedule.

And further down on the same page :

Q. If it is within your own knowledge. Do not state anything else.—A. Yes, sir. Mr. S. W. Dorsey was quarreling, or he was at outs with Miner and Vaile at that time, as to their relative interests in the service, and he had directed John W. Dorsey not to make any more affidavits unless he told him to, nor to furnish any papers to Miner and Vaile.

By the COURT :

Q. What time was this?—A. I think this was in March, 1879.

By Mr. MERRICK :

Q. Go on.—A. As I said, the subject that was under consideration between Miner, Vaile, and myself was how we could get an affidavit other than John W. Dorsey's. Mr. Vaile says, "I think I can get General Brady to accept one from the subcontractor." Subsequently—probably within a day or two after that—we were talking over the same subject, when he said that he had seen General Brady, and he had agreed to accept one from the subcontractor. I was then instructed to write to Mr. Perkins, with whom I became acquainted out there, and ask him to send his affidavit, the form of the affidavit being furnished me at that time. It was the first one I ever saw.

Q. By whom was it furnished?—A. I think Mr. Miner wrote it; I won't be positive, but it was given to me at the time.

On the 26th of March, 1879, Perkins swore to the statement in blank. You remember that Mr. Perkins was on the stand, and testified to swearing to that affidavit. It is 24 S, and found on page 1961. There is nothing peculiar about it, except that it was sworn to in blank. The notary who took the affidavit says the same thing. [Exhibiting affidavit.] On the 1st of April, 1879, a suit was brought by Rerdell against Vaile and Miner. It is hardly worth my while to go into that, except to show that at that time their relations became less friendly. On the 14th of April, 1879, there was a letter of John W. Dorsey transmitting

the oath of Perkins. Rerdell wrote that letter and signed Dorsey's name to it. Rerdell says he filled in the blanks in the oath himself. On the 16th of April, 1879, the petitions that were written by Rerdell were filed. I have shown you those petitions. They are 26, 27, 28, and 29 S. They ask for eighty-four hours' time. Adams says that he wrote 29 S for Rerdell. Adams was a witness on the stand here.

On the 26th of April, 1879, there was a letter from J. W. Dorsey to Brady. It is 30 S, and found on page 1963:

WASHINGTON, April 26, 1879.

Hon. T. J. BRADY,

Second Assistant Postmaster-General:

SIR: In sending my sworn statement respecting the requirements of men and animals on route 38113, I beg to say that the reduction of the time to fifty hours from the present slow schedule will make the service expensive and difficult to perform, and I do not believe that I have put the number of men and animals necessary to run it satisfactorily to the people and the Government as high as I ought to have put them.

Yours, truly,

J. W. DORSEY.

Gentlemen, that letter was written and signed by Stephen W. Dorsey. I will give you Boone's testimony for a change. Boone says, on page 2702:

Q. I hand you 30 S?—A. This is in the handwriting of Stephen W. Dorsey.

By Mr. INGERSOLL:

Q. What is it?—A. It is transmitting a sworn statement on route 38113.

By Mr. BLISS:

Q. By whom does it purport to be written?—A. It is signed J. W. Dorsey; it is all in the same handwriting, dated April 26, 1879.

That was a statement, as you see, that in the oath of Perkins he had not stated quite enough men and animals.

On April 26, 1879, the same date of that letter, is this oath of John W. Dorsey. [Exhibiting it.] It is 25 S, and called for three trips and forty-five hours. Now, Mr. Foreman, be kind enough to follow me on the oath, as I read to you what the testimony is, and see if I am correct. W. F. Kellogg wrote the body of that oath and the jurat. Stephen W. Dorsey filled in the words "three," "four," "twelve," and "three," and the figures "45," "11," and "33." Remember it could not have been Rerdell. It is dated the 26th day of April, 1879, and we have shown you that Rerdell was not in Washington upon that date, but, on the contrary, that he was away out West. On the 25th day of April, 1879, two days after that letter was sent, Rerdell wrote two letters for Governor Pitkin to sign, and one was filed upon route 38134. I have shown you these two letters of Governor Pitkin that he wrote on the same day.

The COURT. Where was he when he wrote those letters?

Mr. KER. He was wherever Governor Pitkin was, in Colorado. can tell your honor at what place they are headed.

The COURT. On the 24th of April he was at Denver.

Mr. MERRICK. He was at Denver on the 24th, and on the 21st he was at Greeley.

Mr. KER. Those letters were written at Denver, Colorado. There was no testimony given by Stephen W. Dorsey as to that affidavit. He was not interrogated about it by his counsel, and he did not mention it in his testimony. But there are two men who testified to the handwriting. Therefore the other side cannot put it upon Rerdell. It would be impossible to do that, because he started away on the 17th of April, 1879, and we showed you that on the 21st of April he was in

one place, and on the 24th or 25th of April he was in Denver, Colorado. On the 28th he wrote the letters for Governor Pitkin, and he did not come back to Washington until the 5th of May. John W. Dorsey signed that affidavit. In speaking of it, John W. Dorsey says, on page 4123:

Q. Look at the paper now handed to you, marked "25 S," and state whether that is in your handwriting?—A. That is my signature.

Q. In whose handwriting is the body of the paper?—A. I do not know, sir. I am no expert in handwriting. I do pretty well if I tell my own.

Q. You never saw it before?—A. Oh, yes; I have seen it before. It is my signature. I say I could not tell.

Q. Your signature is in one handwriting and the body of the paper is in another. Is there a third handwriting there anywhere?—A. It is different colored ink; whether in different handwriting or not, I do not know.

Q. If you had nothing to do with these routes after the division, explain how it came that on this route, 38113, you made an affidavit on the 26th day of April, 1879, in order to get increased pay for expedition?—A. When I sold out I agreed to sign all the necessary papers.

Q. That was part of the consideration, was it?—A. That was the agreement.

Now, on the next page, he says:

Q. Were the others to do the same thing?—A. I do not know anything about that. I had nothing to do with that at all.

Q. You do not know anything about it?—A. No, sir; it was not any affair of mine at all.

Q. You carried out your part of the agreement?—A. I did; I tried to as far as I could.

Q. You signed any necessary papers they brought to you?—A. Yes, sir; any that I thought was proper and right, I signed.

Q. Had you ever been on the Rawlins and White River route prior to the 26th day of April, 1879? I know you were there afterwards.—A. No, sir; I had not.

Q. Did you know anything about it?—A. No sir.

Q. Did you know the length of the route?—A. I think I did; yes, sir.

Q. How long was it?—A. I think one hundred and eighty miles, if I recollect right.

Q. One hundred and eighty miles?—A. I believe so.

Q. On the 26th day of April, 1879, did you know the number of men and animals necessary to carry the mail according to the then existing schedule over that route?—A. No, sir.

Q. You did not know it?—A. No.

Q. What did you swear you did for?—A. I do not know as I did swear I did.

The COURT. Show him the paper.

Q. [Submitting paper.] Look at that paper, marked 25 S. What did you swear to it for?—A. I cannot tell particularly about it, but I will say in regard to those contracts generally that those contracts—

Then Mr. Wilson and Mr. Merrick interposed, and then—

Q. If you did not know the number of men and animals necessary to carry the mail on that route at that time, what did you swear as to the number for as within your own knowledge?—A. I relied upon another man. That is why I did it. I had no interest in the thing at all.

Mr. MERRICK. You said so, I know.

The WITNESS. Can I be allowed to state how I understand these affidavits?

Then, on the next page:

The WITNESS. My understanding about it generally was that it was one of the regulations of the department that the contractor should make the affidavit on what he thought was the necessary number of men and animals; that is, when they were to have expedition on the route; but if the department thought the estimate was too high that they would make their own estimate as a basis for the increase of pay.

Then, further down on the same page:

The WITNESS. I understood it was the regulation of the department that the contractor was to make an affidavit of what he thought was necessary as to the additional number of men and animals on the expedition of a route, and if the department thought his estimate was too high they were entitled to fix the basis upon which to make the increase, and if the contractor was not satisfied with that he could decline to take it, and the contract would go back to the Government and they could relet

it; so that I never could see how anybody could do anything to get advantage of the Government in any way. I supposed they had a rule of their own. That was my idea of it.

The COURT. Your idea then was that it did not make much matter about the affidavit.

The WITNESS. I thought a man must come pretty near to it—whatever he thought was right. That was my idea about it, but at the same time I did not claim to be an expert in the business at all.

The COURT. I observe in that affidavit what seems to be a filling up of blanks. It may be he did not make the affidavit in that way.

Mr. MERRICK. I am coming to that. That is part of this history.

Q. Were you in the habit of swearing to affidavits in blank and allowing people to fill up whatever they wanted?—A. I do not think I was.

Q. Did you ever swear to any blank affidavit?—A. Not that I can recollect of.

Q. Was not this affidavit blank when you swore to it?—A. I could not say.

On the 1st of May, 1879, Brady made an order. It is 22 S, on page 1958:

First. Increase service two trips per week from May 12, 1879, and allow contractor \$3,400 per annum additional pay, being pro rata.

Second. Reduce running time from one hundred and eight to forty-five hours from May 12, 1879, and allow contractors \$8,600.25 per annum additional pay, being pro rata.

Brady says, on page 3406:

Q. I will ask you why, when the contract price for one trip was \$1,700 a year, and you could at that rate have made the route six trips for \$10,200, you instead of that added two trips and expedited the time to forty-five hours at a cost of \$13,606.25, thereby costing the Government \$3,406.25 a year more than would have been necessary for six trips a week upon that route?—A. This seems to have been a route one hundred and sixty-five miles long and a very slow schedule, and they wanted three trips a week and expedition. It seems by the jacket that Mr. Teller and Senator Chaffee and others recommended it. Three trips a week upon a forty-five-hour schedule would be a far better service than seven trips a week upon a very long schedule. Anybody can see that without even a microscope. That was the reason that was done.

Q. Yes; but Senator Teller and the other people did not recommend a forty-five-hour schedule. Why did you take that?—A. Simply because we would not expedite it without making it fast.

Q. How did you happen to light upon a forty-five-hour schedule?—A. To make the running time, I think, about four miles an hour.

Q. Then you did not in that case follow either the petitions or the recommendations of the Senators and Members you have referred to, did you?—A. No. It looks a little as if in that case I had done as I pleased about it, just as I had a right to do, without petition or recommendation of anybody, under the law.

He did as he pleased about it, just as he had a right to do, without any petition or recommendation, so he says. Then he says, further down on the same page:

Q. I say, then, in that case you did not follow the request of the petitions or the recommendations of the Senators and Members of Congress who indorsed them?—A. It seems, as I see by these papers, that the strict letter of their recommendation was not followed. I made it faster than they wanted it to be made probably, but no faster than it ought to have been made if it was to be expedited at all. I say further that a quick service three times a week is much better than a slow service seven times a week.

Q. Did you upon that route in making the expedition consider at all the question of the revenues of the offices?—A. I presume I did not.

Q. What did you consider?—A. The fact that that service was recommended and wanted, and I thought it would be a good thing, and did it.

Q. But when the service was asked for at eighty hours and you gave forty-five hours, what did you consider in arriving at that? It was not what was asked for.—A. I said a moment ago that we would not have expedited it simply to eighty hours. If it had been expedited at all it must be made faster. Four miles an hour even was not very fast, not as fast as it ought to be.

Q. You therefore exercised your own judgment?—A. I said a moment ago I probably did that.

The COURT. We will take our recess now.

At this point (1 o'clock and 3 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. KER. Gentlemen, before getting away from the subject of the affidavit, and the letter that was sent by Stephen W. Dorsey, I want you to look at the figures and the letters that were placed in this oath and compare them with the writing upon this piece of paper. [Handing paper to jury.] For instance, take some of the words that are here written, and see if you will not say at once that they were written by the same person. I show you the oath and the proposal, and for the purpose of comparison I show you 3 T, as this signature is not disputed.

On the 5th of May, 1879, there was a letter from John W. Dorsey to change the address to box 706. That letter was written by Rerdell. Then, on the 22d of May, 1879, Vaile wrote to Stephen W. Dorsey about Rerdell's suit. I do not want to read that letter, but I want to call your attention again to the facts contained in it. Rerdell had brought a suit against Vaile and Miner, and Vaile wrote a letter to Stephen W. Dorsey, telling Dorsey that if Rerdell went on with his suit it would be known who the true parties were that belonged to the firm of Vaile, Miner & Co. On the 24th of June, 1879, Vaile made his answer to Rerdell's suit, in which he stated that Stephen W. Dorsey had employed Rerdell. The only connection it has is to show that Dorsey had an interest in the routes prior to the 4th of March, 1879, when he left the Senate.

Mr. DAVIDGE. Your honor distinctly ruled that the statement of Vaile could not affect Dorsey in any way. You ruled it as good evidence against Vaile.

The COURT. Yes; certainly.

Mr. KER. That was a statement made under oath by Vaile and under oath by Miner, and it does affect Stephen W. Dorsey to this extent, because it is admitted that he had an interest in these routes; that he had advanced \$13,000, nearly \$3,000 of which was money given to him by John W. Dorsey. John W. Dorsey says it was a private arrangement between himself and his brother. Part of that \$13,000 was the \$3,000 that John W. Dorsey had given to him, and Stephen W. Dorsey collected the whole of it, and John W. Dorsey had absolutely paid nothing to the combination.

Mr. DAVIDGE. You evidently did not hear the objection I made to the court.

The COURT. The ruling of the court was, that as that transaction was not a transaction done in pursuance of the conspiracy, but was a subsequent affair altogether, it was evidence against nobody but those who were parties to it.

Mr. KER. In July, 1878, John W. Dorsey went out to Rawlins, and while he was at Rawlins he had a conversation with Mr. Rankin. Mr. Rankin, I think, was the sheriff there. He came here and gave his testimony, which is found on page 2057:

Q. What time was it?—A. As near as I can recollect, it was in the latter part of June or first of July.

Q. Did you have any conversation with him?—A. Yes, sir; I had some conversation.

Q. Upon this subject we have been speaking of, that route and its running?—A. Yes, sir.

Q. What was that conversation?—A. He talked to me in Rawlins something about me taking the contract to carry the mail. I told him that I did not want to have anything to do with it; that I had not time. Him and me traveled the next day, or two days afterwards, anyhow me and him traveled from Rawlins to Omaha together on the train, and we talked it all over. I told him there was no money for me in carrying the mail, and he said he expected to have extra service; that it would be made tri-weekly, and there would be some money in it.

Q. Did he say anything how he was going to get that service?—A. The conversation came up just like it did, as near as I can recollect, when Mr. Rerdell was there, that we were a great way West there, and it took a long time to get anything done out there.

Q. Who said that?—A. I said that.

Q. What did he say?—A. He said that he had a brother that was a Senator, and through his influence he could get it done pretty soon, or something to that effect.

Q. Did he say anything further in that connection? Did he mention anybody else?—A. I do not think Mr. Dorsey did mention anybody. If he did, I don't recollect it.

Q. Did he hold out any inducement to you to take the contract upon the promise of increase, or otherwise?

Mr. INGERSOLL. Is not that a little bit leading?

Mr. MERRICK. Yes; it is a little bit leading.

The COURT. I think it is.

Mr. MERRICK. I say it is.

Q. What did he say about the profit you would derive and the probability of getting it increased?—A. I do not think Mr. Dorsey ever made any promise. There was a man there that was an agent of his, that is all.

Q. I am not speaking of him; I am speaking of Mr. Dorsey.—A. I do not recollect of Mr. Dorsey being—

Q. [Interrupting.] Have you stated all that passed between you and him in reference to your taking the contract and the considerations of your taking it?—A. There was quite a talk, but it has been a good while ago, and I disremember the whole conversation; but he gave me to understand that the mail line would be increased. I don't recollect of him mentioning anybody's name only Senator Dorsey.

This was before the increase was made, and John W. Dorsey was talking about having it made through the influence of his brother. He was talking to Rankin in order to get him to take the subcontract. On the 31st of July, 1879, the schedule was changed. Now, gentlemen, let me remind you, in connection with the conversation of John W. Dorsey, that whatever other conversations he may have denied, he did not deny this conversation. There was no denial of it, nor was there any denial of the conversation that he had with French and the conversation he had with Steineger. With those three men he did not deny conversing, nor saying what they said.

On the 11th of November, 1879, Stephen W. Dorsey filed his subcontract, dated April 1, 1879. On the 27th of December, 1879, there was a subcontract made with Foote & Dalton for three trips at \$14,000. Rerdell signed that subcontract as attorney for John W. Dorsey. This was John W. Dorsey's route. On August 14, 1880, the subcontract of Foote & Dalton was filed. On the 15th of October, 1880, a subcontract was made with Eugene Taylor for three trips at \$10,000, and six trips at \$20,000. They were preparing for additional trips. Rerdell signed for John W. Dorsey. Then, on the 19th of October, 1880, the subcontract of S. W. Dorsey was withdrawn, and on the next day, the 20th of October, the subcontract of Eugene Taylor was filed. On February 8, 1880, Rerdell wrote a letter to Eugene Taylor. It is found on page 2077:

WASHINGTON, D. C., *February 8, 1881.*

EUGENE TAYLOR, Esq.:

DEAR SIR: If you will get up petitions asking that the route be made six or seven

times a week, I can get the increase. Get the officers at White to both sign petition and write letters to the Postmaster-General, asking for an increase.

Very truly,

M. C. RERDELL.

P. S.—This must be done at once, so that I can get it by the 1st of March.

On the 4th of March the then President would vacate the chair, and a new one would go in; and consequently, on the 4th of March, Mr. Brady's tenure of office would be in jeopardy, and it was necessary to have this thing done before the 4th of March. I suppose that was the reason why they insisted so strenuously upon having the petitions in by the 1st of March. Taylor says that he got up petitions. There was a gentleman who undertook to get up petitions also. His name was John B. Adams. He stated to you how he succeeded. The people were all stirred up out in Rawlins, and all commenced to run around and get petitions signed in accordance with the letter that they had received. They immediately began to make their preparations to do as they had been requested. It was a sort of a holiday in Rawlins, and everybody took an interest in it, and everybody tried to get petitions signed. Adams went to work at White River, and here is what he says, on page 2007 :

Q. What did you do?—A. I went to the commanding officer with the petition and woke him up before sunrise in the morning.

Mr. INGERSOLL. I object.

A. [Continuing.] He refused to sign it. I showed it, I think, to three other officers there, who all refused. I think finally I did get about two signatures.

Q. And that was the end of your trip, was it?—A. Yes, sir; it was.

But there were petitions gotten up. Here they are, 33 and 34 S. Those two petitions were circulated by Taylor. On 33 S you will find an indorsement by General Sherman. General Sherman was placed upon the stand and gave some testimony in regard to these routes, in a general way, and as to his idea about the country. You all know General Sherman, I suppose, and know what sort of a man he is. I had the pleasure and the honor of serving under him, and marching under his command, and I know exactly what his character is. He is a noble-hearted, kind gentleman, a brave officer, and a good commander, and a man who would be very likely to grant any request that was apparently reasonable. This petition was taken to General Sherman for his signature, and I will read to you what Rerdell says in regard to it, on page 2350 :

Q. I hand you paper 33 S, and ask you if you ever saw it; and, if so, where you first saw it?—A. I received this petition by mail.

Q. How came you to receive it?—A. I had written to Eugene Taylor to get up petitions for an increase.

Q. The letter that has been in evidence?—A. The letter that has been testified to.

Q. And you received that back?—A. Not in this shape.

Q. When you received it back what did you do with it?—A. I had it taken to Army headquarters and obtained this indorsement upon it.

Q. To whom did you give it to take there?—A. To Col. John W. Steele.

Q. Whose employment was he in?—A. In the employ of Stephen W. Dorsey.

Q. It came back with that indorsement upon it, did it?—A. He took it up there and brought it right back; I went with him and staid in the corridor until he went in and got it.

That was the way that General Sherman's name came to be attached to that petition. Steele took it in and Rerdell waited outside, and it was signed and brought back and put in the Post-Office Department as the basis for Brady's order. On the 3d of March, 1881, as you will find by looking in the back of those petitions, they are said to have been filed or placed in the Post Office Department. On the 8th of March, 1881, Brady made an order. It is 32 S, on page 1963 :

From April 1, 1881, increase service to seven trips per week, and allow contractor and subcontractor \$18,275 per annum additional pay, being pro rata, and allow subcontractor \$13,333.33 per annum additional pay, being pro rata.

By the jacket upon which Brady made the order he knew that the subcontractor was performing that service for a less price, and he knew that the order that he then made was \$4,941.67 in excess of the subcontract price. This was on the 8th of March, four days after the inauguration. On the 14th of March, 1881, when Postmaster-General James came into office, he noticed this order, and had a conversation with French about it, and the next day he had a conversation with Brady. His testimony will be found on page 2035. I do not like to make a statement from recollection. I would rather read the testimony, so that there can be no mistake about it:

Q. Did you, subsequently or prior to that time, and if so, when, have any conversation with Mr. Brady in reference to any star-route matter, and particularly in reference to the route from Rawlins to White River, No. 38113?—A. Yes. I sent for General Brady when the journal was brought me, some time during the second week in March, to sign, and I discovered that there had been an increase on one of the routes.

Q. What route?—A. Rawlins to White River. Do you wish me to state the facts?

Q. Yes; state precisely what occurred.—A. I sent for General Brady, but he was not in; the chief clerk, Mr. French, came in.

Mr. WILSON. Never mind what Mr. French said, or what you said to Mr. French in General Brady's absence.

Mr. MERRICK. I think your honor can tell how far that is applicable after the statement is made.

The COURT. [To the witness.] You ought not to state what French said.

The WITNESS. The next day General Brady came in, I think, with the sheets I had sent for showing fines and remissions, according to my recollection.

By Mr. MERRICK:

Q. He came in with some papers?—A. With some papers, yes; and referring to the conversation I had had with Mr. French the night before he said, "Then, economy is to be the policy of your administration?" I said, "Yes."

Q. What conversation did he refer to?—A. The conversation had the night before with Mr. French in regard to increasing the service on the route.

Then, on page 2038, in the middle of the page:

Q. Was it on the next day when you saw General Brady that the conversation you have given in evidence took place in which General Brady asked you, as you have testified, "Referring to that conversation with Mr. French yesterday, is economy to be the policy of your administration?"

Then there was some interruption, and then—

The COURT. Go on.

Q. Was the order that you gave to the Second Assistant's office, to revoke this order of March 8, carried out?—A. No, sir.

Q. When did you discover that it had not been?—A. Some time in September, I think.

Q. What did you then do?—A. The order was revoked.

Q. At that time?—A. Yes, sir.

Q. What time did Mr. Brady leave the office?—A. I think in April.

From March, when he had the conversation, up to April Brady did nothing. Dogged, quiet, and determined, he meant to brave the thing out. He allowed the order to stand, and there it remained until the following September, when it was found that it had not been revoked, and the Postmaster-General himself revoked it.

Vaile, Stephen W. Dorsey, and Bosler drew the pay on this route. You know, gentlemen, in the early part of the day, when I took up this route, I read you the testimony that this route was given to Rerdell, and was not taken into account in the division of the routes; that it had nothing at all to do with the division. I say that Rerdell never drew a cent upon this route. The warrants in this case and the drafts have all been offered in evidence. The warrants are found on page 727

and the drafts on page 2085. Rerdell never drew a cent of pay, not a penny. John W. Dorsey signed the drafts upon which the pay was drawn all the way through the contract term, and he says it was according to his agreement.

You will remember that there was some testimony given by Mr. Taylor. You will also remember that there was one small office near Rawlins, and from that to White River there was no post-office on the route. White River was an Indian agency, and beyond that there was no mail carried whatever. The route ran from Rawlins, on the railroad, over to the Indian agency, and there it stopped. The only way communication was had with the outside world, from the Indian agency, was over this route. At that Indian agency all were Indians with the exception, as Taylor says, of ten or twelve people who were connected with the Indian agency. I submit to you, gentlemen, that Indians are not a class of people that either send or receive much mail. Taylor says the mail to White River was twenty to thirty pounds from Rawlins, but the other way it was only a few pounds. There was an Indian outbreak in September, 1879, which was soon put down. During the time that this Indian outbreak occurred there was an interruption in the mail service, but during that time when the troops were brought, they ran what are called military couriers. I believe the testimony in this case warrants me in saying that there were military couriers who carried the military mail.

You will remember also that the schedule in this case was reduced to forty-five hours, a less time than the petitions called for. Mr. France, who was the assistant to the postmaster at Rawlins, says, "On the forty-five hour schedule the mail arrived at Rawlins at 6 o'clock in the morning from White River, but the mail left Rawlins for the east at 4 o'clock in the morning." Remember that. The mail left Rawlins and went on east two hours before this mail came in. The mail for the west left at midnight. That being the case, the mail leaving at 4 o'clock in the morning for the east, where most of the letters went, and the mail for the west leaving at midnight, the mail from White River reaching Rawlins at 6 o'clock in the morning had to lie over there. Gentlemen, what difference did it make to the people at White River that the mail was run on a fast schedule of forty-five hours? What advantage was it to them to have their mail lie in the Rawlins post-office from 6 o'clock on one morning until 4 o'clock the next? The only advantage I can see is the advantage the contractors derived from the expedition.

The oath says, that on the present schedule it required four men and twelve animals, making sixteen, and that expedited to forty-five hours it would require eleven men and thirty-two animals, making forty-three. Perkins says, with three trips on a forty-hour schedule he used ten men and twenty animals. That would be thirty, and forty-three is what the oath calls for. He says in the summer he used ten men and twenty animals; but in the winter he used thirty animals, making a total of forty. The oath called for forty-three. But he carried passengers. Dalton says that on three trips at forty-five hours he used nine men and twenty animals, making twenty-nine. There is considerable difference between twenty-nine and forty-three. Dalton says he used those men and animals in carrying passengers as well as in carrying the mail. I submit to you, gentlemen, that the Government does not undertake to pay a man for carrying passengers as well as for carrying the mail.

The original pay on this route was \$1,700. It was increased to \$31,981.25. Taylor's pay was \$20,000. The profit that was derived from this route by the contractors here in Washington was \$11,981.25. Do you wonder

why it is that they did not allow Rerdell to take this route? He said he was to have a part of the increase. It was denied that they had made any contract with him at all. We produced the contract and it was offered here and read in evidence. In that contract it was shown conclusively that Rerdell was to have a portion of the proceeds of this route as well as \$1,000 for attending to Vaile and Miner's business; but his subcontract was withdrawn and the record and the testimony show that Rerdell never received a cent from this route. I am speaking by the papers, and I give the page that my friends may find out whether I am stating to you what is true or what is false. It was their own testimony—trying to throw upon Rerdell the burden of having manufactured these papers and done all this on his own account, whereas the truth is, as the records show and the papers show, and the testimony shows, that Rerdell was working faithfully and well for the people who employed him and were paying him \$3,000 a year.

The productiveness of this route can best be shown by the testimony of Mr. France. He said, "The mail from Rawlins to White River was fifteen or twenty letters." Just think of it! Fifteen or twenty letters going from Rawlins to White River, and the Government paying for that service, seven trips a week, \$31,981.25!

I have explained to you how the petitions were gotten up and arranged, and the people stimulated to ask for what they did not need, and did not require. It was of no earthly advantage to them, except to see some money go into the pockets of the subcontractor and thus to assist a fellow-townsmen. Upon the petitions that I handed you Brady made this order [exhibiting order]. Mr. Foreman, will you see that the date is correct. As alleged in the indictment, it is March 8, 1881. I have already handed you the petitions, and the two oaths, one of Perkins, and the one of John W. Dorsey, which was written in by Stephen W. Dorsey, and you have examined them.

ROUTE 35015, VERMILLION TO SIOUX FALLS, DAKOTA.

This route was taken in the division by Vaile and Miner. It was advertised as fifty miles, but the actual distance was seventy miles. There was a mistake in the advertisement. It was one trip a week and the time was fourteen hours. John W. Dorsey was the contractor, and the pay was \$398. Miner wrote the body of the proposal and Rerdell filled in the amount. The official orders are:

January 14, 1878, letter from A. Boynton.

May 2, 1878, order to embrace Brighton.

June 10, 1878, order to change address.

October 5, 1878, allowance for embracing Brighton.

December 23, 1878, order for increase.

March 31, 1879, Vaile filed a subcontract.

May 14, 1879, Vaile made an oath.

May 15, 1879, Vaile filed his oath.

July 10, 1879, Brady made an order for increase and expedition.

December 15, 1879, letter from the postmasters.

Now, to go back and refer to all the papers in the case and the testimony. I stated to you, gentlemen, that this route was advertised as fifty miles. The correct distance was seventy miles. When you bear that fact in mind you will understand, as I go along, the reason for the different acts. On the 14th of January, 1878, there was received a letter from A. Boynton. It is 13 R, on page 1906:

PHOENIX INSURANCE COMPANY, HARTFORD, CONNECTICUT,

BRANCH OFFICE, CINCINNATI, OHIO,

Agency at Lincoln Centre, Dak., January 1st, 1878.

Hon. J. P. KIDDER,

Washington, D. C. :

DEAR SIR: I will call your attention to the fact that the Post-Office Department in advertising for bids for mail service has advertised the distance from Vermillion to Sioux Falls, fifty miles, by mail route number 35015. Now, the distance is at least seventy-five miles. Of course bidders will bid accordingly, and we fear that the department may reject all bids on account of their being too high. Can you arrange the matter with the Post-Office Department, or shall we go into the petition business again? The people are very anxious for service on that route, and will not be contented until the route is in successful operation. We dislike to trouble you so much, but as the people think that Congressmen can cure all their ills, then so long we will have to trouble you about that mail route. Accept our thanks for the services already rendered by yourself for our interests.

Yours, respectfully,

A. BOYNTON.

Indorsed :

Respectfully referred to the honorable Second Assistant Postmaster-General, January 12, 1878.

J. P. KIDDER.

Gentlemen, this letter was sent to the Post-Office Department on the 12th of January and filed on the 14th.

Let me explain this route to you. [Maps distributed.] Vermillion is down on the railroad. When you get to Glenwood there is another mail route crossing this one, just below the line on the map [indicating]. That route is the route from Yankton to Eden, Yankton being to the left and Eden to the right. The railroad was not constructed through there until later. This route was divided in two. There were two carriers. One man carried thirty-five miles, and the other carried thirty-five miles, making seventy miles, the length of the route. Subsequently, as I will show you, by an order the route was cut off to end at the railroad. On the 12th of January, 1878, there was a notice sent to Brady that there was a mistake in the distance. At that time the proposals had not been received or opened. There had been no contract made and nothing done. Disregarding the letter, they went on and made the contract with John W. Dorsey at \$398 a year for one trip. On the 2d of May, 1878, before the route had gone into operation, Brady made an order, 3 R, on page 1901 :

• From July 1, 1878, embrace Brighton next after Alsen.

You will find Brighton at the lower end of the route. It had not been mentioned in the advertisement. On the 10th of June, 1878, Brady ordered to change the address to box 714, which was Miner's box. On the 5th of October, 1878, there was an order made, signed by French. It is 5 R, on page 1901 :

Allow contractor \$10.90 per annum additional, being pro rata, from July 1, 1878, for two miles increase for Brighton.

In the first place, the order was retroactive; and in the next place, Brighton had already been on the route. The carrier passed through it, and left a mail there, and took no account of the fact that it was not mentioned in the contract. But French made this order giving him \$10.90, and apparently increasing the distance two miles. There was some dispute as to whether the distance was seventy miles or seventy-two or seventy-three miles. The testimony of the mail carriers was that it was seventy miles. This order made it two miles further, or seventy-

two miles by the record testimony. On the 23d of December, 1878, there was an order made by Brady. It is 81 R, defense, and found on page 3305:

From January 1, 1879, increase service to twice a week, and allow contractor \$408.90 per annum additional, being pro rata.

That brought it up to two trips a week. This order was made upon five petitions, 82, 83, 84, 85, and 86 R. Here they are, gentlemen [exhibiting them]. I call your attention to the space in each petition. They are all precisely alike. They are all in the same handwriting, with the same space, and with one or two names upon each. These petitions were used by Brady to make the service twice a week. On the 31st of March, 1879, Vaile filed a subcontract, which Miner signed as attorney for John W. Dorsey. This was after the division, if you will believe what Miner says. On the 14th of May, 1879, Vaile, the subcontractor, made an oath for three trips in ten hours. It is 8 R, found on page 1905. Here it is, gentlemen [exhibiting it]. It is the only oath that is not scratched, or erased, or written over; but it is in the well known handwriting of our well-known friend, John R. Miner. The signature is Vaile's genuine signature, and the only difficulty about it is that Vaile, like the rest, was a pretty good hand with an affidavit. You notice that the oath was taken before Kellogg, who was Dorsey's secretary, and whom he had to do the swearing for the whole crowd. I want to read to you what Vaile said about this, on page 4030:

Q. What had you to do with procuring the affidavits for increase and expedition which were made by John W. Dorsey and John M. Peck upon the routes upon which they were the original contractors?—A. Nothing whatever.

Q. What had you to do with the affidavits made by Miner upon the routes upon which he was the contractor?—A. I never had anything to do with their affidavits. I made an affidavit on one of those routes myself.

Q. You say you made one affidavit. Let me read it to you and see if this is the one. I read from page 1905.

Then he read the oath to him.

Then the jurat is attached. Did you make that affidavit?—A. I did.

Q. Will you state how you came to make it?—A. My recollection is that I met Mr. Brewer, who had charge of the section, in the hall, and he said to me that increased service was wanted on that route, and it was necessary to have an affidavit. I had no communication with the Dorseys or with Peck, and I said, "I can't get an affidavit, unless I make it as subcontractor. Will that do?" He shrugged his shoulders and said to me, "I don't know. You make it and we will see." It was made and it was done. My having this conversation with him leads me more strongly to believe that I never had any such conversation with him—

Mr. MERRICK. [Interposing.] Wait a moment. Wait a moment. I object to any argument. It is enough for him to state what he knows.

Mr. HENKLE. [To the witness.] Never mind about that.

Q. Did you have any conversation with Brady upon that subject at that time?—A. None whatever.

Q. Your only conversation occurred, according to your recollection, with Mr. Brewer?—A. Yes, sir.

Q. And at his suggestion?—A. [Interrupting.] No; it was not his suggestion. It was my suggestion.

Q. He suggested to you that an affidavit was required?—A. Yes, sir; required.

Q. That route seems to have been advertised as fifty miles, and the distance circulars show it to be, I believe, seventy miles or seventy-three miles. How did you come to make an affidavit for a schedule of ten hours upon a route seventy-three miles long, and was not that pretty fast?—A. Very fast. I made it upon, as I supposed, what was then the fact—fifty miles as advertised. I had no idea that it was seventy-three miles or other than what was advertised. If I had I should have made a very different affidavit. I had no means of knowing, as I had not access to the distance circulars or the files. I don't think any one ever called my attention to it. If they ever did I did not have it in my mind at the time I made that affidavit.

On the next page, at the top:

Q. How do you say it happened that you never learned this fact that the distance

circulars showed it to be seventy-three?—A. I had no means of knowing, unless somebody especially called my attention to it, as I had no access to the distance circulars. The official papers were not at my command, and I do not think any one ever called my attention to it.

That was upon his examination-in-chief. Now, upon cross-examination, on page 4067, he makes another statement:

Q. Did you make an affidavit on the Vermillion and Sioux Falls route?—A. I believe I did.

Q. At the time you made that affidavit had you ever been on the route?—A. I never had.

Q. Had you any knowledge, and, if so, what, of the nature of the country?—A. I had a general knowledge of the country.

Q. What knowledge had you?—A. Well, I had been up in that country, in Nebraska. I don't think I was ever in Dakota, although I was once attorney for that Territory.

Q. You never had been on the route and you never had been in that Territory, had you?—A. No.

Q. How near to the route had you ever been?—A. I could not say.

Q. When you fixed the number of men and animals required to carry the mail on that route three times a week on the then schedule, what knowledge had you?—A. I had no special knowledge of the country, only I imagined I knew generally the character of the country and the distance.

Q. Did you know how many men and animals were in fact actually being used?—A. No; I did not.

At the bottom of page 4068:

Q. [Submitting paper.] Please look at the paper, 8 R, and tell me if that is your affidavit?—A. That is my affidavit; yes, sir.

Q. You say you would not have made the affidavit based upon the length of the route without inquiring?—A. Without I thought I knew the distance.

Q. Why did you make an affidavit as to the number of men and horses required, without some inquiry?—A. Well, I know about how many men it would take to perform a given service a given number of miles theoretically from my general information, and it was made upon that—what I supposed was necessary to carry that service. I am not infallible by any means. I might be mistaken, and get too high or too low.

Q. I see the affidavit was made on the 14th of May, and filed on the 15th of May. You testified yesterday as to how you came to make it. Had you at that time no means of knowing the length of the route?—A. I had not without going up there and inquiring. Of course I could have sent up there, and ascertained out on the road.

Q. Were not you and your firm in constant communication with that route?—A. I was not.

Q. Was not Mr. Miner representing you?—A. He may have been. If so, he did not give me that information.

Q. He gave you no information?—A. No.

Q. You did not ask him anything about the route?—A. I have no recollection that I did.

Q. But you went on and made the affidavit based upon the idea that it was fifty miles long, and with no knowledge of the character of the route?—A. That is my impression.

Q. Why did you not get an affidavit from John W. Dorsey?—A. I wanted no communication with him or with the party. I don't think I would have had it expedited if it had been necessary to get their affidavit.

Q. How long did that condition of mind continue?—A. Up to the last trial. It was a little that way at the last trial, but we have gotten over it somewhat now.

Q. Was your feeling against John W. Dorsey particularly?—A. Not all.

Q. It was a feeling against the whole combination, was it?—A. That was it.

Then, at the bottom of the next page:

Q. Then your idea was that you would not have taken the money if to do it you would have had to get an affidavit from the contractor on the Vermillion and Sioux Falls route?—A. I think if it depended upon my asking for any such thing as that I never should have asked it in the world.

Q. Was it necessary for you to ask it in order to get the affidavit?—A. No, sir.

Then, on page 4071:

Q. Going back for a moment to the Vermillion and Sioux Falls route, could that route, being seventy-three miles long, be properly run in ten hours?—A. It could not. The horses would have had to have been put right down on the run to have done it,

and you could not have driven them more than two or three miles before you would have had to change them at that speed.

You see, gentlemen, the route was seventy or seventy-two miles long, and the time fifteen hours. That would be about five miles an hour.

The mail was then being carried on this route at a little less than five miles an hour; but it was necessary to have it increased and it was necessary to get a little more money out of it. Vaile said he did not know how long it was. He thought it was fifty miles, and made his affidavit based upon that idea. On the 15th of May, 1879, the oath of Vaile was filed. It is so marked on the back. At the time that Vaile filed that oath, and when the order was about to be made, Brewer, who Vaile says told him to make the oath, notified Brady that the oath made in that case was made by the subcontractor and not by the contractor. Brewer's statement is found on page 1881. The faithful clerk notified his superior that it was irregular.

There are three petitions, 9 R, 10 R, and 11 R. Here they are, gentlemen [handing them to the jury]—another set of patent petitions, because they are identically in the same language. I read 9 R:

Hon. D. M. KEY,

Postmaster-General:

We, the subscribers, residents on the line of mail route 35015, Dakota Territory, respectfully petition for daily service on that route, and also that the schedule be reduced to ten hours. Southern Dakota is receiving very large numbers of emigrants, and this route is one of the principal lines running northward from a railroad point, and is being very rapidly settled, and is, we believe, entitled to the additional mail facilities asked for.

They ask that it be made a daily line and a ten-hour schedule. They are all the same.

Postmaster Shaw was shown one of these petitions, 9 R, and he was interrogated about it, and says:

My name is there. If I had read the petition I should never have signed it. I do not recollect anything about it.

10 R is Miner's petition. Miner wrote it, and it is not disputed.

On the 10th of July, 1879, with the petitions I have shown you, and Vaile's oath before him, Brady made an order (7 R, page 1904):

From August 1, 1879, increase service to six trips per week, and allow contractor and subcontractor \$1,635.60 per annum additional, being pro rata. Expedite schedule to ten hours each way, and allow contractor and subcontractor \$3,608.10 per annum additional, being pro rata, as appears by sworn statement.

He expedited the route, and allowed pro rata, based upon a false sworn statement. Gentlemen, that brought the route up to the extraordinary time of over seven miles an hour, if you take the full two miles additional. But, according to the testimony of the men who ran the route, it was seventy miles in length, and ten hours would make just seven miles an hour. That is a pretty good rate of speed. I think if you were to drive through the streets of Washington at the rate of seven miles an hour you would receive a polite invitation to step before Judge Snell and pay for the privilege.

Brady says, in telling why he did this, on page 3396:

Q. Have you any recollection, independently of the papers, touching that route?—
A. I have.

Q. Please state to the jury what it is.—A. Judge Kidder, who was then Delegate in Congress from Dakota, lived at Vermillion, and was very anxious to have a daily mail line to that place. I presume he thought, like most members of Congress, that it would be a benefit to him if he could give his own neighbors a daily mail. He was very anxious for me to get him up a daily mail to his town. I tried to do it. The contractors kicked against it, because they said they were losing money on the num-

ber of trips they were then performing, and to make it daily would only make them lose so much more. Accordingly, we conjured up some plan to help them through. For this purpose of obliging Judge Kidder, and as a matter of course the people out there, we expedited the route in order to help the contractor a little. That was one of the principles we went upon in that department while I was there—to help a contractor rather than to compel him to lose money, if we could. We would rather help a contractor any time than to press him. Therefore we got up the service in the way it was gotten up; it was increased and expedited. Subsequently Judge Kidder went out of Congress. Mr. Bennett came in as his successor, and wanted the same thing done some other where. I told him there was no money to do it with. He suggested that we cut down this Vermillion and Sioux Falls route, and save enough money on that to do what he wanted done. I told Judge Bennett that I was not doing business that way; that I had put up that route for Judge Kidder, and I proposed it should stay just where I had put it; that if I could do what he wanted done I would do it subsequently, but that I would not cut down one service in order to put up another.

Q. Do you recollect of their asking you to increase it two hours beyond the contract time?—A. Well, I believe that I have an indistinct recollection—I have no recollection except as I have got it during the trial. The petition, as I understand it, asked for two more hours' running time than the original contract called for. That could not be done under the law.

Then, on page 3458, he was cross-examined :

Q. Did you consider that it was your duty as Second Assistant Postmaster-General to put up the service for an individual?—A. I sometimes tried to accommodate my friends in that way.

Q. Under the contract, if expedition is ordered, the contractor has a right to throw up his contract; did you ever know such a case while you were Second Assistant Postmaster-General?—A. I do not remember any. Contractors were very well treated while I was Second Assistant.

Mr. BLISS. I judge so.

The WITNESS. I guess they are throwing up contracts now.

Q. You think they are?—A. I have been told so; I don't know it.

Q. Do you not know that the department is self-sustaining now?—A. But not by reason of any curtailment of the star-route service; simply by sale of stamps throughout the country, because the people pay for the stamps they have bought. That is the reason it is self-sustaining.

Even in his dying moment he would hang on to his own theory. The contractors had a good time while Thomas J. Brady was Second Assistant Postmaster-General. And when you send your letters from one end of the country to the other with a 2-cent stamp, where you formerly had to use a 3-cent stamp, Brady would have you believe that it is because you buy more stamps, and not because an honest Postmaster-General stamped Thomas J. Brady out of existence as Second Assistant Postmaster-General.

On the 15th of December, 1879, there was a letter from all the postmasters to Brady. It is 16 R, and is found on page 1907. I cannot help reading it. If I do not read it the other side will. They will not read again what I have read :

To the Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General, Washington, D. C. :

SIR: We, the undersigned, postmasters on United States mail route No. 35015, from Vermillion to Sioux Falls, Dakota Territory, do respectfully represent that the mail on the above route is now carried between Vermillion and Sioux Falls—distance, seventy miles—on ten hours' time between the two places.

In our opinion there is no reason why the time ought not to be extended. We therefore ask and petition that the time for carrying the mail on the above route between Vermillion and Sioux Falls be extended to sixteen hours.

Signed by all the postmasters on the route, and indorsed on the back:

Respectfully recommended. Granville G. Bennett.

Indorsed below in the handwriting of Brady:

BREWER: Write Judge B. that cannot be done.—BRADY.

The note that was sent stated that it would change the terms of the existing contract; it is found at page 1939. The reason why he could not bring the schedule back to sixteen hours was that it would change the terms of the contract and be an injustice to the competing bidders. It would be an injustice to those people who had put in bids at the same time that Dorsey's bid had gone in.

On page 3555 Brady says:

Q. On the route from Vermillion to Sioux Falls you stated, I think, that when they applied for an extension of the running time you could not grant it, because it was beyond the contract time?—A. I understand that is the fact. That extension, I believe, was recommended by Judge Bennett.

Q. [Submitting paper.] "Write Judge B. it cannot be done." That is your indorsement, is it not?—A. I believe so.

Q. That is the petition, 16 R, signed by all the postmasters.

Then on page 4032 is found 88 R, defense. The postmasters wrote asking to have the service cut down from daily to tri-weekly, to end at this station up here, Worthing.

March 16, 1880, Brady made an order (87 R, defense, page 4032):

All the postmasters ask that service end at Worthing, 3 a w. from April 1, 1880. Omit Sioux Falls and Prairie Grove and end at Worthing, curtailing distance 16 miles; reduce service, Vermillion to Worthing, 59 miles, to tri-weekly, and deduct from pay of contractor and subcontractor \$3.720.99 per annum pro rata, on which one month's extra pay is to be allowed.

Vaile drew the pay, J. W. Dorsey signed the orders for the pay, and Miner signed the receipts.

Let us take the oath: On the present schedule it required three men and three animals, making six. Reduced to ten hours, it required five men and ten animals, making fifteen. That was Vaile's oath. Leech, who was contractor for the whole route, testified that he made one trip in fifteen hours, using one man and four horses, making five. Vaile had it six. For three trips, ten hours, he used two men and ten horses, making twelve. Vaile had it fifteen. But Leech carried passengers. Millie carried the mail for thirty-five miles, and he used one man and six horses, making seven. And Nichols carried the balance of the distance, using one man and four horses, making five. Five and seven are twelve. And with those twelve men and horses they carried the mail and carried the passengers. According to the oath that Vaile put in it required fifteen.

Leech says there were times when if you had a hundred horses you could not make the time. He says: "I carried the mail from August, 1878, to February, 1880. I lost all I had, and had to give the route up." They fined him so that he lost everything. He received nothing from the route, got into debt, and had to throw it up. He could not make seven miles an hour.

Millie says the mail consisted sometimes of a postal card and sometimes from three to five letters and two or three papers. You remember Millie. He was the funny fellow who said he got fat driving seven miles an hour, going seventy miles a day every day. He said his horses were not in very bad condition. But he said sometimes there was nothing but a postal card in the mail, and somebody put the question to him whether he was not very anxious about that postal card, whether he was not afraid he would drop it. "No," he said, "I always hung on to that; I watched it for fear of its slipping out."

Nichols said that the largest mail was fifteen to twenty pounds, the smallest a postal card. That was coming up from Vermillion. You remember, the mail that was sent up from Vermillion went off on the other route, as I have already explained, and Nichols, coming up from

Vermillion, says that the largest mail on that route was fifteen to twenty pounds, and the smallest a postal card. Just think of it, gentlemen, seven miles an hour for a postal card! and the country was rapidly settling up, according to these petitions, and they required increased mail facilities. I think that this is one of the wickedest routes of the lot; there was more bad work upon this probably than upon any of the others, although it was a small route.

Vermillion was on the railroad. Now let us see how the schedule worked. The testimony was that the mail left for the east at 9.30 a. m. and for the west at 4 p. m.; and that the mail on this route arrived at 5 o'clock p. m. It left for the east at 9.30 a. m., and left for the sea-shore that Mr. Green was inquiring about at 4 p. m., and the postal card that ought to have been carried with expedition had to lie over in the office at Vermillion from 5 o'clock p. m. until 9.30 the next morning before it could start on its journey east; and it had to wait until 4 p. m. the next day if it was going the other way.

At Sioux Falls it was altogether as bad. The mail left for the east at 1 o'clock p. m., and for the north and west by stage, three times a week, at 7 o'clock a. m. The mail arrived at 5 o'clock p. m. When the mail on this route got in at 5 o'clock p. m. it had to wait until 7 the next morning if it wanted to go out west, and then, unless it happened to hit the stage day—because there were only three trips a week made by the stages—it would have to wait until the stage went. When it got in at 5 o'clock in the afternoon, if it was going east, it could not leave until 1 o'clock the next afternoon.

But you know the people required expedition. It is the best indication of the arrangement that was made between these people. The arrangement was that they were to take the routes at a low figure, and that the routes were to be expedited up so as to give them a large amount of pay. And on account of the mistake made in advertising the distance on this route they were never able to find out, in the hurry and confusion of fixing up these routes, that there was a mistake, and that the mail was being carried at the rate of five miles an hour already. And then, acting without that knowledge, they agreed to get up petitions, and did get them up, as I showed you, in Miner's handwriting, copied by somebody else, and they put them in. And acting upon the petitions and the oath, Brady gave them a weekly service, and brought the time down to ten hours, having the mail to run at the rate of seven miles an hour, and all there was to be carried was a postal card and a couple of letters, and sometimes two or three papers. Finally, it was cut off at Worthing, and left with three trips and expedition.

The original pay was \$398; it was increased to \$6,133.50. We had no contract from Leech on file, and we could not find out what Leech received for carrying the mail on this route. But we did find out from the papers that \$6,133.50 was the price that Thomas J. Brady was willing to pay for carrying a postal card.

There were some mail bills put in on this route, but it is not worth while for me to go into the mail bills.

I will call your attention to the overt acts in the case. Here is the oath marked, "Filed May 15, 1879" [handed to jury]. There is the jacket, 7 R, July 10, 1879. I have shown you the five petitions that were inside of it. This is the correct date that is mentioned in the bill of indictment.

No. 35051, BISMARCK TO TONGUE RIVER, DAKOTA.

[Maps handed to the jury.]

This is another of the routes taken by Vaile and Miner. The route

was advertised as two hundred and fifty miles in length. The real distance was three hundred and three miles. There was one trip a week; time, eighty-four hours. John R. Miner was the contractor; pay, \$2,350. The official papers are:

April 20, 1878, S. W. Dorsey wrote to General Rosser.

April 21, 1878, reply of General Rosser received.

June 25, 1878, letter from Miner to Brady.

Same date, letter from Boone.

July 15, 1878, two letters from C. B. Wright.

September 30, 1878, Miner's oath was made.

October 1, 1878, Miner's oath was filed.

October 4, 1878, offer of Miner to carry the mail.

December 23, 1878, an order for increase and expedition.

March 1, 1879, letter from Judge Kidder.

August 2, 1879, order to increase service.

July 31, 1881, the route was discontinued.

This route, I suppose, has formed the subject of more talk than any of the others, because it was a route that was run by these people themselves; they did not sublet it to anybody, but chose to run it themselves.

The first thing that appears is, that on the 20th of April, 1878, Stephen W. Dorsey wrote a letter to General Rosser, asking General Rosser to give the correct distance of the route. General Rosser was an engineer upon the railroad. That letter is marked 3 T, page 2137. It is one of the letters in Dorsey's handwriting about which there is no dispute.

On the 21st of April, the next day, General Rosser sent an answer to Stephen W. Dorsey, and this answer is marked 4 T, and appears at page 2137. The answer of Rosser was that the distance was three hundred and three miles. You know that it had been advertised as two hundred and fifty miles.

Then, on the 24th of June, 1878, there was a letter from Miner to Brady asking to have the mail discontinued, and giving five reasons. That letter is 5 T, page 2137.

The fifth reason is:

5th. The whole country between Bismarck and Tongue River is occupied by hostile Indians, and no mail *can be carried* over this line *except with a large military escort*. It is simply impossible to carry the mails over this route until military posts are established along this route.

I therefore respectfully ask that this route may be discontinued.

Respectfully, &c.,

JOHN R. MINER, *Contractor*.
"B."

The letter "B" under it stands for Boone, I believe. Boone at that time had not been frozen out. He was one of the elect, with visions of cash before him.

June 25, 1878, there was another letter, and the very valuable Kellogg wrote the body of the letter, and Mr. Boone, still with visions of cash and fears of a loss before him, signed it and swore to the statement contained in the affidavit. That is 6 T, page 2138. It is in substance about the same thing, that it would be impossible to carry the mail over the route at all.

On the same day, June 25, 1878, on these letters that were sent in to Brady, Judge Kidder indorsed a request for the discontinuance of the route (5 T, page 2137):

Judge Kidder presents this with the statement that he has reason to believe that

the facts set forth therein are correct, though he does not know of his personal knowledge.

BRADY.

JUNE 25.

Brady put his own indorsement upon it.

In June, 1878, you will remember, John W. Dorsey was out on this route trying to get the service put on. At that time he had a conversation with Mr. Pennell. Mr. Pennell was a gentleman who was examined here as a witness upon the stand. He did contract work in Montana and Dakota in building railroads. And although our friends on the opposite side wanted to make it appear that he was in Government employ—he told them that he had been—but it was at a little loss to himself. He had gone out, at our request, to bring a witness back here whose presence we thought necessary to testify to a conversation. But Mr. Pennell's testimony and his character are unimpeached. If they wanted to impeach him they might have done it, but I suppose they found it would be an impossibility to do it. Nobody knew better than John W. Dorsey and Miner that they could not have impeached Pennell's testimony, because they had both been out there. Pennell says, at page 2157 :

Q. Did you have at any time any conversation with Mr. Dorsey with reference to your becoming interested on the route?—A. Yes, sir; when he first came there he wanted me to go in with him and take a half interest with him.

— Q. What did he say to you then?—A. Well, he said to take a half interest.

By Mr. INGERSOLL :

Q. [Interposing.] What is that? I did not hear you?—A. He wanted me to take a half interest. I had some stock, and he said he would furnish the money to build ranches, and I could build the ranches and take care of the stock, and he could go back. He said he did not want to stay there. I declined to do that.

Q. Was it you he wanted to take a half interest?—A. Yes, sir.

Mr. INGERSOLL. Go ahead.

By Mr. BLISS :

Q. What further?—A. I declined to do so.

Q. Was anything said about any reasons why you should take a half interest?—A. They did not like to buy stock and come into the country—that Indians were liable to run off with it, &c.

Q. Was anything said about any increase of service?—A. Yes, sir. I told him there was not money enough in it for me to go into it. He said they would have an increase of service.

Q. Did he state what the increase would be?—A. He said first it would be three times a week, and then the time would be shortened, and it would be increased to six times a week.

Q. Did he say anything as to the amount that would be allowed for increase?—A. He did not claim to know exactly himself. He said it would be at least \$25,000 a year, and might be a great deal more for three times a week.

Q. Was anything said as to when these increases were to take place? Give us the whole conversation.—A. He said there would be one increase inside of six months sure, and he thought another one inside of a year, to six times a week.

Q. Anything said as to how it was to be obtained? If there was anything of that kind, give us the whole conversation?—A. We had considerable talk about it at that time, and he said that he had a brother in Washington that would help them through with it and have influence in it, and gave me to understand that they could have it about as he wanted it.

Mr. WILSON. Do not state what he gave you to understand.

The WITNESS. I couldn't say exactly word for word what he did say.

Mr. MERRICK. State in your own language the substance of it.

Mr. INGERSOLL. Had the dead wood on it.

Mr. MERRICK. Yes, that is it.

Mr. BLISS. This belongs to the Deadwood region.

The WITNESS. He told me that they were sure of getting it increased, and they would get this amount of money for it, and that his brother here would help them get it, and he spoke about being all right with the department—that he was all right with the department, and that there was no trouble about that—whoever had the

increasing and expediting. I didn't know at the time who that was, but I didn't have much faith in what he said, and therefore I didn't take the interest.

Q. You did not become interested in the contract?—A. No, sir.

Afterwards, in another conversation, page 2156:

Q. Was anything at any time said to you as to why more ranches were built than were used?

Mr. WILSON. That is very suggestive, your honor.

The COURT. I do not know that it suggests the answer.

Mr. INGERSOLL. I do not think it will do him any harm.

The COURT. It calls his attention to the subject.

Mr. WILSON. Go ahead.

The WITNESS. Yes; he said the reason was that they would need them.

By Mr. WILSON:

Q. Who said?—A. John W. Dorsey said that on increased service they would need all the ranches, and it would be cheaper to put them up going through once than to make two trips.

Then, again, you remember that about the 1st of July they were to start out to build the ranches. Pennell says that he started on the 17th of July, and that he was to build twelve of them. They were to be twenty miles apart. He says that he did go on and build twelve, and afterwards, when John W. Dorsey came along the line over from Fort Keogh, he gave orders to build some more, and acting upon the order of John W. Dorsey he built three more ranches, making fifteen altogether.

Rerdell started out there about the 11th of July, 1878. He says, at page 2218:

Q. For what particular purpose were you to go West?—A. I was to go West for the purpose of assisting John W. Dorsey in putting service on the route from Bismarck, Dakota, to Tongue River, Montana, or Fort Keogh, as they called it then, I believe.

Q. Did you go?—A. I did; leaving here on the night of the 11th of July.

Q. Did you receive any instructions before leaving?—A. I did.

Q. From whom?—A. From Senator Dorsey.

Q. Did you receive any money, or were you given a credit upon which to draw at the time you left?—A. I was, but I would have to explain how that was done. I got no direct credit to me in my name.

Q. Did you receive any money?—A. I did.

Q. How much?—A. One thousand five hundred dollars.

Q. From whom?—A. Senator Dorsey.

Q. Now, will you explain the credit?—A. He went with me to the German-American National Bank, on the corner of F and Seventh streets, and placed to the credit of John W. Dorsey & Co. \$3,000, causing me to sign the firm-name of John W. Dorsey & Co. on the signature book, so that they would know who drew the drafts.

Q. Did you sign the firm-name?—A. I did sign the firm-name of John W. Dorsey & Co., and he placed to the credit of John W. Dorsey & Co., for me to draw out over the signature that I signed on the signature book, \$3,000.

Q. How much money did you say you took?—A. He gave me \$1,500 in money and a credit to John W. Dorsey & Co. of \$3,000.

Q. Was that all the money or credit?—A. At that time; yes, sir.

Q. Did you subsequently receive any further money or further credit to be used on that trip?—A. No, sir; not till after I came back. I had some more money, that is, I negotiated some more money after I returned from Dakota.

Q. What paper was it that you had to negotiate?—A. I am at a loss to remember. I cannot recall now, positively, whether Mr. Miner had some blank notes or I had them. I do not remember. Those notes were signed John W. Dorsey & Co., and they were indorsed S. W. Dorsey, but the amount was not in the note. It strikes me now there were three of those notes. I know there were two.

Q. Who gave you those notes?—A. Well, I cannot remember whether Mr. Miner had them or I had them or whether Mr. Dorsey gave them to me. I remember having the notes after my return, or, at least, I remember negotiating the notes. I cannot remember whether Mr. Miner had the notes or I had them, Mr. Miner being here on my return from there.

Q. How much of the whole fund did you use in stocking the Tongue River route?—A. Well, sir, it was pretty nearly all used, except a small balance that I had along in the fall of the year and turned over to Mr. Miner and Vaile.

Q. Used for what purpose?—A. It was all, I think, or at least the majority of it,

within a few hundred dollars, used for stocking the Tongue River route. What I mean by stocking is building stations, buying grain, and paying freight bills, &c. I went all over that line and spent nearly all that I had that I carried out with me, and then had to get some more after I got back.

Q. Aggregating, I suppose, several thousand dollars?—A. Well, there was \$3,000 and \$1,500 and then a note for \$1,000 and a note for \$2,500 that was negotiated.

Q. Making \$8,000 in all?—A. That is the gross amount that passed through my hands.

I ask you to remember this testimony, gentlemen, in this connection, because Mr. Vaile and Mr. Miner, as I will show you as we go along, will make a claim that they never received a dollar from the route. I want you to see what was actually expended upon the route, and how much they were likely to have received as the product of Mr. Miner's oath, filed in this case, and Mr. Brady's excessive generosity.

Q. At the time you received your instructions from S. W. Dorsey in reference to what you were to do in the West, did he say anything to you about establishing a line or a post-office about sixty miles north of the Bismarek and Tongue River route?—A. He did.

Q. What did he say about this route to be added to the Tongue River route, and running to the north?

Mr. HENKLE. About whom are you inquiring?

Mr. MERRICK. I am inquiring about the instructions which he says S. W. Dorsey gave him.

A. Among the instructions that he gave me was one to the effect that I was to arrange for an office. He first furnished me with the necessary blanks for the establishment of post-offices. The Post-Office Department furnished the blank applications to be filled up. He furnished me with some of those blanks, explaining how they were to be filled up, and said the advertised distance was short, and, when I put the men out over the road, to make an application for an office off to one side at an angle, giving me a little draft of what he wanted, and to have it sent to the Post-Office Department.

You see, gentlemen, these were instructions given by Stephen W. Dorsey to Rerdell before Rerdell started out upon the route at all.

Q. How far off from the line of the Tongue River route did he indicate that this new post-office was to be?—A. I was to put it far enough off to get an increase of distance of about sixty miles, that being about the distance that the line was short.

You know, as explained to you, that it was advertised as two hundred and fifty miles, and General Rosser said that it was three hundred and three miles, and some of the papers on record mention it as three hundred and ten miles. But Rerdell says here that the object of this "elbow" post-office was to make up the distance so that it would make their pay equal to the pay for three hundred and three miles.

Q. Did he tell you how you were to accomplish that purpose?—A. He did.

Q. How were you to do it?—A. I was to have one of these blank applications filled up, applying to the Post-Office Department for the establishment of the new office, and to get the men employed on the line to sign it, designating one as postmaster.

Q. You mean the men employed to build your ranches, and so forth?—A. Yes, sir.

Q. What did you do in execution of the instructions you received from S. W. Dorsey, as to stocking the Tongue River route, building ranches, and establishing a post-office off the line of the route?—A. Well, sir, I went direct from here over the lines that I had passes on—I think that was about the direct line—from here to Saint Paul. When I arrived at Saint Paul I did not make the connection with the train going to the northward over the road running up to the point where I wanted to go, and I was compelled to remain there nearly one day. I had only missed the train probably a couple of hours. There I met John W. Dorsey. I was sitting in a hotel and he walked in, to my astonishment. I did not know he was there. He took me down to the corals or stables near the depot and showed me a car-load of horses that he and Mr. Pennell had been to Saint Louis to buy. We went on together, I think, to Bismarek. As soon as I got there and saw the condition the route was in I went right to work buying grain and buying materials to build the stations, that is, such lumber as would be needed, and cooking-utensils and provisions. All this I did with the assistance of Mr. Pennell, who assisted me in all of it, and Mr. Dorsey, too. I paid the bills for all these materials and supplies through the house of J. W. Raymond & Co., drawing on the German-American Bank here in the name of John W. Dorsey & Co.

Q. You signed their name?—A. I signed their name. I had letters of introduction to Mr. Raymond. As soon as we got the train ready and started Mr. Pennell out over the mountains to build the stations, dig wells, cut hay, and build bridges and everything of that kind so as to open as good a road as we could, my instructions were to cross the prairies and stake it out. I filled up one of these blank applications for that post-office, and I think we selected the name of the post-office, but I have forgotten what it was, and got it all fixed up for Mr. Pennell to carry it and remain there and have the men sign it, and so forth. I shipped the grain up the Missouri River to Fort Buford, and from Fort Buford up to Miles City, which was the western terminus of the line; and going along with it I distributed some of that grain at the mouth of the river there—I have forgotten the name of the place. It was directly on this line, or supposed to be, where we were going to establish the office. When I got to Miles City I found the boat would only stay there about twenty-four hours, and I got up a petition there asking for an increase of service over the line and got all the men I could find there to sign it. I do not think any one refused. I went across to Fort Keogh, just across Tongue River, probably two or three miles from Miles City. I think I had a letter of introduction to General Miles. I presented it and got him to write a letter. I think he wrote a letter or caused a letter to be written. I returned on the boat, leaving John W. Dorsey there.

Q. To go back a little, if you recollect, please state where the route that you were to arrange for was to part from the regular Tongue River route in order to reach the new post-office?—A. I do not exactly understand your question.

Q. Whereabouts did you locate the contemplated post-office that was to be north of Tongue River, and whereabouts was the road leading up from the Tongue River route to this post-office to leave the Tongue River route?—A. Well, sir, we had a map showing the topography of the country, and the map showed a creek, and as I was informed by Mr. Pennell as to the direction—

Mr. MERRICK. [Interposing.] You need not say what you were informed. I suppose they would object to that.

A. [Continuing.] We marked it out on the map and also on the blank map that was placed on the back of the application, and I also marked off the stream that I found located. I think I had a post-office map.

Q. What was the amount of population in and about the place at which this new post-office was to be located?—A. From my personal knowledge I knew nothing about it.

By the COURT:

Q. That was the paper post-office?—A. The paper post-office for the purpose of increasing the distance.

We do not know which one of these little creeks it was he had mapped out to locate the office upon, but it was one of them. He had with him a large post-office map, and, of course, the creek does not show so plainly on these maps as it would upon the larger post-office map.

Stephen W. Dorsey, of course, is mentioned in this testimony as having given the directions, and having told Rerdell how to fix up the post-office and how to build the ranches, and of course he is entitled in that connection to have read to you what he said. It is found at page 3920:

Q. Where was John W. Dorsey at that time?—A. I supposed that he was somewhere on this line, but it appears from the information I have since got that he was not. He was buying horses out in Minnesota, I believe.

Q. Where was Peck?—A. Peck was in New Mexico.

Q. Where was Miner?—A. Well, of course I do not want to answer questions of this sort when I was not personally present to know, but I think he was in Denver.

Q. Where was Boone?—A. I believe he was here, though I do not know.

Q. Did you not procure passes for Rerdell to go west?—A. I do not remember, but I suppose I did.

Q. Have you any recollection of procuring passes for him?—A. No, sir; but I have no doubt I did.

Q. Did you give him letters of introduction?—A. I think I did.

Q. Did you give him any forms of petitions?—A. That I do not remember.

Q. Did you give him any money?

The WITNESS. For himself?

Mr. MERRICK. Did you put in his control or his possession any funds.

A. I think I did.

Q. How much?—A. I believe \$3,000; but as to that I will not make an absolute statement. I think it was \$3,000.

Q. Did you give him any instructions as to building ranches or organizing post-offices along on routes connecting with the Tongue River route?

The WITNESS. As to building ranches?

Mr. MERRICK. Yes.

A. I think the ranches were mostly built at that time.

Q. That is not an answer to my question.—A. I don't remember whether I did or not.

Q. You don't remember whether you gave him any instructions or not?—A. No, sir; I gave him general instructions to go out there and assist John W. Dorsey in putting that service on, for the reason that at that time I was afraid it was going to fail.

Q. Did you give him any instructions about petitions for expeditions and increase?—A. Possibly.

Q. Did you not tell him that the route would be increased?—A. I may have told him so. Whether I told him so or not, I believed it.

Q. Had not the contractors and others at that time asked to be relieved from that route because it was not needed?—A. I don't know. If they did they made a statement that was not true. It was needed. They may have asked to be relieved on account of the Indian troubles.

The COURT. Are you ready to adjourn?

Mr. KER. Yes, sir.

The COURT. [To the Crier.] Adjourn the court.

Thereupon (at 4 o'clock p. m.) the court adjourned until to-morrow morning at 11 o'clock.

FRIDAY, APRIL 27, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. KER. Gentlemen, I explained to you yesterday the instructions that were given to Rerdell by Stephen W. Dorsey, when Rerdell started West, about fixing up the stations and about getting up the paper post-office, and told you that he gave to Rerdell some eight or nine thousand dollars to spend. I also read to you Dorsey's testimony in that respect, in which he practically admitted all that Rerdell said, except about the paper post-office. On the 15th of July, 1878, there were two letters of C. B. Wright. They are 20 and 21 T. They were both written by Rerdell. Here they are, gentlemen, both alike. [Exhibiting them.] There is no difference in them at all. Rerdell said he had a letter of introduction from Stephen W. Dorsey to Mr. Wright, and he stopped at Saint Paul and procured those letters from Mr. Wright. They are both filed in this case as petitions or recommendations for an increase. Then, as I told you, on the 15th of July, 1878, Rerdell met John W. Dorsey at Saint Paul, and they started out together towards Bismarck along with Pennell. On the 17th of July, when they reached Bismarck, Rerdell had a conversation with Pennell, in which conversation Rerdell told Pennell about the petition that he had written and was to send out to Pennell upon the road in order that Pennell might get the men to sign it. It was the same one that John W. Dorsey had spoken to Pennell about previously, but Rerdell, having his instructions from Stephen W. Dorsey, probably reiterated to Pennell what John W. Dorsey had said. On the 17th of July, the same day, John W. Dorsey again repeated to Pennell the instructions, in order to impress upon Pennell's mind the importance of getting up this paper post-office, on a branch of the Little Missouri River. In July, 1878, Rerdell wrote petitions for increase, as he has already said, and I have read to you his testimony in that respect.

Here is one of the letters that Rerdell wrote and got General Miles to sign. [Exhibiting 25 T.] Here is the petition, 24 T, that Rerdell said he wrote, and had no trouble in getting people to sign. Everybody he asked signed the petition. On the 17th of July, 1878, Pennell started out to build the ranches. You will remember that both John W. Dorsey and Rerdell went together over to Miles City. Then, as Rerdell says, he started back and came over to Bismarck again. You know instead of going back by way of the railroad and steamboat from Miles City, John W. Dorsey cut across the line of this route, and he says that he met some of the outfit on the way and started down with them to another place from the place where he met them. That night he had a conversation with the men at the camp. The conversation he had with Coll McLellan is given on page 2656, beginning at the bottom of the page:

Q. Well, give the substance of what you remember.—A. He told us that he intended to have the service increased. In about three months, I think, he expected a tri-weekly service, and in about three months after that he expected a daily service.

Q. Did he say anything about the profits or cost of it?—A. Yes, sir; he said that while they were having a weekly service, they expected to lose money on it, but when it was increased, and the time expedited, they expected to make a very good thing of it.

Q. Were any sums named?—A. I think he mentioned \$150,000 as the sum to be realized.

Q. Did he say anything about how he expected to get it increased?—A. Yes, sir; he told us that his brother, Senator Dorsey, was chairman of the Post-Office Committee, I believe it was, and through his influence he expected to get the increase, or partly through his influence.

Q. Did he say anything as to who was interested in the route?—A. He did not say who all of the parties were.

Q. Did he name any?—A. I don't remember any, excepting Senator Dorsey and the Second Assistant Postmaster-General.

Q. He named him, did he?—A. He did not give the name; only the position.

Mr. WILSON. Does the court hold that is competent.

The COURT. I think so at this stage.

Mr. WILSON. I reserve an exception.

Mr. DAVIDGE. So do I.

Q. Was anything said about the way the service was to be performed?—A. I do not understand.

Q. Was anything said about performing the service on time or anything in that connection?—A. I think he said at one time he did not care whether they got through on time or not; that they expected to draw pay just the same.

Now remember, gentlemen, that was the same as the conversation John W. Dorsey had with Steineger when Steineger objected to taking the route upon the time which had been fixed. John W. Dorsey told Steineger that "the Post-Office Department took no account of time upon a route that passed over mountains." You see the similarity there is between what he told one man and what he told the other. Dorsey denies this conversation, on page 4093. He was interrogated by his counsel, going all over this conversation. I will read to you his answers:

No, sir; I do not remember any such conversation.

Then, again:

No, sir; nothing of the kind at all.

That is the most infamous lie that was ever sworn to in the world. It is a lie without cloth or warp or woof either.

That is on a par with the rest of it; it is false in every respect. It is absurd that I should tell some mule-whackers such things as that the first time I met them. There is not a word of truth in it.

Then, on the next page:

That is another lie, if there ever was one. I insisted all the time that I was there

that that mail should be carried on time. I made one round trip myself, and got in on time and got back on time, and I knew it could be done.

Then he speaks about the ring:

What have you to say to that, whether there was a ring organized in Washington?—

A. I never said any such thing in my life; I never knew of any such thing.

Q. Did you say anything to him about Senator Dorsey being interested?—A. No, sir.

Q. Or about Senator Dorsey being in any ring?—A. No, sir.

Q. Or about the Second Assistant Postmaster-General being in any ring?—A. No, sir.

Q. Or being interested?—A. Nothing of the kind. I would like to explain my meeting with those men there that night.

Then he had a conversation with Isaac Cable, the young man who was brought here by Mr. Pennell. You remember I told you we sent Mr. Pennell back to Bismarck to hunt up the people who were at the meeting on that night, in order to have one corroborate the other. Mr. Cable's testimony is found on page 2656:

Q. With whom?—A. The conversation was addressed to Mr. McLellan.

Q. Where was it?—A. It was at Beaver Creek, on the west side of the Little Missouri.

Q. Do you know when it was?—A. I think it was in the latter part of July, 1878.

Q. How did the conversation come about?—A. We met Mr. Dorsey that evening on his return from Miles City; we met him that day in the afternoon some time, and that night we rode very late, and the men of the crew working for him was very angry at having to work so long, and rather thought it was Mr. Dorsey's fault, I guess, and they made some kick, and wanted to go back, and others thought they had no other way of getting their pay, and for this reason, Mr. Dorsey gave this conversation when they made this—

Q. [Interposing.] Kick?—A. Yes, sir.

Q. What was the conversation?—A. I don't think I can give the conversation.

Mr. WILSON. I make the same objection as before.

Q. You can give the substance of it?—A. I think I can.

Q. Well, what was it?—A. Well, he said that in the first place they did not expect to make any money out of the contract under the first bid or at the figures they had it at that time, but they took these contracts low in the first place to keep out small bids, or to be sure of getting the contracts, knowing that they would have an increase of service.

Q. What else?—A. He said they would get the increase with the influence of his brother, Senator Dorsey.

Q. Did he state how the influence was exercised?

Mr. WILSON. Wait a moment.

The COURT. Tell the whole story.

Mr. BLISS. State the whole conversation.

A. I will, if they will give me time, as much as I can of it. I believe he said with the influence his brother had over the Second Assistant Postmaster-General, he did not mention any name. He also said there was a ring formed here in Washington, but I don't remember as he said at that time what that ring was formed for.

Q. Anything else that you remember?—A. Not at present; no, sir.

Q. Was anything said about the amount of increase, or anything of that sort?—A. Well, he spoke of what their pay would be at the end of the year if it was increased as he expected. He said the pay would be \$150,000.

Q. Was there anything else said that you remember?—A. No, sir.

Q. Did you ever have any conversation with John W. Dorsey, or was any conversation held in your presence, with reference to any post-office?—A. Mr. Dorsey asked me at one time if I thought his men would sign a petition for a post-office on the west side of the Little Missouri.

Q. When was that conversation?—A. I think it was in August; it was on our return trip.

Q. On the west side of the Little Missouri; do you mean on this route?—A. Yes, sir. I asked him at the time what his idea was for a post-office there, and he said that it would make the road longer—for to make the road longer.

Q. Did he state just where he expected the post-office to be located, or anything of that sort?—A. No; he did not.

Q. At that time was there anybody living at this place west of the Little Missouri River?—A. I never knew of any, and I have been through there a great many times.

Q. When was this conversation, do you say?—A. It was in August, I believe.

John W. Dorsey says, on page 4095, in answering categorically inquiries put to him by his counsel :

Q. Did you see him when he was here on the stand ?—A. Yes, sir ; he was another mule-whacker.

By Mr. MERRICK :

Q. What ?—A. A mule-whacker ; that is what they call them out there.

Then, as to the conversation, his answers are :

No, sir ; nothing of the kind.

It is not true.

No, sir ; nothing at all like it.

No, sir.

No, sir ; not a word of it.

No, sir.

And so he goes on and denies the conversation *in toto*.

On page 4094 he gives us a general explanation :

Q. All right. Where did you meet them ?—A. I will say that in returning with this escort from Fort Keogh I met a mule team at the Little Missouri on the second day ; and the next day a little after noon we met this outfit about ten or fifteen miles west of the Little Missouri, west of what is called the Custer crossing.

Q. Custer or Rosser crossing ?—A. Custer crossing. They had gone about fifty miles too far north. I told Mr. Pennell the mistake he had made in going to Custer crossing, and said I, "Now, it makes pretty near one hundred miles extra travel for the round trip." He said they had looked for the Rosser crossing for three days, and could not find it. I told him to go to the Rosser crossing, and the stage driver with me said to him, "If you find any water, you have got to start right off ; if you get there to-night you have got all you can do." So they packed up everything—they had got their dinners and started. And between 8 and 9 o'clock, quite late, we got to the only water there was, what they call a water-hole, fifteen or twenty feet square. They built one fire, and there were twenty-five men there besides myself. We started out with thirty men, but two men staid to drive some ox teams and three men stopped at the ranches. We were all there that night at the fire ; there was nowhere else to go. And that is the only time that I ever saw or staid with those men, that I know of. That is all there is of it. I recollect the night very well. That is the first time I ever saw them. If I told it to one, I told it to the whole of them. Mr. Pennell was there. He said that there was some kick among the men about the pay, and that I was to blame for it. There is no truth in that. I had no more to do with it than you gentlemen here. I never even heard of it until I heard it here. The fact is that nearly all of them were paid before they left Bismarck by Captain Raymond, the banker there, and they were to be settled with when they returned. So there is no truth in that : not a word.

Gentlemen, let us see whether there is any truth in it. This conversation, as you will remember, is variously stated as having taken place on the last of July or at the beginning of August, 1878. It was away out, as you see by your maps, upon the Little Missouri River, and consequently it would take a number of days for John W. Dorsey to get from where he met the men over to Bismarck. Here is a letter dated September 27, 1878. It is marked 27 X, and found on page 2239 :

[John W. Dorsey & Co., Mail Contractors. Branch Office, Kansas City, Mo.]

WASHINGTON, D. C., September 27, 1878.

M. C. RERDELL :

DEAR SIR : I have just returned from the prairie, but did not find the money here to pay off the men, and they are clamorous for their pay.

I have just telegraphed you in regard to it. I presume you all think it is an enormous bill, but if you knew what we had to do you would not be surprised. You have not written me anything about the prospect for the increase, or in fact anything else lately.

Have you written S. W. about the Black Hills route from Keogh ; and, if so, what did he say ? And what does he mean by \$30 a mile. What did the express agent at Chicago say about the business ?

Yours, in haste,

J. W. DORSEY.

You see that letter was written in September, and in it he says he has just returned from the prairies, and the men are clamorous for their pay. That is a direct contradiction of his statement that the men were paid at Bismarck, and that he never heard about their asking for any pay. Then, again, it further corroborates the testimony of Pennell, McLellan, and Cable, because he asks about the increase. He says:

You have not written me anything about the prospect for the increase.

Certainly there was in his mind some idea about an increase at that time. In the same month John W. Dorsey had a conversation with a man named Howard T. Lambert. He was also on the stand and gave his testimony, which is found on page 2175:

Q. Was it September, 1879, or 1878?—A. I should say it was September, 1878; I was wrong before.

Q. Did you have any conversation with him?—A. Yes, sir; I talked with him several times there.

Q. Was anything said about any change on the route?—A. There was. I was talking to him about the route, and he said he expected to make a good route out of it.

Q. Did he say how?—A. He said the route would be expedited.

Q. Anything more?—A. That was all at that time, I believe.

Q. Did you have any other conversation with him?—A. Yes, sir; after I got on the road.

Here is a man that he talked with, and his testimony John W. Dorsey does not deny. He had almost the same conversation with Lambert that he had with the others. The route was to be expedited. In point of fact, Stephen W. Dorsey, in his testimony that I read to you yesterday, said it was probable he told Rerdell that the route would be expedited. On the 30th of September, 1878, Miner made his oath for three trips at sixty-five hours. It is 12 T, and found on page 2140. Miner says it was an estimate that he made. On the 1st of October, 1878, Mr. Vaile came in, and filed a subcontract. On the 4th of October, 1878, Miner made a written offer to carry the mail. With this offer Miner filed his oath. It was an offer to carry the mail for \$32,650. Gentlemen, I want to call your attention to the fact that on the jacket there is a mention of another oath. The jacket states that the other oath that was put in by Miner called for thirty-seven men and seventy-three animals. The oath that Miner put in last, that was acted upon, called for one hundred and fifty men and one hundred and fifty animals. If you will take the oath calling for one hundred and fifty men and one hundred and fifty animals, and figure upon it for yourselves, you will find that oath put in by Miner figures out the precise sum that John W. Dorsey said the route would be expedited to, that is \$150,000 a year. I suppose the size of the figures startled them a little and they did not think it was safe to go on with an oath and a calculation of that size, or to take that amount of money out of the Treasury. But Miner had put in another oath in which he states the numbers differently. I submit to you, gentlemen, that where a man makes two oaths about the same matter, and there is such an immense difference between them, that you ought to agree with me in calling it perjury. Miner says, in speaking about this oath, on page 4197:

A. The estimate made at the time was with a view to transporting all the forage and provisions by team over the route from the east end. We afterward found that by buying a year's supply we could send it by boat over the west half of the route up the Missouri and Yellowstone; but unless we bought a year's supply we would be obliged to transport it by teams and wagons; and that would take a large number of men and animals.

By the COURT:

Q. So in counting your animals you took into account all those employed in carrying out supplies?—A. All the animals that were in use on the road, and as I under-

stood at that time, that was permissible. Of course, I had not the knowledge of the law then that I have obtained by going through two trials since.

There is some truth in that. Then, on page 4265:

Q. If you did not know anything about it, where did you get the basis for that affidavit that the number of men and animals necessary to carry the mail three times a week was twelve men and thirteen animals?—A. I got it from the best information I had, talking with other parties as to those matters.

Q. When you were talking to the other parties, did they not tell you that it had never been carried three times a week on the original schedule of time?—A. They did not.

Q. And you say you did not know that it never had been?—A. I did not know anything about it.

Q. You got your basis for that affidavit from talking with other parties?—A. I did.

Q. What other parties?—A. I think I talked with Mr. Salisbury, and I think I talked with Mr. Vaile, probably, and concluded that a horseback mail could be divided into sections of twenty-five miles each, and carried by a man and animal on each section.

Q. How many men and animals had been used in carrying it once a week?—A. I did not know.

And while he did not know, yet he was perfectly willing to swear to it. Then, on page 4280:

Q. Is it true that the affidavit was a matter of estimate; purely estimate; a jumping estimate?—A. It certainly was an estimate, for I never had been on the route and did not know at the time I made it the exact number it would take.

Q. Was it a jumping estimate?—A. I do not know whether it was a jumping estimate or not; it was an estimate.

Q. Did you not say that it was a jumping estimate?—A. I don't know whether I did or not.

Q. You cannot say whether you said that or not?—A. I cannot.

Q. And you did not expect the pay to be based on that affidavit at the time you made it?—A. It was not based on the affidavit.

Q. I did not ask you that.—A. I do not know whether I expected it or not.

Q. You do not know whether you expected it or not?—A. I do not. It was not based upon that affidavit.

I have not given you the order that Brady made. On the 23d of December, 1878, Brady made an order. It is 10 T, and found on page 2139:

From January 1, 1879, increase service to three trips per week, and allow contractor and subcontractor \$4,700 per annum, being pro rata. Reduce schedule time to sixty-five hours in each direction, and allow contractor \$27,950 per annum additional pay, being less than pro rata, as appears by his sworn statement of stock and carriers required.

Brady says, in speaking of the order he made at that time, on page 3430:

Q. When John R. Miner swore, on the Bismarck and Fort Keogh route, that it would take one hundred and fifty men to make the expedited time called for, did you accept that as correct?—A. I do not know whether he swore to that or not. Will you show me the papers?

Mr. BLISS. There is the affidavit, sir. [Submitting paper to witness.]

Mr. WILSON. Now hand him the order.

Mr. BLISS. No, I am handing him the affidavit, which is in evidence.

The WITNESS. I would like to refer to a memorandum which I have before I answer that question.

Q. Did you assume that that statement as to one hundred and fifty men was correct?—A. Certainly, as I said before, I assumed that the affidavits made by the contractors were correct.

Then, further down on the same page:

Q. Did you undertake to examine the affidavits at all, to see whether on their face, without going outside of them, they did not lead to absurd results?—A. Oh, no; and there are not any absurd results in them, either.

Q. We will see. Did you look to see at any time how many miles the affidavit would require a horse to travel in a day on any one of these routes?—A. We frequently counted that up in our leisure moments; we sometimes counted it up.

And on page 3446:

Q. Do you know of any better way of ascertaining the number of men and horses employed on an existing schedule, and the number that would be employed on a proposed schedule, than by taking the sworn statements of the contractors?

Then there was some objection by counsel, and the witness continued, on page 3447:

I said that there could be no better general rule than to take the statement of the contractor interested in the service, and I don't care a snap of my finger whether he had had any experience in it or not. You can't make a better rule than that.

Then, on page 3452:

Mr. BLISS. I will explain to you. You stated with reference to the Bismarck and Fort Keogh route:

"But how to increase it by simply adding trips to it at the ridiculous figure at which it had been taken by the contractor was a stumbling-block. No contractor could even do the once-a-week service really across there at that price. They had probably bid upon it blindly, like a good many contractors, lumping the whole service, bidding so many dollars a mile, as is the common practice among contractors.

"It was very evident that it could not be increased to three-times-a-week service and make an efficient service simply for three times what they had bid for once a week."

Then you went on to state that you ordered expedition. Now I ask you in what way that tended to make an efficient service?—A. It tended to make a more efficient service, as a matter of course, to make it three times a week. It tended as a matter of course to make it a much more efficient service to make it a fast service, and that could not be done with any regard for the rights or safety of the contractor at the price, as I have said before, that they had originally bid for the contract.

Q. Then you considered that you were not to hold the contractors to the original terms of their contracts, but you were to make changes which should benefit them, did you?—A. I answered that before by saying that we would prefer to help the contractors to crushing them.

Further down:

The WITNESS. The distance was misstated in the advertisement. They had to carry over three hundred miles of service. That, at the figures they gave, even throughout this country, where the expense of performing the service is comparatively cheap, would have been a comparatively low figure. Now, to require that contractor to perform three-times-a-week service at that figure, which would be simply three times \$2,350, would have been ruinous to him, and no good service could have been obtained by it. Possibly if there had been stations along the route he might have carried it on a mule at that rate of pay. If there had been ranches along the route, or if it had been in the southern portion of the country, where he could have turned his mule out to graze during the night-time, he might have performed the service. But it would be apparent to anybody, whether they had had much experience in mail service or not, that he could not have performed a good service, say, a stage service, even at that price and not have lost a great deal of money. Therefore, when we wanted to get up a better service, that is, a faster service and a more frequent service, the only way to do it was by increasing and expediting, and paying the contractor something near what it would actually cost him to perform it, or else we had to continue the old contract.

Q. But if the contract was a losing one for one trip at \$2,350, did it become a gaining one by multiplying that sum by three and making three trips?

The WITNESS. Without expedition at all?

Mr. BLISS. Yes.

A. That is a question you will have to ask the contractor.

Q. You were stating your theory. Is it your theory that it would?—A. My impression is that it would not probably cost him twice as much to do three trips a week in proportion as to make only one.

Q. Does your experience tell you that three trips a week could have been performed over that three hundred miles on the schedule then fixed, for three times \$2,350?—

A. I would not want to undertake it.

Q. If the allowance for expedition is to be gauged by the number of men and horses used on the one service and the number of men and horses that would be used on the other service, how would you in that way convert a losing service at one trip and slow time into a profitable service at three trips and fast time if you did not make an allowance in cases of that kind in excess of the amount authorized under the statute?

Then there was some conversation, and then :

The WITNESS. It is a matter that I have had very little experience in personally. As I said before, a contractor could tell you much more about that than I could. In some way I arrive at the conclusion that we benefited the contractors more or less in that way.

Q. And thereupon you made the expedition to sixty-five hours, first adding to the \$2,350 \$35,000, and then adding three trips more, and carrying the total up to \$70,000, did you?—A. Yes, sir; for the purpose of getting up good service between those points.

Now, on the 25th of December, 1878, John W. Dorsey wrote to his brother. The letter is 26 X, and found on page 2239 :

[Merchant's Hotel, L. N. Griffin, proprietor.]

BISMARCK, DAK. TER., December 25, 1878.

DEAR SENATOR: I send you the inclosed blank d'fts as per your instructions.

I send you the inclosed blank drafts.

If all right I suppose you will send to Mr. Miner. I returned here Monday after a very uncomfortable trip of nearly eight hundred miles by stage. The last ten days the thermometer has ranged from zero to 20 below, and there is almost six inches of snow from Keogh here. There were five passengers down on the stage. Your favor of the 9th is received, and I am glad that Mr. V. has bought out, though I have no doubt but this route alone will pay him or some one else \$100,000 clear of all expense within the life of the contract.

You may think that I am oversanguine, but I would be willing to take my chances on it. I did not expect to suit every one when I came here, and have succeeded in not doing it. Mr. Vaile, nor any one else, knows anything about the difficulties one has to contend with here till he tries it. I thank you very much for your offer, and will be pleased to accept it and do the best I can. I would be glad to leave here at once, but Mr. Vaile writes me to start the mail three trips a week January 1, on horseback. I don't want anything to do with it, as he will not be pleased if I do ever so well. I have done all the hard work and he talks as if it was fun to do it. I will do the best I can while I remain, but hope to leave soon after Jan'y 1st.

Thanking you for your many favors, I remain,

Yours, very truly,

J. W. DORSEY.

Gentlemen, you see the reiteration of what he told the men out on the route—that it would be increased to \$150,000. The increase of three trips a week came, and he was waiting, according to Vaile's orders, as he states in this letter, to put on the service on the 1st of January, 1879; but he says there can be a profit of \$100,000 a year clear of all expenses within the contract term. It seems to me that these letters, one written to Rerdell about the men making trouble as to their money, and the other written to his brother in December, both go conclusively to show that what the men testified to was the truth. Stephen W. Dorsey gives an explanation of this. It is found on page 3885. The letter I have read to you was read to him :

Do you recollect receiving that letter?—A. Yes. But I do not understand how it got in here.

Q. In this case?—A. Yes

Mr. INGERSOLL. Mr. Rerdell kept it as a voucher. [Laughter.]

Q. Mr. Ingersoll says Rerdell kept it as a voucher; do you know anything about that?—A. No; I do not.

Mr. MERRICK. There seems to have been a distribution of the papers between you and him, respectively, some of which belonging to the one ought to have been in the custody of the other.

Q. It seems that in your letter to John W. Dorsey you had informed him that Vaile had bought out—A. [Interposing.] No, not that Vaile had bought out, but had cut out.

Mr. MERRICK. This word is "bought" out.

The WITNESS. Well, Vaile had bought out nothing that I know of at that time. That was the period in which I was having some difficulty with Mr. Vaile in regard to these notes over here.

Q. You were having some difficulty with Mr. Vaile about that time?—A. Yes.

Q. What about?—A. About these notes over at the German-American Bank.

Q. Did you not inform John Dorsey that Vaile had bought out?—A. No, sir; I did not; that is some error, either in the print or in the writing.

Mr. MERRICK. I have the original letter here, 26 X, before me, and that seems to conform to the printed copy in the record; there is no alteration in it.

The WITNESS. That may refer to the time when Mr. Vaile came in, the August previous; but that is in answer to a letter which I will explain, if you desire.

Then there was an interruption of counsel.

Mr. MERRICK. [Reading:]

“Your favor of the 9th is received, and I am glad that Mr. V. has bought out”—

Did you write to him on the 9th?—A. Yes, I think I did. After this letter was published in the testimony here I referred back, and found a copy of a letter that was very much blurred; but I thought what I said was that “Mr. Vaile had cut you out,” but not bought out, and that an error had been made.

Q. You said Mr. Vaile had “cut you out,” not bought you out?—A. Yes; I think that is what I said.

Q. There is no “you” here?—A. That is not my letter.

Mr. INGERSOLL. That is an answer to his letter.

Q. That is an answer to your letter?—A. Yes, sir.

Q. “I am glad Mr. Vaile has bought out.”—A. He probably misapprehended what I said. When I came back here the first of December, if you will allow me to state it, I found that Mr. Miner had given to Mr. Vaile subcontracts covering all these important routes, which cut out entirely the interest of Peck and Dorsey, and also cut off the drafts which had been given to me to protect this note over here and the money I had advanced, and the whole thing was in Vaile’s hands; but I could not have said anything about being bought out at that time.

Q. Vaile was trying to swindle the whole party then?—A. I don’t know; I did not see how he could protect the subcontracts after filing the subcontracts so as to cut out these drafts.

Q. Did you not in your letter to John Dorsey, to which this is a reply, say that Mr. Vaile had “taken the whole business, and is to pay you \$10,000 for your interest?”—A. No, sir; I do not think so.

Q. “In payments to be strung out?”—A. No, sir; I do not think so.

Q. You do not think you did?—A. I do not think I did.

Q. Have you any recollection?—A. No recollection of it.

Q. You have no recollection of it?—A. No, sir; there may have been some possible conversation at that time (because that is when we were trying to fix the matters at the bank) in which Vaile said “I will take all these and pay Peck \$10,000 and Dorsey \$10,000.” That is a possible thing.

Q. I do not want possibilities. What is your recollection?—A. I do not remember. We had a good many controversies and a good many meetings.

Q. Did you not inform John Dorsey that Vaile had actually taken the whole business, and was to pay him \$10,000 for his interest and Peck \$10,000 for his interest?—A. I think not; I do not remember it. I say it is possible that I did.

Q. Do you remember that you did not?—A. I don’t remember whether I did or did not.

Q. Was it a fact?—A. I say I don’t remember whether it is a fact or not.

Q. No; you say you do not remember whether you told him or not.—A. I do not remember whether it is a fact or not.

Q. You do not remember whether it is a fact or not?—A. No.

Gentlemen, we called upon the other side to produce this letter of the 9th of December, and we called upon them to produce their press copy of the letter. We served them with the proper notice—the notice we were required to serve upon them when we wanted papers of this kind to offer to the jury. We had no desire to conceal anything, but simply wanted to get at the whole truth, and after we had made this call for the letter of December 9, Mr. Ingersoll, the counsel for Dorsey, said “we won’t give it to you. You can’t get it. Here is one of the 7th you can have.” As the letter of the 7th had no relation to the matter at all, and was not in controversy, and had no bearing upon the case, we did not care about offering you the letter of the 7th. We wanted the letter of the 9th, in which we claim that Stephen W. Dorsey wrote to his brother, John W. Dorsey, and told him that Vaile had *bought out*, and that Vaile was going to give him \$10,000 for his interest, and

pay Peck \$10,000 for his interest. We wanted to show you what Stephen W. Dorsey had written at that time, but they kept it out, just as they kept out their books and refused to give them to you. In other words, after Stephen W. Dorsey took the witness stand, and was sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth, undertaking to conceal nothing from you, he permitted his counsel to stand up and say to the court and to you, gentlemen of the jury, who are to pass upon the question of his guilt or innocence, "We will not furnish you with that evidence." I submit to you that when they do not furnish us with evidence that is called for, and is evidence in the case, it is your duty to presume that that evidence would have hurt them, or otherwise they would have offered it to you.

Mr. HENKLE. That is a new rule.

Mr. MERRICK. We do not claim that to be the rule on notice to produce, and failure to produce; but when a party goes upon the witness stand and avails himself of the privileges of the act of Congress to testify, and on cross-examination he is called upon to produce papers which are in his possession, and he says he will not produce them, the jury must presume that if he did produce them they would prove that he was not telling the truth, or operate against him.

Mr. HENKLE. That question has been decided exactly the other way.

Mr. MERRICK. I shall ask the court to instruct the jury that that is the rule of law, and I shall argue the point in my argument of the facts and the law, when I come to make it.

Mr. KER. I say to you, gentlemen, and I think his honor will so instruct you in this matter, that every presumption is against the party to whose possession the paper is traced if he does not produce it on notice.

I have told you about the conversation that John W. Dorsey had with Mr. Lambert. On the 12th of January, 1879, John W. Dorsey had another conversation with Lambert. Lambert was carrying the mail, had made his first trip, and when he came back he saw John W. Dorsey. I read from page 2179:

Q. Then after you got on the road, you say you had another conversation with him?—A. Yes, sir.

Q. In January, 1879?—A. I did.

Q. And in that conversation he volunteered the remark that his brother would have everything on the road and make a good road of it?—A. Yes, sir; that is what he told me.

Q. How did that conversation come to pass?—A. I started in on him about the condition that the road was in. It was not equipped or anything of the kind. He told me it was not his fault; that his brother was running that part of the business; that he was doing the best he could.

You know this was Miner's route. On the next page, about the middle of the page:

Q. Then you were in Bismarck on the 11th and 12th of January, do you say? Was it at that time that the conversation took place?—A. It was right after that, before I went back on the trip.

On the 29th of January, 1879, Vaile and Miner asked to withdraw the subcontract of Vaile. Then, for some reason that is not explained, on the 3d of February they asked to rescind that order and allow Vaile's subcontract to remain on file. On the 12th of January, 1879, there was a new schedule. It is 43 T, and found on page 2152. Gentlemen, that schedule was all written by John R. Miner, and was signed by Mr. Brady. On the 1st of March, 1879, there was a newspaper article sent to Brady in a letter signed J. P. Kidder. The letter is 35 T, found on page 2150. Rerdell wrote that letter and Judge Kidder

signed it. I think there is an indorsement of Mr. Maginnis on the back of it. Then there was a letter of H. H. Bingham, on the 11th of June, 1879. That is 34 T. General Bingham was a member of Congress at that time, and represented a district in Philadelphia. I do not think he was much interested out there in Dakota. His letter is recorded on page 2148. It is a very conservative letter, marked at the head "personal:"

WASHINGTON, D. C., *June 11, 1879.*

MY DEAR GENERAL: The inclosed explains itself. Please file the paper with the other recommendations in the case. The increase seems to be very much needed, and the friends of the interest are very earnest and sincere in the movement. I hope you can see it possible to determine the question favorably before July 1st. Can you let me know just how the case stands and the chances for your favorable action?

Very truly, yours,

HENRY H. BINGHAM.

General BRADY, *Washington, D. C.*

I should judge, from the tone of that letter, that it made very little difference to General Bingham whether the request was granted or not. It seems that the article was brought to him, and doing as members of Congress sometimes do, to oblige those who are either members or ex-members of Congress, he wrote that very conservative letter to General Brady, and inclosed the newspaper article. Brady took the letter and newspaper article and had them put on file along with the rest of the papers. I am showing you the material upon which Brady based his orders for increase.

On the 31st of July, 1879, there was a letter from Frederick Billings (32 T, page 2143). I suppose it is a genuine letter. But over on the back of it you see it is indorsed:

BREWER: Increase Bismarck to Tongue River, as requested within, to 6 times a week.
BRADY.

Make the order to commence as quickly as contractor can put on the increased service.

B.

On the 2d of August, 1879, an order was made (39 T, page 2151):

1st. From August 11, 1879, increase service three trips per week, and allow contractor \$35,000 per annum additional pay, being pro rata.

2d. Increase pay of subcontractor in like amount.

Gentlemen, I have shown you what this increase was based upon—the papers that were brought in to have this made a \$70,000 route. First, there was a letter from Judge Kidder, which I showed you, containing an extract from a newspaper, the *Avant-Courier*; then the petition written by Rerdell; then the letter from General Bingham; and, fourth, the letter from Frederick Billings, with the newspaper article in it. Those were the letters, or petitions, or whatever you choose to call them, upon which Brady based his action and said to Brewer:

Increase Bismarck to Tongue River, as requested within, to 6 times a week.

Make the order to commence as quickly as contractor can put on the increased service.

It seems to me that it was not a very forcible recommendation that was made to General Brady, but upon those letters he made this order to increase the service up to six trips a week, and allowed them at that rate \$70,000.

On the 5th of January, 1880, Postmaster Lounsberry, who was on the stand—you remember him; he told you about the Bad Lands—sent a telegraphic dispatch to Brady (48 T, page 2153). He says:

Regarding Keogh service, whole shall be regarded failure. Impossible for any person to perform in winter on present schedule. Could probably secure six days' service.

Then, on the 31st of July, 1881, the entire route was discontinued.

John W. Dorsey, it seems, did a great deal of talking while he was out there. He talked with McLellan, with Cable, with Pennell, with Lambert, and finally he had a conversation with Lounsberry, found on page 2681 :

Q. What were you asked to do? Let us understand.—A. A petition was presented to me for the establishment of a post-office on the Little Missouri River.

Q. When was that?—A. That was about December, 1878.

Q. Who presented it to you?—A. John W. Dorsey.

Q. What did he wish you to do when he presented it to you?—A. The petition was before me. Whether it was accompanied by the usual blank form for the establishment of a post-office or not, I do not remember, but it was to certify to the fact of a settlement being up there, and the necessity for a post-office.

Q. Did you so certify?—A. I did not.

Q. Was there any settlement up there?—A. No, sir.

Q. Was there any necessity for a post-office?—A. No, sir; I so understood.

There was what John W. Dorsey did in 1878—present that petition to Lounsberry. You will know, from the testimony, as to the rule and the law, that before a new office is put on the nearest postmaster has to send a certificate giving the distance and stating that at such a settlement or such a place a post-office ought to be established. So John W. Dorsey requested Lounsberry to certify that there was a settlement up there on the Missouri River, and that there was a necessity for a post-office being established at that place. That Lounsberry very properly refused to do.

Before I read what John W. Dorsey said in relation to that I want to remind you that after Lounsberry had left the witness-stand and gone into the ante-room, John W. Dorsey came to him there and they had a conversation. This is what Lounsberry says, in relation to that, on page 2681 :

Question. Since you were on the stand before have you had any conversation with any of these defendants?—Answer. Yes, sir.

Q. With which one?—A. John W. Dorsey.

Q. What did Mr. Dorsey say to you, if anything?—A. Mr. Dorsey said he was very glad that I was not examined as to that post-office to be established on the Little Missouri River.

Q. What else did he say, if anything?—A. He said he was glad I had not been examined on that case, because I was asked to certify to a petition for this post-office and refused to do so.

Q. You had refused?—A. I had refused to certify to it. He said that was the only wrong that he had asked any one to do in connection with this route.

There was Dorsey's statement made to Lounsberry—"That was the only wrong he had asked any one to do in connection with this route." Now, I will read what John W. Dorsey says about that on page 4106 :

Q. Did you have any conversation with Mr. Lounsberry at the time he mentions in this testimony during the present trial?—A. Yes, sir.

Q. Will you state to the jury what that conversation was?—A. Well, after he testified here, I supposed he was through then and I could talk to him freely, and I told him just as I honestly felt about it. I did have a conversation with him as he states, but he did not state it correctly as I stated it to him. I said that it was the only wrong that I had done in this business, or known to be done. That is what I told him as far as I now remember. He says, "I believe it." I never thought then he would be called again, but I stated just what was true. It was the only thing I had ever done, or tried to do, or known to be done in this business; the only wrong thing.

Q. Now, when you came back to Bismarck and Keogh, you stated, I believe, last night that you found a petition there and some papers, and among other things a letter from Rerdell?—A. Yes, sir.

Q. What did you do in consequence of that letter?—A. I carried this petition to Mr. Lounsberry and asked him to indorse it.

Q. What did he do?—A. He declined to do it.

Q. Then what did you do with the petition?—A. I think I inclosed it and wrote to Mr. Rerdell about it. That is what I think about it, but I had forgotten all about the thing, until it was brought out on the other trial of this case, entirely.

Q. Was Mr. Rerdell in Washington?—A. Yes, sir.

Q. And you wrote him a letter at the same time, you think?—A. I think I did. That is my recollection now.

Q. Do you know as a matter of fact what became of the petition afterwards?—A. I do not.

Q. With the qualification you have stated was the testimony that I have read of Mr. Lounsberry substantially true?—A. Yes, sir.

There he admits what he told to Lounsberry in the ante-room, but he undertakes to alter it in a way to weaken its force and at the same time help him. Mr. Lounsberry, you will remember, was a man of character, and I suppose it would have been a pretty hard thing for John W. Dorsey or anybody else to induce you gentlemen to think he was testifying to a lie. He was a man of intelligence, and by his conversation you could see that he knew what he was talking about. When he had that conversation with John W. Dorsey after he had left the stand, I presume you will agree with me that Mr. Lounsberry knew exactly what John W. Dorsey had told him. And when Mr. Lounsberry says that John W. Dorsey told him "it was the only wrong that he had asked any one to do in connection with this route," I think you will be disposed to believe that Mr. Lounsberry was telling the truth, and that John W. Dorsey did not say to him, "It was the only wrong that I had done in this business, or known to be done."

But, gentlemen, is it the only wrong thing? Have I not shown you his affidavits? If they were taken in blank, and handed over to somebody else to be filled in, to be used against the Government, I submit that is a wrong thing. If he took those affidavits and swore to them without knowing what he was swearing to, I submit to you, gentlemen, that is another wrong thing.

I need not recur to the letter of John W. Dorsey sent to Rerdell on December 9, 1882 (page 4150), in which he told Rerdell he was going to punish him if he (Rerdell) pleaded guilty or took the stand against the defendants. I will not bother you with that.

On this route Vaile drew the pay, and Miner drew part of the pay. Vaile says, on page 4062:

Q. You stated yesterday that you made a loss upon the Tongue River route, did you not?—A. Yes.

Gentlemen, I want you to follow me in order to see where this loss comes in:

Q. In calculating your loss, did you calculate as expenses of the routes the building of ranches?—A. Yes, sir.

Q. Did you calculate the expense of building mounds?—A. Yes, sir.

Q. Did you calculate the expense of making a road?—A. Yes.

Q. Did you calculate the expense of making bridges?—A. Yes, sir.

Q. And of all that permanent outlay you counted in as part of the expense?—A. Yes, sir; because we did not own the land; it was Government land; and as the railroad ran over us we abandoned those ranches; I think \$25 was all we ever received for a ranch.

Q. Have you any knowledge as to how many men and horses you had at any time upon that route?—A. I have not.

Q. What other expenses did you include in your estimate?—A. Well, all; everything.

Q. Well, what?—A. Paying labor—

Q. [Interposing.] Labor for what?—A. Carrying mail; and ranchmen. We had to keep our own ranchers. Supplying all the stock with food; grain was very expensive up there; I think we paid as high as six cents a pound for oats in some instances, perhaps more.

Q. Anything else?—A. Oh, I can't now enumerate; but whatever was necessary to keep men and animals and guard stations.

Q. You do not know how many animals you had there?—A. I do not.

Q. Do you know how many men you had there?—A. I do not.

Q. Do you know how much was paid to each man?—A. I do not.

Q. Have you any knowledge whatever of the details of the matter?—A. I have not.

Q. Except that you were called upon for a certain amount of money?—A. That is so.

Q. And you paid it?—A. I paid it.

Q. That is all the knowledge you have on the subject?—A. That is all the knowledge I have.

Q. What was the aggregate amount of expenses on that route?—A. I could not say that. It was after I really got possession of it, or my men were in charge of it, that we sought to pay up everything every quarter.

Q. Do you know how much you paid out?—A. No, I cannot say that; I kept a sort of run of it in my head.

Q. Do you know how much you received upon that route?—A. No, I do not.

Q. Did you keep any books?—A. No.

Then, on page 4064, the next page:

Q. If the contract was a losing one, why did you continue it?—A. If my attention had been called to the provision on that on its first expedition, I think I should have thrown it up.

Q. The contract gave you the absolute right, on an order of expedition, to throw it up, did it not?—A. Yes, sir.

Q. And it was then a losing contract?—A. It was.

Q. You knew it was then a losing contract?—A. Well, of course I could not say positively that we would lose until I had experimented under the expedition, but I felt sure that I could not make any money, and if I had thought I would not have been jeopardized in other matters, I think I should have thrown it up.

Q. If it was a losing contract before expedition, and the expedition was to be made according to the rule laid down in the law, how could it, after expedition, become a profitable contract?—A. It did not.

Q. How could it be?—A. It could not be.

Q. Then why did you not throw up the contract at the time the expedition was ordered?—A. As I say, my attention was not called to this provision in the contract. I may have known of that provision years ago, but I don't think I had read one of those contracts for twelve years, may be longer.

You see he could have thrown up the contract at any time after it was increased, if he had wanted to, and I ask your attention to what he says about losses. His claim was that he lost from \$40,000 to \$50,000 upon this route, and we wanted to know where he lost it.

I recall your attention to the fact that the schedule time was not made on this route. Barnes said that it took him from seven to nine days; Lambert says he went in from eight to ten days. You know the time was reduced to sixty-five hours. It had been eighty-four hours, and then by some means it ran up to one hundred and eight hours. That does not appear upon the record, gentlemen, only upon the back of one of the jackets. There does not appear to be a schedule of one hundred and eight hours; there is of eighty-four. And Mr. Henkle strenuously insisted that it was run up to one hundred and eight hours.

Mr. HENKLE. Yes, and showed it from the records.

Mr. KER. I also can show it, certainly, by 89 T, page 2881. That is the jacket containing applications for remission of fines and deductions, and on that jacket is a statement that the schedule time is one hundred and eight hours. But nowhere else is it stated upon the record, openly, where it could be found out, where people could see, as was done in other cases, whether there was an order fixing the schedule at one hundred and eight hours. But take the testimony, and you will find that, by some mysterious means known to Vaile, who was "close to Brady," and Brady himself, it was run up to one hundred and eight hours. Calculate the traveling time, and you will find that they traveled the route in one hundred and eight hours. If they were longer on the road than one hundred and eight hours they were fined, but if they performed the trip in one hundred and eight hours they were not fined. The old

schedule was eighty-four hours, but between them they quietly and secretly made it one hundred and eight hours, and in that way they were saved from the fines and saved the deductions.

Mr. HENKLE.. They did not save the fines.

Mr. KER. They did not save fines for not making the trips, because when trips are not performed there can be no remission of them without a great deal of trouble.

Miner says in his oath that it took twelve men and thirteen animals. To increase, it would take one hundred and fifty men and one hundred and fifty animals. In proportion that would have given Miner about \$150,000 a year. He took the other oath away, leaving the damaging piece of evidence upon the record that there had been another oath, and if it had not been that Brewer was a faithful clerk that evidence never would have been left there at all. They left the piece of evidence on record that they had filed another oath stating that eleven men and twelve animals were actually employed, and for the increase it would take thirty-seven men and seventy-three animals. Gentlemen, if you take the oath that has been taken away—the one that I have last referred to, thirty-seven men and seventy-three animals—it will be just about the amount of money that Brady allowed for this expedition. But I suppose they wanted the oath for one hundred and fifty men and one hundred and fifty animals to remain, in order that whoever would look at it might suppose that Brady had made one of the best bargains that could be made for the Government.

Barnes testified that he ran from January to April, 1879. He said there then were eight men and eighteen horses. Lambert said there were eight men and twenty-two horses. There is a great deal of difference between that and the oath that Miner took, one hundred and fifty men and one hundred and fifty animals. Pennell said that for the sixty-five-hour schedule it would take eight men and forty animals, but when he was figuring with Rerdell—you know Rerdell was told what to do—Rerdell just doubled that, making it sixteen men and eighty animals. But Rerdell did not make out the oath.

Pennell says they paid \$75 to \$90 per head for the stock that they bought. He helped John W. Dorsey to buy the twenty-five head they had. If you will take the stock that they purchased and multiply it by the price they had to pay out there, \$75—or give them the highest figures for good stock, \$90—then I defy my friend on the other side to count up and by any possible system of arithmetic make it appear that Vaile had made a losing contract. Take the entire outfit and allow for building ranches. Rerdell says that part of the \$10,000 he paid out went to pay for the horses, and we have not heard of any other money that was expended. Of course they had to pay men for carrying the mail, and Vaile says he had to pay guards. Did you hear from any witness who had been over that route that there ever had been an Indian down upon the route except before the route was established?

But with the oath calling for one hundred and fifty men and one hundred and fifty animals was not where the steal came in so badly as it was when Brady ordered it increased to six trips. When Brady increased that service he allowed for three hundred men and three hundred animals. Just to think of it! His increase allowed them pay for three hundred men and three hundred animals! This last increase was pro rata, for in it was calculated the one hundred and fifty men and one hundred and fifty animals that Miner had sworn would be required for three trips. The trips were doubled, the calculation was doubled,

and it amounted to three hundred men and three hundred animals. Vaile says, at page 4070 :

Q. Did you know anything about the affidavit on the route from Bismarck to Fort Keogh or Tongue River?—A. I do not now recollect anything about it. I may have at that time.

Q. As a mail contractor, is it your opinion that to carry the mail on the route from Bismarck to Fort Keogh three times a week on a schedule of sixty-five hours one hundred and fifty carriers were necessary?—A. I think so.

Q. You think one hundred and fifty carriers were necessary?—A. Not actual carriers. I mean men engaged in one way or another in the mail service.

Q. What do you mean by men engaged in one way or another in the mail service?—A. Cutting hay, distributing forage, staying about the ranches, ranch-tenders, guards, and so forth. We often had to send guards out with the men.

Gentlemen, his honor made a remark during the course of the trial that they might as well charge for the men who made the clothes or furnished the food for the men who carried the mail, and then charge for the men who made the shoes. They could have gone on in that way estimating for the number of men required to do it; they could have estimated for the men required to bake the bread and do the cooking, and then they could have estimated for the people who were to furnish those men with clothes and shoes; and they could have estimated for the men who shod the horses, and then for the clothing of the men who shod the horses, and they could string it out in that way to a very considerable length. I suppose that is Mr. Vaile's idea.

Q. Guards with the men?—A. Yes, sir.

Q. Is it your opinion that to perform the service on that schedule it needed as many men as horses?—A. Yes, sir; I think it did.

Q. You think it did?—A. Yes, sir; we never had as many as we ought to have had.

Q. Did you ever have one hundred and fifty men employed there?—A. I don't think we ever did.

Q. You ought to have had one hundred and fifty men there?—A. I think so. We had a great deal of trouble. Our men were scared off repeatedly, and we lost trips because we had not sufficient guards.

Q. You had not a sufficient number of men?—A. Yes, sir; it was one of those routes three hundred and ten miles long, and there was not a man between the two points; or, we will say, two hundred and fifty miles of it perhaps, and you had to get them from one end or the other.

Q. You say there were no men between the two points?—A. Out at Fort Lincoln, as I am told, there was a settlement, and again, perhaps, forty or fifty miles from Fort Keogh, there may have been a settlement.

Q. It was a wilderness, was it?—A. It was a wild——

Q. [Interposing.] It was a wilderness?—A. Yes, sir; and if anything happened to any of our drivers or men, there we were, and we had nothing to go on.

Q. On the 30th of September, 1878, had not the winter's supply of feed and hay been put up?—A. The supply of hay, I think, was put up, but there was no grain on the road.

Gentlemen, I want to explain to you what was meant by this statement in Vaile's testimony [submitting map to jury and pointing]. Here is Bismarck. The route ran along here. But they tell us that instead of running directly, it ran up here to a point forty miles up the river. Then when it got up to this point, forty miles up the Yellowstone River, the mail was carried by the same carrier. This was John W. Dorsey's route, that ran down from Buford to Fort Keogh. There was only one carrier for both routes for forty miles there. Then when the mail reached this point, forty miles up the river—there was no settlement there, it was a mere stopping place—it cut off east across the country, and for two hundred and fifty miles right straight across that country there was not a living soul upon the route. Up here, upon the Buford route, there were some settlements. You have heard about the settlers upon the Yellowstone. Up here there were some settlers. But that was an

entirely different country from the two hundred and fifty miles right across to Bismarck.

The original pay upon this route was \$2,350, and I told you it was increased to \$70,000. Gentlemen, I want you to follow me while I analyze this to show you how much they lost.

There were deductions upon that route. Forty-six thousand two hundred and ninety-nine dollars and eighty-nine cents were deducted from their pay. Brady remitted \$13,303.74. He remitted for every trip in which they were late—every one. Mr. Lake, the clerk, reminded him, upon the jackets that were shown you, where they applied for a remission of fines, that he had remitted everything in the way of fines for a loss of time, and if he remitted any more it would be for trips that they had not performed. If they did not perform the trip at all, there should be no remission for that. But they received back every dollar that was lost because they were late. When Brady went out of office the only thing that remained unremitted was deductions for trips that they had never performed, and the amount deducted for trips that were never performed was \$13,994.84. That was all that Brady left when he went out of office unremitted. One half of all that had been imposed in the way of fines and deductions during his time he remitted, and he would have remitted the whole of it if it had not been that his clerk called his attention to it. But after Brady went out of office, after this dishonest Second Assistant Postmaster-General was turned out and an honest administration came in in his place, they figured it out, and \$18,991.31 were deducted from their pay, money that Mr. Brady should have deducted, and which an honest administration recovered back, taking Brady's orders as a basis to go upon. Therefore, you see they did not come out so badly after all. The route was started, or ought to have been started, in July, 1878, and in July, 1881, it was discontinued. The total amount of money they gathered in during those three years was \$157,487.83. That was their pay; money actually received during the three years they held this route; and that, of course, was independent of the fines and deductions. One hundred and fifty seven thousand four hundred and eighty-seven dollars and eighty-three cents passed out of the public Treasury into the hands and into the pockets of Mr. Vaile and Mr. Miner. Now, gentlemen, taking that for three years' service, do you think they lost any money? You can do a little figuring on your own account. You can then see how much that service netted or should have netted these people.

Between the points that I have shown you there were no post-offices, no people, and of course there could be no revenue, and nothing to the advantage of the Government, good or bad. But the mail carriers tell you and the postmaster tells you what mail was sent out and what was received, and you can judge whether Brady's orders were honest or dishonest when you see the amount of mail matter that was actually being carried over the route. They say that when the mail went from Bismarck over to Miles City it was from fifty pounds up to two hundred and fifty pounds when there was a heavy mail. But when it came back to Bismarck from Miles City it was very light. The testimony of Mr. Lounsberry is that he usually made up two sacks of mails to go over from Bismarck to Fort Keogh, and he says that when it came back in the same two sacks there were thirty to forty pounds of mail matter. There is the best way you can take to get at the value of the route—thirty to forty pounds of mail coming from Fort Keogh, the place that was "being rapidly settled up, and required more facilities."

Why, General Sherman told you on the stand that there were no set-

tlers between Bismarck and this point that I have pointed to, on the Yellowstone, on the map. There were settlers, a very few of them, at Miles City, which was a place that was growing, I suppose, like all these Western places grow where there is a railroad established or a military post; and General Sherman said that there were a few settlers up there on the Yellowstone, but none between that and Bismarck.

Gentlemen, we had in this case overt acts. I have shown you the petitions, letters, and papers, and I have shown you the orders that Brady made. There is no use in taking up any more time, because I have, I think, shown you that the allegations contained in the indictment are correct, and that the dates that are there mentioned are the correct dates. If my friends on the other side should undertake to dispute the facts just ask them to hand you the papers, and I think you can then judge for yourselves whether what I have told you and shown is correct, or what they say is correct.

Gentlemen, I have gone carefully over this testimony. It has been a long and tedious task. You have listened with the greatest attention, and I must thank you for the patient attention you have given me.

The testimony that I have referred to covers 4481 printed pages of what has been taken down by the stenographer and printed in what we usually call the record. You have listened to the testimony of one hundred and fifty witnesses, some of them called more than twice. You have had read to you, handed to you, and exhibited before you two thousand seven hundred and sixty-one separate pieces of paper of documentary evidence.

And just here your, honor, I think it is my duty to pay a tribute to the clerk, through whose hands these papers have passed. With wonderful ability and skill he has so marked those papers that not one of them bears a duplicate mark, and there is not a single inaccuracy in the marks upon them. And also to the gentleman who has come with these papers from the Post-Office Department; he has, as you have seen, handed out, when called upon, these two thousand seven hundred and sixty-one papers without the loss of half a second of time.

That is the mass of testimony through which I have wandered, in bringing it together and putting it in a concise and, as I thought, clear shape, in order that you might understand the different events and the order in which they occurred. There are a great many dates mentioned, and it would be impossible for you or for me or for anybody else to remember them. But in mentioning the testimony, in mentioning every piece of paper, I think without exception I have given to you the official mark upon it, as I have given the page upon which it is recorded; and I have done that from a conscientious regard for the duty that devolves upon me not to misstate one single item of evidence, not to misinterpret one single word that fell from the lips of a witness, but to give it to you properly and truthfully, so that the gentlemen who will succeed me cannot say that I have endeavored in the slightest way to mislead you.

And I ask you, gentlemen, when you come to hear from those gentlemen—and I repeat, I think, for the third time—do not permit one statement to go unchallenged when you think or when you know that it differs from the testimony I have read to you or the paper I have handed to you, for I have given the official mark upon every paper about which I have spoken, and the page upon which it is recorded.

There are twenty-one oaths in this case. I will drop from those twenty-one the oath that was taken on route 38150, called the Saguache route; that was an oath taken by Sanderson, and I do not want to hold any-

body accountable for what somebody else has done, unless it was done in pursuance of this conspiracy. And I will drop from that twenty-one, also, Vaile's oath. That will be two. Nineteen oaths I have handed and shown you. Has there been one of those nineteen oaths that has not been written in, altered, erased, or changed? I examined them carefully, and compared them with the evidence. When I started out I told you I thought there were sixteen altered out of eighteen. I find that there were twenty-one oaths. I take off Sanderson's and Vaile's, leaving nineteen; and I submit to you that there is not one of them that is not a false, fraudulent, forged oath. Perkins's oath was signed in blank, and filled in here in Washington. It was one of the nineteen. Vaile's oath that I have excluded from the nineteen, if it were not altered, if it were not changed, erased, and written in, like the others, gentlemen, it was as false in every respect as any one of the oaths exhibited to you in this case. Twenty false and fraudulent oaths placed in the department, in the office of the Second Assistant Postmaster-General, to get expedition upon seventeen of these routes. Twenty oaths were used, and not one of them a truthful oath. Not one of the nineteen is such an oath as would bear upon its face even the stamp of truthfulness.

I do not want to take up your time in going over the dates. I have shown you that on the 21st of April, 1879, the jurat was signed to four of the oaths made by John W. Dorsey. Three of his oaths were signed, according to the jurat, on the 26th of April, 1879, and those three oaths, made on the 26th of April, 1879, were written or filled in by Stephen W. Dorsey. They cannot lay the blame of that upon Montford C. Rerdell, because these seven oaths were signed and written on days when it was conclusively shown that Rerdell was out West, in Sidney, Nebraska, in Greeley, Colorado, and in Denver, Colorado, writing letters that are here and undisputed.

Then you have the oaths of Miner and you have oaths of Peck. I handed them to you until I was tired of showing them; until, I am sure, you were tired of looking at them. "Chico Springs, Sept. 18, 1878," was at the head, and down at the bottom was the jurat of the notary public, signed the same day. And accompanying these letters put in the department were proposals bearing the same date, said to have been signed by Peck, but really signed by Miner. Mr. Merrick reminds me that the proposals were dated at Washington City on the same day the oath was dated at Chico Springs, "Sept. 18, 1878." The offer was dated "Washington, Sept. 18, 1878." The oath was supposed to have gone to Peck, to be signed and sworn to; but could it reach Peck on the day that Miner says he wrote the date in Washington and sent it to be sworn to? These oaths were put in the Post-Office Department. They were brought here, and Miner, when on the stand, had to admit that, from looking at the oath, the figures and letters for the number of men and animals must have been written in at a time different from the time when he wrote the body of the oath. Every one of those oaths had been written here by Miner, and there was no dispute about it; and on every proposal where Peck's name was signed John R. Miner wrote the proposal and signed Peck's name to it.

In the matter of increases—I do not want to follow them all the way through, but I want to give you those that took place within a short space of time. From the 22d of April, 1879, to the 2d of August of that year there were seventeen increases made by Thomas J. Brady. On the 22d of April, 1879, he made one increase; on the 24th another, and the 29th another. On the 1st and on the 9th of May each he made an

increase. On the 3d, on the 12th, 24th, 26th, and 27th of June he made each day an increase, with this exception, that on the 26th of June he made increases upon two routes. On the 8th of July he made increases upon two routes; on the 10th of July he made increases upon two routes, and on the 23d of July an increase upon one route. And on the 2d of August he made an increase upon one route.

Gentlemen, the fiscal year begins, as I told you, on the 1st day of July. These increases were made to begin about the 1st of July. In the months of June and July there were eleven increases. At the time that other people were seeking recreation and rest at the seashore and elsewhere Thomas J. Brady was here in Washington. Would they have you to believe that Brady was stopping here in Washington, in the heat of this city, remaining here from a simple sense of his duty, and with a desire to serve the public, at the time that his associates, his chief and others, were away, and when he himself ought to have been away, because that is the time allowed to him in which to seek rest and recreation? He was here; and I suppose the gentlemen on the other side will ask you to believe that he was here from a sincere desire to do his duty to the people and to his superiors. But I say, as the records show, Thomas J. Brady remained here with the people who were acting with him, when the other people in his office were away, in order that he might the more safely carry on the business of robbing the public Treasury. And I guarantee you he never made an order and trusted to the good faith of Dorsey or of Vaile to pay him in years afterward. He exacted his toll in advance. He says, "I did not take any money." But did he take any checks or drafts? He was not asked that, nor did he say, "I did not take any post office drafts," such as you have seen before you. He was here, and he remained here to reap from his co-conspirators the benefit and advantage that he was to receive from making the orders that were made upon the dates that I have specified.

The COURT. Mr. Ker, would you rather conclude before taking a recess?

Mr. KER. I cannot conclude before the recess, but I will finish very shortly after the recess.

The COURT. Then we will take a recess.

At 1 o'clock p. m. the court took the usual recess.

AFTER RECESS.

Mr. KER. If your honor please, with regard to the Vermillion and Sioux Falls route, No. 35015, I find on page 4718, just below the middle of the page, this statement:

Brady gave them a weekly service, and brought the time down to ten hours.

It should have been:

Brady gave them a daily service, or six trips a week, and brought the time down to ten hours.

It is a slight inaccuracy, but even in that respect I would like to have it corrected.

The COURT. Yes, it was six trips a week.

Mr. KER. Gentlemen, I desire in a short way to analyze the acts that have been performed, and the result of the work of Mr. Brady, backed by the petitions and backed by the oaths that I have shown you. I will take the statement of the defendants, which statement, of course, we do

not admit, but on the contrary deny. In the division, or so-called division, of the routes Vaile received six of the routes mentioned in the indictment. I find that the original pay upon the six routes that he claims to have received was \$15,980. Five of these routes started at one trip a week and one of them started at two. Brady, by his orders for increase of trips alone, gave upon these routes \$55,340.91. He brought two up to seven trips, two up to six trips, and two up to three trips. The amount that Brady allowed for expedition was \$140,588.76. Add together the amount at which these routes were started, \$15,980, the amount for trips, \$55,340.91, and for expedition, \$140,588.76, and the total amount of pay that Vaile received each year upon these routes, starting at the low figure I have given you, will be found to be \$211,909.67. These figures are indisputable, because they are taken from testimony on the stand and taken from the records themselves. We are unable to tell you, in three instances, what the profit was, but upon the balance of them, as I have taken it from the record, the profit is shown to have been \$37,336.91. As I say, that is not all. I have given you as much as I can find.

Stephen W. Dorsey took eleven routes. Of these eleven routes, eight were increased to seven trips and three to three trips. The original contract price at which they were let was \$21,381. Brady allowed for trips alone \$81,488.56. He allowed for expedition \$151,625.57. Now, if we add the original cost, \$21,381 and the trips, \$81,488.56, and the expedition, \$151,625.57, we find that, by Mr. Brady's generosity to Mr. Dorsey, Dorsey received each year \$254,495.13. I have endeavored to obtain the profits that Dorsey received from these routes. I have not been able to obtain the profits from all of them, but such as I have I will give you. I find from the subcontracts on file that Mr. Dorsey's total profit was \$104,714.42 every year. All that he had to pay out of that sum was for the expense of writing letters, Rerdell's salary, John W. Dorsey's salary, and Steele's salary.

By putting the routes together I find this state of facts (and I want you to bear in mind, gentlemen, that in my estimate there are two routes excluded entirely, Saguache and Lake City and Ouray and Los Pinos; they are not taken into this calculation at all): The original trips cost, on the entire service, excluding the two routes I have named, \$37,361. Brady allowed for trips alone \$136,829.47. He allowed for expedition alone \$292,214.33. Adding together the amount allowed for trips and the amount allowed for expedition with the original pay, we find the total amount paid for service on these routes was \$466,404.80 each year. We find that the total profit derived by these people on these routes, as far as we have been able to ascertain it, was \$142,051.33 each year. What the whole amount was I cannot say, but the figures I have given you are taken from the record and are absolutely correct. Now, think of this, gentlemen! Think of the increase that Brady made, from the paltry sum of \$37,361 up to \$466,404.80, based upon old contracts, and with nothing at all to guide him but the oaths I have shown you backed by the petitions I have shown you!

I submit to you, gentlemen, there can be no claim of honesty in such a transaction as that. The whole amount of money that these people received during the contract term amounted to over \$900,000, when it should have been a little over ninety thousand dollars.

You know the money that the Government receives from the offices on these routes is what is called "productiveness." Congress had in mind the revenue when it said "having due regard to productiveness." Let me give you a statement of the productiveness, that you may compare

it with the orders made by Brady, and see how far he obeyed the laws that Congress made to guide him. Including the two routes, Saguache to Lake City and Ouray to Los Pinos, that I omitted from my other statement, we find that the original contract price was \$41,135, and that the increases made by Brady brought the amount up to \$448,670.90. In 1879 the entire revenue received, counting the railroad offices and those supplied from every source whatever, was \$35,516.61, gross; the net revenue, throwing off the railroad towns, was \$9,636.04. In 1880 the entire revenue, counting every office upon the routes, was \$46,375.53; throwing off the railroad offices, the entire revenue was \$12,307.24. In 1881 the entire revenue, counting every office, was \$56,713.04; but excluding the railroad offices, the entire revenue was \$10,807.26. There it is, gentlemen. The Government received \$10,807.26 from the offices on these star routes, and Brady brought the pay up to \$448,670.90. There is a statement from figures that I say are absolutely correct. You will find that when these routes were started, originally at \$41,135, the revenues were \$35,516.61—a very close connection between the revenue and the contract price. Of course, the mail had to be carried anyway. But when the revenues in 1881 were only \$10,807.26, where was the excuse, where was the necessity, where was the reason, to grant an increase of trips, and to expedite the routes, and bring the pay of these contractors up to the enormous figure of \$448,670.90—nearly half a million of dollars to carry ten thousand dollars' worth of mail?

The main question in this case, gentlemen, is: Was there a conspiracy? Was there an agreement between these people? When I started out I told you that it would be an impossibility for anybody to bring witnesses upon the stand who would say, "I heard them say that they were going to do it." You can judge from the actions of people, or by what these people told others. That is the only way you can tell what was in their minds and what they contemplated. We claim that there was an agreement between these people to have these routes increased and expedited without that expedition being needed and required. We claim that there was a secret agreement and bargain between these people to take these routes at low figures and to raise them up, through Brady's influence, to a large figure, without necessity, without reason, without warrant, and without cause; and by means of the expedition and increase of trips to bring contracts that were modest before up to an immense sum, and thereby take money from the public Treasury; money that should not have been paid out. I have gone over this case, and I have shown you, by the papers and the testimony, that the Government's claim has been made out, beyond a doubt. I have called to your attention the conversations between John W. Dorsey and different people; the statements of Miner, the statements of Vaile, the statements of Stephen W. Dorsey, and the statement of Thomas J. Brady made to John A. Walsh. From those statements, some made before expedition was granted and before the trips were increased, you can find nothing else than that it was running in their minds that the object was to have more trips and expedition and thereby to secure the money that we claim they started out to procure. It is true we have not been able to show, by anybody, that money was actually paid to Thomas J. Brady. It would be impossible for us to conceive or for you to conceive that these defendants would take the stand and admit the acts that we charge against them. When men band themselves together to commit an offense against the law and to rob the United States Treasury they are not expected to take the witness-stand and admit that fact. But witnesses have given their testimony, and John

A. Walsh has told you that Thomas J. Brady, in another similar transaction, said to him, "You remember the Price drafts," and that he "received 20 per cent. upon the increases that he made and 50 per cent. of all the remissions that he made." Gentlemen, John A. Walsh got down from that witness-stand without one word of cross-examination. His testimony was allowed to stand unchallenged, and without any attempt whatever to impeach it. With the exception of the contradiction, or attempt at contradiction, made by Thomas J. Brady when he equivocated in his statement of his money transactions with John A. Walsh, there is no contradiction of Walsh's testimony.

Were these defendants banded together? Did they divide off and take separate courses, and never reunite? Have I not shown you papers Miner gave upon the routes that Stephen W. Dorsey took and used to the very end of the contract term? Have I not shown you papers that belonged to the routes of John W. Dorsey and John M. Peck used and reused upon the routes that Vaile and Miner took? Were they not leagued and colleagued together, Stephen W. Dorsey altering and changing the figures in and upon routes that went to Vaile and Miner, Stephen W. Dorsey writing in words to the oaths that went into the Post-Office Department, and that Thomas J. Brady said he based his orders for expedition upon? If there is any doubt about that, if there can be any doubt about it, gentlemen, I can only recall you to one solitary instance, without wearying you any further, and I challenge the gentlemen on the opposite side to contradict it in one point. On the route from Canyon City to Camp McDermitt are acts which I will explain to you, that you may see if they do not point to guilt, with the finger of accuracy, about which there can be no mistake whatever. It was a route taken by John M. Peck, and the original pay was \$2,888. The length of the route was two hundred and forty-three miles and there was only one trip a week upon it. The route began at Canyon City; that was on The Dalles and Baker City route, as I have explained to you, and therefore supplied from another source; it went on down through the country until it came to Camp Harney, a military camp, passed through the diminutive village of Alvord, where there was a revenue of \$3 a year, and on down to Camp McDermitt, that also received mail from another source. During the entire distance of that route, two hundred and forty-three miles, there was no office to yield a dollar of revenue to the United States but Camp Harney and the miserable village of Alvord. Upon that route Miner wrote the proposal, Rerdell filled in the amount, and Stephen W. Dorsey filled in one word and signed Peck's name. There is no dispute about that. There you have Miner, Rerdell, and Stephen W. Dorsey together. Do you remember that I handed you the altered affidavit, dated the 18th of September, 1878, sworn to by Peck, and Miner wrote the body of it? Do you remember that it was put in together with the proposal on the 23d of December, 1878? Do you remember that on the 23d day of December, 1878, Thomas J. Brady made an order to increase the trips and reduce the time, and allowed for the same \$18,612, when there never had been a mail carried over the route, when there never had been a letter carried over the route, and when the entire revenue upon that route, as shown by the jacket before him, was only \$213? Do you remember afterwards that Vaile filed his subcontract? Do you remember that in July, 1879, Brady ordered an increase of trips and brought the service up to seven trips a week, allowing for the service \$28,666.66? Do you remember that immediately after that Camp Harney was taken off the route

and there was no office between Camp McDermitt on the one end and Canyon City on the other but the little village of Alvord that I have mentioned? You remember all that? Brady brought the contract price, starting at \$2,888, up to the sum of \$50,166.66. Vaile, with his subcontract on file, drew the money, and John R. Miner drew the money, and their profit on that route was \$30,166.66. Do you call that an honest transaction? Does not that one route stamp indelibly upon your minds and upon your memories the fact that if Thomas J. Brady had been an honest Second Assistant Postmaster-General he would have regarded the interests of the United States, and would not have made an order giving \$50,166.66 to carry the mail across that route, with only the village of Alvord upon it, and the entire revenue coming from the route being \$120.32? One hundred and twenty dollars and thirty-two cents was the revenue, \$50,166.66 was the pay, while Vaile and Miner received a profit of \$30,166.66 every year. Was Brady honest? Could he have been honest? He was the man who held the key to the public Treasury. He was the man who was placed there to stand on guard between the people who would dare to make a raid upon the Treasury and the Treasury itself. He was the representative of the people. Like the vidette before the picket-guard, he was the man upon whom the public Treasury depended for safety and security. If the vidette proved a traitor, his own comrades would shoot him down like a dog in his tracks, as he deserved. Without Thomas J. Brady nothing could have been done by these conspirators. Does he give you an explanation of his action? He does. I will read it to you. It is the last piece of evidence I will read, and I read it because it is his own testimony, sworn to on the stand, and he must stand or fall by it. It is on page 3480:

Q. Do you know whether the number of orders for expedition made by you was greater or less than those made by your predecessors during the same length of time?

A. I do.

Q. Was it greater or less?—A. Greater.

Q. How much greater?—A. I cannot say.

Q. Was it twice as great, or five times as great, or ten times as great?—A. I can't say. I never made any comparison.

Q. Do you not know that you made more than ten times as many orders as Mr. Routt and Mr. Tyner, your predecessors, during a corresponding period in office?—A. I may have done so. I thought myself a ten times better Second Assistant than they were.

Q. Do you not know as a fact that you made more than twenty times as many orders as those predecessors of yours during the corresponding period?—A. As I say, I never made a comparison, and I don't know. There was very little expediting done under Mr. Tyner or Mr. Jewell, very little. It was not the Jewellian policy to build up the star service or to give much service to people dependent upon steamboat service.

Q. How was it as to Mr. Routt?—A. I don't remember anything about Mr. Routt's administration. I do not know that I have ever even looked up the number he might have expedited.

Q. Do you know whether your orders for expedition were not only more numerous than those of your predecessors, but were made for larger amounts?—A. I presume so. They were much better orders than those of my predecessors.

Q. You stated that Congress approved your course in expending money prior to the Congressional investigation. By what act did Congress so approve it?—A. They gave us the money to continue the service just as we had expedited and increased it.

Q. Did they approve it in any other way than by passing an act making an appropriation of money?—A. They adopted my suggestion to limit expedition to 50 per cent.

Q. Did they approve it in any other way than by passing an act appropriating money?—A. As I say, they adopted that suggestion of mine in addition.

Q. Did they approve it in any other way than by appropriating money?—A. That was a sufficient approbation, giving me the money to continue the service.

That was a sufficient approbation! All that he cared for, all that he desired, was to get the money. There he tells you that Mr. Jewell did

not pursue the policy he pursued; that Mr. Routt did not pursue the policy that Brady pursued. And you saw by his letter that there were \$3,000,000 covered into the public Treasury of unexpended money, and that he was asking Congress to give him \$2,000,000 of that to carry out the policy of Brady. And when did that policy start? I have shown you that it began in 1878. It began when Vaile came into the combination and made the terms with Brady. Miner says that "Vaile was close to Brady." There is where Brady's policy began, and it continued on until he was removed from his office.

Now, gentlemen, did Brady get any of the money? He started in the internal revenue service at a salary of \$1,500 or \$2,000 a year. In 1876 he was made Second Assistant Postmaster-General, and I think the law specifies his salary to be \$3,500. In 1880 you find him with three thousand shares of Chattanooga stock, worth \$240,000, with other stock, with four or five newspapers, and living like a prince in Washington. Starting from the internal revenue service with a salary of \$3,500 as Second Assistant Postmaster-General, he comes into a princely fortune—a beautiful example for the youth of our country who wish to take to politics for a living.

But this is not a question of politics, gentlemen. It is a question of solemn duty. You have been selected to try this case. It is one that is surrounded by extreme difficulty. You have to remember the facts and circumstances, and you have to put them together. But you have a harder duty than even that. With unlimited wealth at their command, with friends flocking around like buzzards to feed upon the carcass, the wealth of Dorsey and Brady and Vaile is a fair object for every man who would take from them their ill-gotten gains. They are surrounded by a class of people who are anxious to wring from them the money they obtained from the Government. These people, with the money of Brady and Dorsey and Vaile in their pockets, are flying around through the community. People who are friends of yours, people who know you and who presume upon the friendship that they suppose exists between you, may be induced to make improper advances to you. Here, before his honor in open court, is the place where you are to get the testimony that is to guide you. If the polluted hand, coming from the other side, is stretched out to you, do not touch it. If the voice in supposed friendship is raised to advise or guide you in your judgment, push that friend aside. Such friendship, such advice as that, is contaminating, and you should never allow it.

We have had in the prosecution of this case a set of men the like of whom have never been on trial in this country. The history of the case, the action, the proceedings in it, are the subject of news to spread throughout the world. It goes upon the telegraph to every nation that has a government. It is published wherever there is a newspaper. Your institutions, yourselves, your city, and your Government are on trial in the eyes of the people of foreign lands. But still you have nothing to do with that. You have to take the testimony that was given here, and that alone. You have to act as men should act who are placed in a high position, with the eyes of the people whom you represent centered upon you.

Stand up like men, fearlessly and faithfully, and assist the Government in the effort it is now making to bring these guilty men to punishment. There never has been a case in which the prosecuting officers have had so many difficulties to encounter. There never has been a case in which honest jurors, desirous of doing their duty, have had so many difficulties to encounter, to keep their minds from being impreg-

nated with that which should not be there. But I ask you now, on behalf of the Government and the people that I have the honor to represent, to stand manfully and be with us in this fight, for we are engaged against one of the wealthiest, one of the most powerful and defiant rings that has ever engaged in so successfully robbing the public Treasury; and, gentlemen, when your verdict comes to be given, I know that hereafter, when you look upon it, you can say in your own minds, in your own consciences, I did my duty faithfully and as a man.

Mr. WILSON. Mr. Merrick, shall I now bring up that matter about the route from Baker City to Bridge Creek?

Mr. MERRICK. Yes, although I wanted to put it off until Mr. Bliss should be present. I do not suppose it makes any material odds. Mr. Wilson has called my attention to the route from Baker City to Bridge Creek, as to the route being cut off at Mitchell. It looks to me, from the map I have examined, as if Mitchell was on both routes, and that the line running between Bridge Creek and Mitchell, according to the original arrangement for the routes, ran over both by the Bridge Creek route and by The Dalles and Baker City. I am willing to make any correction or let it stand for the present. Mr. Bliss will be here on Monday, and he knows more about the details than I do. That fact appears from an order that is not in evidence at all, but which Mr. Wilson has got from the department and which seems to show it:

Embrace Mitchell on this route next after Bridge Creek from May 10, 1879, without increase in pay or distance.

That is the route from The Dalles to Baker City; it is on that route. This, although not in evidence, seems to show the fact, and I am perfectly willing that that fact should be admitted to the jury. That is the only error committed by Mr. Ker in his whole argument, which has been one of the ablest I have ever listened to in my life in the opening of a case, and that error has been shown by proof not in the case.

Mr. WILSON. Oh, yes; it was in the case before. I had a letter from the Postmaster-General.

Mr. MERRICK. There is no point in it; let it go.

The COURT. I have seen that order, and I have seen the post-office map which shows the same thing. I am satisfied that the remarks of Mr. Ker in regard to cutting off that part of the route—fourteen miles I think——

Mr. MERRICK. [Interposing.] Fourteen miles.

The COURT. [Continuing.]—were based upon a misapprehension of the facts.

Mr. MERRICK. It was not upon a misapprehension of the facts as then in evidence. However, I think the fact is as Mr. Wilson states it, and therefore I admit it gladly, cheerfully.

The COURT. There was no evidence that I remember——

Mr. MERRICK. [Interposing.] He said he did not see where it had gone.

The COURT. There was no evidence to show that when that fourteen miles was cut off between Mitchell and Bridge Creek it was put on another route.

Mr. MERRICK. None at all.

The COURT. And in his remarks to the jury upon that point Mr. Ker assumed that it was left out in the air, and there was no reason for it, except a conjecture on his part. But it is all right; the misapprehension should be corrected now.

Mr. WILSON. I want to make one further correction. Your honor is not exactly right in saying that there is no evidence on that subject,

because the Government did put in the statement here which did show that Mitchell was on The Dalles and Baker City route.

Mr. MERRICK. What statement was that?

Mr. WILSON. I will give you the page.

Mr. MERRICK. There is no statement.

Mr. WILSON. But it is not necessary to take up time, because it is all conceded now.

Mr. MERRICK. It is conceded now.

The COURT. It was a natural misapprehension on the part of Mr. Ker, under the circumstances, because there was no distinct proof in regard to it.

Mr. MERRICK. None at all.

The COURT. The map might have been given in evidence, and it would have shown it upon the face of the map; but there was no evidence distinctly upon that point.

Mr. WILSON. It grew out of the error in the map that the Government brought here and submitted. It made a map that was not correct.

The COURT. They showed a map showing this route.

Mr. WILSON. Exactly, but—

The COURT. [Interposing.] But they did not show the large map.

Mr. MERRICK. Not at all. If Brother Wilson insists upon it, here is the advertisement which puts Mitchell upon the route which Mr. Wilson speaks of, and did not put it upon the other at all.

The COURT. It was on this route originally, and it was subsequently put off.

Mr. MERRICK. By this order which ought to have been in and was not in, and was not before Mr. Ker at all.

The COURT. There is no ground, I think, to charge Mr. Ker with any intentional misrepresentation.

Mr. WILSON. Oh, no; I do not charge that. I only interrupted him at the time in order that it might be corrected.

The COURT. It was a mistake he was likely to fall into in the absence of evidence.

Mr. MERRICK. The only one in seven days.

Mr. WILSON. We will show you about that before we get through.

Mr. HENKLE. We have had six days and a half of a very able presentation of the case on behalf of the Government. I do not exactly agree with my Brother Merrick that it has been in all instances without error, except the one which has just been corrected; and I am not exactly prepared to state, although it has been very ably presented, that it was, in all instances, exactly fair.

The COURT. Your time for showing that will come hereafter.

Mr. HENKLE. But I rise now, by the peremptory direction of my clients, to propose on their behalf—and I do not speak for any of the other counsel or any of the other defendants in the case—to submit the cause to the jury under the instructions of the court. I make this proposition to the counsel for the Government.

The COURT. You represent whom?

Mr. HENKLE. Vaile and Miner.

Mr. MERRICK. Of course the Government has no objection to Mr. Vaile and Mr. Miner submitting their case.

Mr. WILSON. I am willing to submit mine.

Mr. MERRICK. The Government has no objection to all the defendants submitting their case if they want to.

The COURT. We have Brady and Miner and Vaile now; that is three out of five.

Mr. WILSON. I only say that on condition that there is no further argument for the Government.

Mr. MERRICK. I have nothing to do with the management of their case, your honor.

Mr. HENKLE. Of course, my proposition is subject to the condition that there shall be no further argument on the part of the Government. So far as my clients are concerned I am willing that the case shall go to the jury on this very able argument that has been presented on behalf of the Government.

The COURT. Who speaks for the other defendants?

Mr. HENKLE. I do not undertake to speak for anybody except my clients and myself. Judge Wilson has spoken for his client.

The COURT. Nobody has spoken for either of the Dorseys.

Mr. DAVIDGE. Mr. Ingersoll has not been here for several days, your honor, and I have not conferred with him upon the subject. So far as I am personally concerned, my judgment would be in conformity with that of the gentlemen who have made known their views to the court. I will make it my duty to talk with Mr. Ingersoll, if it be worth while; but if the Government will not accept the offer, there is an end of it.

Mr. MERRICK. The Government says nothing until an offer is made. We have nothing to do with the management of their case.

The COURT. I cannot regard the offer as complete until it is made by the counsel for all the defendants.

Mr. DAVIDGE. I have only stated the reason why I am unable now to act. But I will confer with Mr. Ingersoll between now and the meeting of the court on Monday morning. I presume nobody will go on to-day.

The COURT. No, I presume not.

Mr. DAVIDGE. Mr. Bliss is to follow, I presume, if there is any further argument for the prosecution, but I believe he is not in town. So there will be no further argument to-day.

The COURT. We will hear further in regard to it probably on Monday morning. Adjourn the court until Monday morning.

Thereupon (at 2 o'clock and 51 minutes p. m.) the court adjourned until Monday morning, April 30, 1883, at 11 o'clock.

MONDAY, APRIL 30, 1883.

The court met at 11 o'clock

Present, counsel for the Government and for the defendants.

Mr. CARPENTER. If the court please, I would like to have the proceedings suspended until Colonel Ingersoll gets here. I expect him every moment.

Mr. HENKLE. Is it understood that the Government declines our proposition to submit the case?

Mr. MERRICK. I have not had any proposition made to me.

The COURT. Your proposition was not entertained by the court, because it was an incomplete one.

Mr. HENKLE. Then I ask your honor to suspend until Colonel Ingersoll gets in. I understand he is willing to submit the case.

Mr. MERRICK. I take it for granted that the more the case is discussed the more disadvantageous it is to the defendants.

The COURT. Now, Mr. Merrick, that is a flight of the imagination of which the court will not take any notice.

Mr. HENKLE. [To Mr. Merrick.] You have had seven days of discussion on your side already.

The COURT. The court is here to entertain any proposition that counsel may choose to make, of course.

Mr. MERRICK. Certainly; any proposition that is a proposition for the decision of the court.

The COURT. Yes.

Mr. MERRICK. Propositions that are for the decision of counsel are propositions that can be as well made quietly out of court.

The COURT. The court of course is not informed as to what Mr. Ingersoll may be prepared to offer. We will wait three or four minutes.

[Mr. Ingersoll entered.]

Mr. INGERSOLL. I did not know that the court was waiting for me. So far as both the Dorseys are concerned we are willing to submit the case, provided the Government will submit its case.

The COURT. The Government will say whether or not it accepts the proposition.

Mr. MERRICK. The Government has not yet completed its opening, your honor.

The COURT. That is enough on the subject.

Argument of

HON. GEORGE BLISS

to the jury on behalf of the Government.

May it please the court, gentlemen of the jury, the able and extended argument of Mr. Ker has rendered it unnecessary, if not improper, for me to inflict upon you a very lengthy address. At the same time, in the distribution which has been made between counsel of the analysis of the evidence, it was arranged that the laying before you of all the details of the evidence, the gathering together of the evidence as it bore upon each route, preceded by a statement of the evidence in general terms as to the *dramatis personæ* in this tragedy should be assigned to him, and that he should lay out, so to speak, the strands of the rope which we think this evidence discloses, and that it should be reserved for me in the opening to endeavor to twist those strands up into the rope and to show you the collocation of the evidence and the inferences which must necessarily follow from it. That is the end to which I propose now to address myself.

In the first place, gentlemen, however, I desire to call your attention to the fact that the statements of our witnesses as to the routes, the nature of the country, the number of men and animals actually used at the time expedition was ordered, the number of men and animals that were in fact used after expedition went into effect, the amount of mail matter, and the manner in which the mails were carried, are absolutely uncontradicted. They have not sought by a single witness from any region of the country to contradict in any way the testimony we have placed before you upon any of these subjects. They knew from the former trial precisely what would be the nature of our testimony in this respect. They had here sitting by them during a considerable portion of the trial one or more of the parties whom the evidence has shown to you would be important witnesses on their side if they could contradict the statements of our wit-

nesses. They have had here Mr. Williamson and others, but they have not attempted to place one of them on the stand. They have therefore accepted conclusively and in the strongest manner possible the evidence of our witnesses as to the subjects to which I have referred. I shall therefore assume in what I have to say that their statements must necessarily be accepted by you as absolutely correct. From that preliminary what necessarily follows? It follows in the first place that the affidavits made by these defendants, or some of them, and accepted by Brady as the sole basis upon which he acted in granting expedition and in taking large sums of money from the Treasury, are absolutely and unequivocally false. They are false in the statement of the existing fact as to the number of men and horses necessary to run the several routes on the speed and for the number of trips they were then being run, and they are false in their statement as to the number that would be necessary to run the routes upon the time to which they proposed to have them expedited. That was a natural result, I may say in passing, from the fact that those affidavits were made solely by parties interested, and that they were made by parties who never had been upon the routes, save in a single instance. There is a single affidavit made by one not a defendant here who had been upon the route. The others were made by parties who had not been upon the routes, and with a single exception by parties who, according to the admission of the defendants and to the admission of their counsel in this case, were absolutely ignorant of all matters connected with the mail service. It was natural, therefore, that they should misstate the facts. It was not natural that they should fly directly in the face of facts known to them and misstate those facts to the extent which they did unless they were doing it intentionally. Moreover the statements of the amount of mail matter going over the routes, and which was to be carried in consideration of the payment of these enormous sums, are, as I have said, absolutely uncontradicted. It must be accepted by you that these expeditions were made for the carrying of mails which were absurdly small, so small that on one route in a period of nineteen days out of thirty-five days not a single letter went over the route either way; yet the amount paid for expedition in carrying the mail upon that route was somewhere about \$52,000. It must be accepted as conclusively established that expedition was ordered when the mails as expedited made no connection with any place beyond their termini, and when, therefore, nothing was gained except merely as to the local post-offices, there being sometimes only a single intermediate office on the route. Connections were disregarded, and nothing was gained in that respect. It must be accepted also that in every little order that could be made and in every little way in which the Government could be swindled the order was made and the Government was swindled. Animas City, Brighton, and all those places were put upon routes, and an additional sum of money was paid out of the Treasury for so doing, when in fact there was no addition of distance of travel. On the Saguache and Barnum route there was a large sum of money taken from the Treasury by a gross error, blunder, or something, I cannot say what, in the calculation of the amount which the affidavit shows the Government ought to pay. That error never was corrected until these gentlemen went out of their influence in connection with the Post-Office Department and the present régime came into office. It must be accepted also that from the beginning to the end of this case you will find no evidence of any error having been made in favor of the Government. I think you will go through the evidence in vain to find a single case where an error has been made in favor of the Government. It is

always against the Government. Moreover, in no single case was the remonstrance of a postmaster or the remonstrance of a citizen along the route regarded in any respect so long and so far as it came in conflict with the interests of these defendants. We were excluded by the ruling of the court from offering to you the remonstrances made after orders had been granted; but there are before you, and I shall call your attention to some of them, numerous remonstrances of postmasters and others, entitled to weight, made before the orders were granted, representing a condition of facts which would render the granting of those orders absolutely improper. To those remonstrances no attention whatever was paid. You will remember that it even went so far that when Postmaster-General James came into office and saw upon the journal an order dated on the 8th of March, 1881, by which there was a very large increase of trips and a very large increased amount of money to go from the Treasury upon the route from Rawlins to White River, that although he signed the journal as he was required fairly and honorably and legally to do, because the journal has to be a correct statement of the operations of that day, yet that he at once directed that the order should be revoked. The order never was revoked by Brady, but remained unrevoked for five or six months' until accidentally it was discovered in connection with the investigation which resulted in this indictment. It was not revoked, although Mr. Brady admittedly had some conversation with Mr. James upon the subject, in which he showed he knew of that order. Mr. Brady undertakes to fix the time when that conversation took place at a different date from that fixed by Mr. James. At any rate it was a conversation as to that order, and it was a conversation as to the policy of economy which that order foreshadowed. The order made by Brady remained unrevoked for five or six months, although the Postmaster-General, his superior officer, had directed it to be revoked. All these things you may call carelessness or something worse, but there is this remarkable fact, that they are all against the Government. The Government was never once considered.

There is another thing, gentlemen, that you ought to remember in this case, and that is the withholding by these defendants of documentary evidence admittedly in their possession. I think the court, when it comes its turn to lay down the law to you, will instruct you that if a defendant withholds evidence admittedly in his possession it is not only your right but your duty in all doubtful cases to draw from that fact of the withholding of the evidence the conclusive inference that the books or documents withheld would show facts unfavorable to the person withholding them. During this trial we have demanded books and papers constantly and repeatedly. We have been told as we went along that we should get enough of them. Mr. Davidge told us we should have enough of the stub-books. Gentlemen, we have not been able to get anything on the subject. We were told that we should have enough of the letter-books. We have not been able to get anything on that subject. I have here a memorandum of things which we have asked for and which we have not got. I ought to say in passing that when I speak of books you will remember I am not now speaking of the books which Rerdell kept, and of which Dorsey says he never heard. I am speaking of the books which they admittedly had in their possession. I am speaking of the books which they have shown by their own witnesses on the stand are in their possession and had been consulted by the witnesses just previously to going on the stand. I am not sure but what one of those books was identified as having been in court during this trial. I am speaking of those books,

the letter-books, the stub books, and every thing of that sort. I am not speaking at present of those books which Mr. Rerdell referred to as kept by himself and which Dorsey found it convenient to deny. They told us that their reason for not producing these books was that they did not want us to go rambling all over their books and to examine into private matters which had no relation to this case. Gentlemen, during the progress of this trial the court has said once (upon page 2281, if I mistake not) that we would not have the right, because a book was produced, to go rambling over the whole book. We would only have the right to go to the particular page and the particular point as to which we had asked for the production of the book. There we would be obliged to stop. The excuse therefore that they would not produce these books, because they did not want us to look into matters which did not concern this trial, is simply a sham, and they knew it to be a sham. Gentlemen, one fact shows how conclusively it is a sham. Is it trying to pry into anybody's business; is it trying to examine into anybody's secrets, unless they are writing to people whose names they are ashamed to have known, to ask to be allowed to see an index to a letter-book? We asked to be allowed to see the index to the letter-book in order to find a particular letter. They refused to produce that index and refused to allow us to see it, simply because they knew as a fact, I ask you to infer, that that index, if produced, would show that in a missing page of that letter-book there had been a letter written to a gentleman the substance of which we produced here by the recollection of a party who had read it. If that index had not shown that that letter was there, addressed to Mr. Bosler, would not that index have been produced and made accessible, to say the least? And, gentlemen, it will not do to say, as one of the counsel did, that there was no evidence that the letter-books were indexed, because Mr. Gibbs, the clerk at the Ebbitt House, swore upon the stand that he made indexes for those letter-books. Therefore no excuse of that kind will answer. Gentlemen, where are these papers that we asked them to produce? Where is the letter written on the 8th of February, 1881, to Perkins, at White River, asking him to get up petitions and to see that he got the petitions here before the 4th of March, 1881, before General Garfield's administration came into power, and when General Brady would be in danger of going out of office, if he was not certain to do so. This was to lead to an increase of some twenty or thirty thousand dollars upon that route. Where is the press copy of that letter, proved to have been written and the original proved to have been destroyed? Where is that press copy which they claim to have had here in court at the last trial? Why have they not dared to produce it here now? Where is the letter of Peck to Dorsey at the outset of the mail-contracting business in which Dorsey was asked to bring Boone or some other man into the business? Where is the power of attorney that Miner gave to Moore to go West and put the service on and which Moore says he delivered up to Miner, and which they have not dared to produce? Where are Rerdell's accounts which admittedly came into their possession? Why have they not dared to produce them? Where is the letter from Clendenning, the honest postmaster, whom Mr. Dorsey thought he owned because he put him into office, and whom he thought he could compel or induce to violate the law by certifying to bonds in which the bidder's name had not been inserted? Where are all these papers? There are others that do not occur to me. The papers have been shown to be in their possession, and some of them are admitted by them still to be in their possession, including of course the stubs of the check-

books. When upon the stand they did not deny that they still had them in their possession. I think the court will instruct you that it is your duty in all those cases where any of those papers can have any bearing upon the evidence before you, if there is the least doubt in your minds, and if there is anything left to be settled, that you will infer that the evidence which those books and those papers would have furnished must necessarily have been evidence to confirm the position of the prosecution and evidence to upset the position of the defense.

I suppose there is no impropriety in my mentioning in passing that in the exercise of a legal right, a right which the court holds they have, they succeeded in excluding from you documentary evidence which we desired to produce, and which we think would have been valuable here; for instance, the telegrams of Dorsey to Rerdell after the meeting at the Albemarle Hotel in New York, and some other evidence upon that subject. I find no fault with the ruling of the court or with the objection of the defendants, but simply call your attention to the exclusion of the evidence I have referred to, and also of the evidence as to whether Mr. Rerdell was at Mr. Dorsey's office at the time Mr. Torrey says he was not there, and the exclusion of the confirmatory evidence by Mr. Rerdell's brother as to the contents of the letter which Dorsey wrote to Rerdell on the day after the interview at the Albermarle Hotel.

But again, gentlemen, they had it in their power on important disputed points to call witnesses who are in their interest, acting with them, their friends, their associates, and their partners who shared in the plunder that came from the Treasury by virtue of these orders. They did not call them. James W. Bosler sat here in court. We called him to prove the loss of certain papers as necessary before putting in secondary evidence. Bosler sat here in court day after day. He was proved before you to be a man to whom Dorsey says he turned over his whole mail business in the spring of 1880, proved before you beyond all question to have been the party (disinterested if you choose, but certainly not interested in behalf of the Government) who could have told you just what the truth was as to the making not only of the affidavit by Rerdell in June, 1881, but as to the truth of the making of the affidavit in July, 1882. He could have told you whether Mr. Rerdell's statement on that subject was correct, or whether Mr. Dorsey's statement was correct. Mr. Bosler was the friend, the associate, and partner of these parties, and yet they did not dare to put him on the stand. So we ask you, gentlemen, to infer from that fact that they knew if he had been put on the stand they would have been in danger, at least unless he could have fenced with the truth as some of them have done. If he could not have fenced with the truth as they did—and I doubt it—there would have been danger of his showing that their statements under oath on the stand were not correct. They did not choose to put him on the stand. It was not our business to put him there. He was the man who shared in the profits of this business. He was their associate and their friend. It was not in common sense or in common decency our business to put him on the stand. They chose not to put him on the stand. They chose not to subject him to the criticism of our cross-examination. Gentlemen, if they had done that the book which Mr. Dorsey used to settle with Mr. Bosler, as he himself swore, the book which he undertook one day on the stand to say was his book and in his possession, and had been taken to his house at a certain time and remained there, would have come out, and you would have seen the entries there and what there was in that book; who was paid the money; how they were paid, and how consistent the answers were

with the story that they told on the stand. But Mr. Dorsey came back the next morning, after having learned or remembered the fact that I had had a glimpse at that book, not in his possession, but in the possession of Mr. Bosler after he said he had got it, and testified that it had gone back to Mr. Bosler and that it was Mr. Bosler's book and not his. We were told as to Mr. Bosler, counsel told us more than once in court here, and told you, that we should have a chance to question Mr. Bosler on the stand, and yet they did not dare to produce him here. [In reply to remarks by counsel for defense in an undertone.] On the Government's attachment, yes; but he is more attached to the defendants than to the Government. We found where he was in hiding and in whose company he was.

The COURT. Gentlemen, do not interrupt.

Mr. BLISS. I think they had better not interrupt, but if they do, I propose to reply to them.

The COURT. I am not finding fault with you for replying. I am finding fault with them for their interruptions.

Mr. BLISS. As to Mr. Bosler, I want to refer you to the passage in which they promised we should have the pleasure of a legal interview with him. If I mistake not it is on page 3947:

Mr. INGERSOLL. You will have a chance to ask Mr. Bosler about it. Perhaps he can give you some of the details.

We had no chance to ask him. They took care that we should not have a chance to ask him about it. It could not have been, gentlemen of the jury, because they were not willing to trust his testimony, because Colonel Ingersoll, in his opening, told you in speaking of Bosler, on page 430:

Just as soon as he could make the arrangement he went to a gentleman living in Pennsylvania by the name of James W. Bosler. Who is Bosler? He is a man well acquainted with the business of contracting with the Government. He has been in that business for years and years. He is a man of ample fortune, excellent reputation, considered by his friends and neighbors to be a gentleman and an honest man.

That is the man described by Colonel Ingersoll, their associate and friend and partner, whom they did not dare to put on the stand.

Then again, gentlemen, when Mr. Moore was on the stand there was a great show of an intention to contradict him. On his cross-examination he was asked: Did you not tell Mr. Pelham so and so? Did you not on the 23d of January say so and so to Mr. Pelham? Did you not on the 24th of January tell Mr. Pelham so and so? And, then, they went on from that to Mr. Betts, and they asked him if he did not tell Mr. Betts so and so. Oh, they were going to contradict him in the most flagrant manner. But Mr. Moore, learning of the fact and being compelled to return to a sick and dying family in Oregon, came into court, waived all the privilege he had for closing Mr. Pelham's mouth on the ground that it was a privileged statement from client to counsel, and gave full permission to tell everything he knew. They finally put Mr. Betts on the stand, and asked Mr. Betts two or three questions which were clearly inadmissible, because they were seeking to contradict Moore upon collateral matters, and there they stopped. They did not call Mr. Pelham and seek to contradict Moore, as they claimed they would, upon matters which would have been admissible if Pelham could have so testified. I will not stop to go over those questions—I have a reference to them—but they were forced to take Betts. As if you would believe Betts as against Moore! They were forced to ask Betts inadmissible questions, and then he disappeared. Pelham never appeared.

And Moore stands before you, therefore, so far as all this testimony is concerned, wholly and absolutely uncontradicted.

Gentlemen, there is another thing I wish preliminarily to call your attention to, and that is this: the letter, on page 4150, which Mr. John W. Dorsey wrote on the 9th day of December, four days after this trial began, in which he threatened Mr. Rerdell that if he testified upon this trial or aided the Government he would have him indicted for forgery. Rerdell had told him that he wanted an immediate trial. Dorsey said that he did not believe it.

What I have to say to you I will say frankly and with the kindest feelings, and, as I believe, for your good as well as that of others—

The Christian gentleman who could make two contradictory affidavits on the same day is interesting himself in the good of Mr. Rerdell as well as that of others.—

And that is: If I know of your doing anything which I may have reason to think is intentional to injure the defendants in the coming star-route trial, I will prosecute you for *forgery* and another crime which I will not mention now.

It will remain with you whether any one but you and I ever know of this, and I hope you will not *make* the occasion for it to go any further, but if you do you may be sure I will do as I say, if possible, and I can put my hand right on the acts, day and date.

Yours truly,

J. W. DORSEY.

That is a letter written by him after this trial commenced, in the endeavor to prevent Rerdell from aiding the Government. He knew that Rerdell possessed important evidence, and for the purpose of preventing him from giving that testimony to the Government from being made available Mr. John Dorsey deliberately states that he knows of a crime which has been committed (*forgery*); and he will make the bargain with Mr. Rerdell that by his silence he, John W. Dorsey, will compound a felony. There is the proposition John W. Dorsey makes here in the endeavor to prevent your getting the knowledge of this evidence. And Mr. Rerdell is so badly frightened by this statement of Mr. Dorsey's that he quietly hands the letter over to the Government, when the Government signifies its willingness to accept him as a witness, and he goes upon the stand and gives his testimony. We claim, gentlemen, from that transaction—and we think the court will direct you that it is the law—that when a defendant on trial seeks to suppress or prevent the obtaining of evidence there is to be derived from that a very strong inference against his innocence and in favor of his guilt, and a very strong inference that the testimony which he is trying to keep away he knows will be damning to him.

Another preliminary fact that I ask you to bear in mind is this: The burden which the defendants are under in urging, necessarily if their position is to be maintained, that a long series of witnesses in behalf of the Government have come upon the stand here and committed perjury deliberately, openly, and willfully, and have done it without any inducement, without any reason in the world apparently, except the pleasure of committing perjury. They want you to believe that Pennell, a contractor from Dakota; that McLellan, Cabell—mule-whackers I think Mr. Dorsey called them—Lambert, Swift, and all those men came here and deliberately lied. Not one of them, but they all came here and deliberately lied.

They want you to believe that Mr. Moore came here and lied. He was brought here under a subpoena from the presence of his sick family; brought here certainly very unwillingly on his part, and they would

have you believe that he deliberately lied as to what Miner and Stephen W. Dorsey had told him.

They want you to believe that John A. Walsh, whom they did not cross-examine, and who is not to be put out of the case by a sneer from a gentleman who sneers at everything that everybody else respects—they want you to believe that John A. Walsh came here and deliberately committed perjury. And the only evidence they have of that is that he has a suit pending against Brady because, as he alleges, Mr. Brady owes him \$20,000 or \$30,000 for money borrowed from him under circumstances that almost amounted to compulsion. Because Mr. Walsh has such a suit pending against Brady, therefore they want you to believe that Mr. Walsh committed perjury on that stand—a man whom they did not dare to cross-examine, I was going to say, probably because they had had some experience in that way.

Then there is Boone. They handle him delicately. Boone does not lie. Boone is mistaken. Boone swears to facts diametrically opposite to what they say. Boone swears to the same things that Moore swears to in many instances. Moore is a liar; Boone is mistaken. That is the delicate way in which they treat him. Gentlemen, of course we do not know why they treat Boone so delicately, but it is absolutely consistent, to say the least, that that treatment of Boone should be in consequence of the fact that Boone is the fortunate possessor of information with reference to them, not pertinent here, which it might be uncomfortable to have come before the public.

One other thing preliminarily I desire to state, and that is this: That since Mr. Rerdell went on the stand they have confined themselves almost exclusively to attacking him. They have not put themselves in the position of defending themselves. They have not looked to the testimony we have given in the case; they have left that substantially unimpugned, and they have gone to work to attack him. Everything has turned upon the attacks upon Rerdell. And yet bear in mind—if I may refer to it—that at the last trial, where the Government certainly had a case that the jury thought was worthy of something else besides a sneer, Mr. Rerdell sat with them and was defended by the same counsel who are now sneering at him. And they are trying to persuade you, apparently, that if in some way they can break down Rerdell, then they have disposed of the Government's case. Before I get through I think I will show you how absurd that idea is.

Bearing all these preliminary things in mind, let us come down to the case. I do not desire to here go over the laws bearing upon the Post Office Department, but I will simply recall to your attention the fact that the laws applying to the Post-office Department require publicity, advertising. The awarding of contracts to the lowest bidder and all the different contingencies are subject to the law requiring publicity. That is the system of law provided for in all details. The failure of a bidder who has been accepted to take a contract is provided for by an arrangement for temporary service and new advertising. The failure of a man who has entered into a contract to enter upon the service is provided for in the same way. All those things are carefully guarded by the statutes in reference to the Post-Office Department which require publicity. This gives every man an opportunity to compete, and the award must be given to the lowest bidder. That is the theory of the law. The Supreme Court of the United States, in 3 Otto, says (see page 228 of the record), in a case with the significant title of *Garfield vs. The United States*:

The object of the statute was to secure notice of the intended post routes, of the

service required, and the manner of its performance, that bidders might compete, that favoritism should be prevented, and that efficiency and economy in the service should be obtained.

Now, gentlemen, if those laws had been followed, instead of this secret resort to this by-play, if it can be called a play, under which these contractors were awarded privately large sums for increase of service and expedition, can there be any question that the result would have been exactly in accordance with that decision of the Supreme Court; that is, that the bidders could have competed, that favoritism would have been prevented, and that efficiency and economy in the service would have been obtained? And was not the result obtained in these cases precisely the opposite of that in all respects?

I have upon my memorandum various references to the laws, but I will not go over them. They all look to advertising, publicity, competition, and award to the lowest bidder.

For the purpose of providing for any possible injury to the service that may occur from any unforeseen contingency there is a statutory provision about which you have all heard so much, and which I will not read again. It has reference to increase of trips and speed. As to this, Mr. Chandler in his opening address said that Mr. Brady followed the practice and the precedents of the department. Brady says he did not. Brady says that he despised the Jewellian policy and the practice and precedents of the department, and that he went on upon a scheme of his own. I leave that difference to be settled between Brady and his counsel, but I think, in view of the evidence in this case, that the client was in the right.

The regulation provides, as you will remember, that there must be an affidavit. I think I had better refer to the regulation for a moment, because it will be necessary to call your attention to some details connected with it. Section 620 of the Postal Laws and Regulations is as follows:

When it becomes necessary to increase the speed on any route, the contractor will be required to state, under oath, the number of horses and men required to perform the service according to the contract schedule and the number required to perform it with the proposed increase of speed.

It says "according to the contract schedule." The contract schedule, is, of course, the rate of speed, and the time is also substantially involved. They are required to state the number of men and horses required to perform the service according to the contract schedule. If it is one trip, the requirement is a statement of the number of men and horses required to perform the service according to the contract schedule for one trip and in the time specified in the contract. And they are required to state the number of men and horses it will take with the proposed increase of speed. Does that mean that the contractor's statement is to be accepted as absolutely correct; that it is to be taken without any inquiry; that the party interested is practically to say how much money shall come out of the Treasury? I think hardly anybody will accept that view. And yet, if I can correctly understand the proposition announced in Mr. Chandler's opening, he seems to have adopted somewhat that view and to wish you somewhat to adopt it. It is sufficient for me to say that I do not care to spend a moment upon that view. I think the court will instruct you that that would be an utterly illegal regulation. It means, gentlemen, simply this: that the contractor is to swear, first, to one fact, how many men and horses are necessary on the present schedule; and, secondly, to his opinion of what will be necessary upon the proposed schedule. One is a fact; the other is sim-

ply an opinion. But he must do both of those carefully and conscientiously, and when he has done them the affidavit is to be accepted by the Second Assistant Postmaster-General as a piece of evidence in the case upon which he is to make up his own mind as to the amount which will be allowed in case he orders expedition and increase, being governed by the proportion between the number of men and horses actually used and the number of men and horses that are thought to be needed on the proposed schedule.

I have used the terms "men and horses," because the regulation says "men and horses." But the statute under which the regulation is framed uses the words "stock and carriers," limiting the men apparently to carriers. Upon that I shall have something to say hereafter.

But, at any rate, gentlemen, you will see that the statute simply provides a limit; that it does not say that the amount allowed shall be governed by any affidavit. The idea of an *affidavit* does not enter into the question. It is the *fact*. Section 619 of the Postal Laws and Regulations is:

No extra allowance shall be made for any increase of expedition in carrying the mail, unless thereby the employment of additional stock and carriers is made necessary. (R. S., Sec. 3961.)

Now I shall show you cases here where the affidavits alleged that additional men and carriers would be necessary, but where, in fact, they were not at all. Will anybody claim that because a contractor can swear that additional men and carriers will be necessary when they are not, therefore the statute allows payment to him? The statute says:

And in such case—

Where additional stock and carriers are necessary—

the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.—*Ib.*

"Shall bear no greater proportion." That is the limit beyond which no Second Assistant Postmaster-General can legally go—not the one which he must adopt and follow up. That is not the question whether the contractor says more men and carriers are needed, but it is a question of fact whether more men and carriers were needed. That is the question which is to govern. Of course the Second Assistant Postmaster-General is liable to mistake, but if he makes up his mind honestly upon that basis he will not be held responsible for any mistake. But as to that, if any Second Assistant Postmaster-General will simply exercise the precaution that a prudent man uses in his own business there cannot be any room for trouble.

This statute I said it was claimed covered not only carriers but that it embraced also everybody apparently who ever had anything to do with carrying the mail. The stock-tenders, the people who hauled in the grain, and everything of that sort have been at one time and another brought into this case by the counsel on the other side, under a claim that they were to be considered in this question. That is a question for the court, and the court will undoubtedly instruct you, as it has twice at least during the pendency of the trial expressed off-hand its views upon that subject. I do not now want to stop to refer to it, but simply call your attention to it. Can "stock and carriers" include stock-tenders and hostlers? Are stock-tenders stock? It seems to me absurd that there can be any question as to what that statute means.

The application, under this statute, of the old "rule of three" car-

ries us back to our school days, when we labored and perspired over the arithmetic. I want to call your attention to one or two results which will come from a very slight deviation in amounts. Take, for instance, a case where the amount allowed is \$2,000 a year, and where they are actually using five men and ten horses. Suppose that upon an increase they used fifteen men and thirty horses. That would carry the allowance from about \$2,000 up to about \$4,000, legally. But suppose they cheat on one branch of the equation, and instead of what they are really using, five men and ten horses, they put it down only four men and eight horses, understating the amount actually in use. If I mistake not a mere understatement of two men and two horses in the affidavit, if the order is made upon the affidavit, would carry the allowance from about \$4,000 up to about \$7,500 a year. Suppose they overstate the other branch of the equation, and instead of making it fifteen men and thirty horses they carry it up to twenty-five men and fifty horses. If I mistake not, in that case the result would be that there would be taken from the Treasury, instead of \$4,000, somewhere about \$10,000. I cannot be very much in error in that respect. Therefore, gentlemen, you see what results follow under this rule of three from a little understatement of the number of men and horses actually in use, or a little overstatement of the men and horses that will be needed. And when you combine the two, making an understatement of one and an overstatement of the other, though both changes may be very small, the results to the Government become very large. Then if, as I shall show you in some of these cases I think, the change is large, not only from the number actually being used, but from the number which it turned out would be used, the result is to take from the Treasury these very large sums with which we have been dealing here.

That was the rule as to expedition which I have referred prior to the statute of April 7, 1880, the time when Mr. Brady was whitewashed by Congress, as has been said. But from that time on there was superimposed upon this rule another one, which forbade the granting of expedition in excess of 50 per cent. of the original contract price. As to that there has been some discussion before you in the course of Mr. Ker's remarks, and I do not now propose to refer to it further than simply to suggest to you that if the construction which the other side contend for is applicable to that law as to the orders which Mr. Brady made after the law went into effect, then Mr. Brady's orders, if not an utter violation of law, were a bald evasion of it.

Now, gentlemen, having this system in mind, how did Mr. Brady go to work to apply the law, or what he called the law, when he undertook to grant expedition to these favorite contractors? By his own admissions upon the stand—and I call your attention to those admissions as significant; significant because they were the admissions to which he was compelled by the facts to resort in order to protect himself, as he seems to think, from the inference which any other view of the facts would necessarily carry with them (that of direct and personal corruption)—Mr. Brady was compelled to say on the stand that he made no inquiry whatever as to the truth of any of the statements in the affidavits; that he accepted them as absolutely conclusive; that he assumed that these contractors were honest men; not seeming to consider the fact that an honest man, even if he could not be mistaken as to the number of men or carriers then being used, might be biased by his interest, would almost inevitably be biased by his interest, in his statement of the number that were likely to be used on the proposed schedule. He said he

accepted them as conclusive, because he believed the contractors were honest men; that he did not inquire whether any of the men who made the affidavits knew anything on the subject or not; that he did not care whether they did; that he did not know whether any of them had ever been on the routes as to which they were swearing; that he did not test any of their affidavits to see whether they were true or not, either by inquiries outside or by taking and applying a few figures to the affidavits themselves; that he did not undertake to see to what results the affidavits led; and that the only information he got came from the parties interested. That is Mr. Brady's unblushing statement as to the course that he, as a public officer, took in making an order which resulted in taking from the Treasury hundreds of thousands of dollars a year. Could any competent, honest officer pursue such a system? Would any man who had held a position make an admission of that kind upon the stand unless he was forced to do so by the facts that were gathered around him in the case? He said also that he treated them as entitled to the amount which their affidavits called for. He said that they, not he, held the key to the Treasury door; that they were entitled to the amount which they called for. Does any man do business for himself in that way? Do you believe that any public officer ever did his public business in that way, unless he was influenced by some motives other than the public good; unless he was influenced by motives of personal advantage? I do not believe you can for one moment think it possible that any officer could have honestly gone on in that way. And just consider, gentlemen, Mr. Brady says that he did business in that way; that he assumed that the persons who made the affidavits were honest men; that he did not care whether they knew what they were talking about or not. They could go on and make their affidavits, and he was to register their decrees, which would take these sums from the Treasury.

But when we come to the contractors, we find Mr. John W. Dorsey giving his ideas. He is a gentleman who would make two affidavits on the same day with entirely different statements, and then account for them by a bald lie—a lie as bad and as easily detected as the lie in the affidavit itself. He gave you his theory about making the affidavit. He says:

My understanding about it generally was that it was one of the regulations of the department that the contractor should make the affidavit on what he thought was the necessary number of men and animals; that is, when they were to have expedition on the route; but if the department thought the estimate was too high, that they would make their own estimate as a basis for the increase of pay.

I understood it was the regulation of the department that the contractor was to make an affidavit of what he thought was necessary as to the additional number of men and animals on the expedition of a route, and if the department thought his estimate was too high they were entitled to fix the basis upon which to make the increase, and if the contractor was not satisfied with that he could decline to take it, and the contract would go back to the Government and they could relet it; so that I never could see how anybody could do anything to get advantage of the Government in any way.

You may commit perjury, bald perjury, gentlemen, but Mr. Brady was the honest man whose duty it was to prevent that perjury from injuring the Government, and the question whether it was right to commit perjury was to be judged entirely by the fact whether the perjury succeeded!

I supposed they had a rule of their own. That was my idea of it.

The COURT. Your idea then was that it did not make much matter about the affidavit.

The WITNESS. I thought a man must come pretty near to it—whatever he thought

was right. That was my idea about it, but at the same time I did not claim to be an expert in the business at all.

No, you remember he did not claim to be an expert. He told either Boone or Moore, I forget which, that his brother brought him down here on business which he did not understand. So there is Mr. John W. Dorsey's idea of an affidavit. An affidavit was a thing that he was to make and "come pretty near to it." It is coming pretty near to the truth. But he was going to be prevented from inflicting any injury upon the Government—his own wishes and the law were entirely out of the question—because there was an honest Second Assistant Postmaster-General who was to judge whether the affidavits were true, and the Second Assistant Postmaster-General assumed that they were honest men who made the affidavits, and he would not go to work to find out whether they were or not. Was there ever a worse confidence game in the world than this? I think before I get through I shall make considerable progress towards satisfying you that this story is not and cannot be true; that Brady and John W. Dorsey, both, one and all, understood what all this affidavit business was, just as Brady said he understood what the business of the petitions was. It was simply a cover, an excuse, something with which to hoodwink the public, if there should ever be an inquiry upon the subject.

Mr. Miner was a witness before the Congressional committee, and he was asked here if he did not swear so and so before the committee, and he stated that he could not exactly tell whether he did, but substantially it came to this: that he swore to an affidavit for one hundred and fifty men—one man to every two miles—upon the Bismarck and Fort Keogh route; that that was a running estimate. But Brady said: "We won't take that; that is going a little too deep; you must come down a little," and he cut him down a little money. But he did not cut him down so low as he would have been cut down by another affidavit which the same Miner had made relating to the same facts, and which other affidavit has disappeared from the files of the department, though the evidence of its existence and what it contained could not be taken away, and we placed it before you.

And, gentlemen, in this connection Mr. Dorsey says that he thought when a contractor had made his estimate, and Mr. Brady should cut him down, if he cut in too deep the contractor could throw up his contract. Have you heard of any of these contractors ever throwing up their contracts? Have you ever heard of Brady cutting too deep, no matter how big a slice he cut into the Treasury cake?

Brady says that he made these increases in this way and upon these principles, if I may call them principles—at any rate, these guides. But, in point of fact, gentlemen, Mr. Brady's theory does not work, because he did not work it out. He did not live up to the theory that he made upon the stand in the vain effort to shield himself. Mr. Chandler told you, in his opening, that the regulations of the department were absolutely binding upon Mr. Brady; that they were the law; that he could not violate those regulations without subjecting himself to punishment. And yet that regulation which says in so many words that he shall have the oath of the contractor Mr. Brady did not pay any attention to whatever, and he is compelled on the witness-stand here to admit that he did not. Mr. Chandler would have you believe that Mr. Brady in all that he did was bound with the bonds of the law, and that he could not break the law because he was bound to obey the regulations. And yet that regulation required him to have the oath of the contractor, and there is

no pretense that in four or five of the cases here he had the oath of the contractor.

Mr. Brady says, after I had shoved a few of these affidavits in his face where he had taken the oaths of persons not contractors, at page 3431 :

Q. At times did you take the affidavit of the subcontractor?—A. Certainly we did, and I would do it now.

I have no doubt he would if he could get another chance at the Treasury.

If the subcontractor was actually performing a service and was subcontractor at the full amount of pay, why not take his affidavit?

The conclusive answer is this : the regulation says you shall take the contractor. The affidavits he took were not even those of the men who were performing the service ; there is no pretense that they were. They were from men who he admits himself knew nothing whatever about the postal service, and the very men who, on the stand, themselves admit that they knew nothing about it.

And yet, gentlemen, he took the oath of the subcontractor upon the White River route. And there I may as well call your attention, in passing, to an interesting little occurrence, which may not have impressed itself upon your minds in all its force. That is the route where there was sent out to the subcontractor, Perkins, an affidavit to be sworn to in blank, which was duly sworn to in blank and which came back here. It was then filled up and found its way to the department. It is the affidavit referred to upon the jacket in that case as being the affidavit of the subcontractor. The order is recited as being made upon the subcontractor's oath, and that could have been only the affidavit of Mr. Perkins. But the counsel on the other side were very confident that I was wrong, and they were very confident that I was somehow or other withholding papers from them ; and, therefore, Mr. Wilson, I think it was, undertook to say in the course of the case that that affidavit was not used, but another affidavit which found its way into the department, an affidavit made by John W. Dorsey, was in point of fact the affidavit that was used in the case. Incidentally Mr. Brady came to our assistance. I called Mr. Brady's attention to a communication which he had made to Congress on the 19th of March, 1880. Having been called upon by Congress to transmit copies of the affidavits of subcontractors upon which orders were made, he transmitted a copy of this affidavit of Perkins, with his statement that it was the affidavit upon which that increase was made. That is in this record, upon page 3524. From that time out it certainly did not lie in the mouth of Mr. Brady or his counsel to deny that on the White River route he took the oath of the subcontractor, Perkins.

On the route from Vermillion to Sioux Falls, beyond all question Mr. Brady admittedly took the oath of Mr. Vaile, the subcontractor, though Mr. Brewer, the careful clerk in charge, was so astonished by the fact that he should take a subcontractor's oath in the face of the statute or the regulation (which Mr. Chandler tells you, and I think properly, has the binding effect of a statute) that he should take the contractor's oath, that he not only called Mr. Brady's attention to the fact, but, determined to have his own record right, he put among the papers in the case his own memorandum that he called Mr. Brady's attention to the fact that it was the subcontractor's oath. And that memorandum we found when we came to enter upon the examination of the case.

He took Mr. Vaile's oath as subcontractor. It is true Mr. Vaile was

the subcontractor for the whole amount, and yet he told you upon the stand here that he had never been upon the route, and knew nothing about it, except from what information he had derived and the judgment he had formed from his general knowledge as a mail contractor. In that respect he had the advantage over any of the other affiants in this case, because he did know something about the mail business. But unfortunately in this instance Mr. Vaile had had experience sufficient to know something about the business, and therefore the affidavit comes in his way as convicting him of a deliberate misstatement, for the affidavit is so grossly inconsistent with the facts that no man experienced in the mail business could honestly have made any such affidavit. But for present purposes it is sufficient for me to call your attention to the fact that on that route Mr. Vaile's oath was taken.

On the route from Saguache to Barnum the oath of somebody described as a carrier was taken.

And, as if that was not enough, on the route from Pueblo to Greenhorn John W. Dorsey's oath was taken. John W. Dorsey not only was not contractor, he was not subcontractor. He had no earthly relation to that route, And yet Brady took two affidavits on that route from him on the same day. I suppose he had a sort of idea that to take two affidavits from somebody who had nothing to do with the route would be almost as good as one affidavit from the contractor. At any rate, he took those affidavits from a man who he knew was not either contractor or subcontractor. The very jacket upon which he made the order for expedition based upon that affidavit showed that he was not subcontractor. He put his own signature directly upon that paper which showed, a few lines above, that the man whose affidavit he accepted as subcontractor was neither contractor nor subcontractor, nor had anything whatever to do with the route. I shall have occasion to call your attention later on to those affidavits and some singular facts which they disclose. But it is sufficient to say now that there are two affidavits upon the subject, both sworn to by John W. Dorsey upon the same day, up in Vermont, and both false, and both the affidavits of a man who was neither subcontractor nor contractor.

It is perhaps just as well to call your attention here—so that I may not have occasion to refer to it again—to Mr. John W. Dorsey's statement as to how he came to make two inconsistent affidavits. We may as well know as we go along a little of the character of this man. These two affidavits were dated, I believe, on the 21st of April, 1879, and both sworn to before the same clerk of the court in Vermont. They were filed here, I think, respectively, on the 6th and 8th of May, 1879. The latter one, filed on the 8th of May, was accompanied by a request to withdraw the first, in consequence of a clerical error that it contained, and yet there are not two figures in the two affidavits alike. John W. Dorsey says that the way he came to make those two affidavits on the same day was this: that Rerdell sent him from Washington those two affidavits; that he got one by the morning mail; that he filled that up and swore to it, using all the expedition possible, and got it off by the 11 o'clock mail that forenoon; that in the noon mail he got another letter from Rerdell telling him that the first affidavit was all wrong; that he must swear to another affidavit, and inclosing the affidavit; that he went down to the clerk of the court and swore to it again, and he sent that affidavit off by the night mail. And yet we proved to you beyond all question that Rerdell was not in Washington at that time; that he had not been in Washington for days before, and was not in Washington for days afterwards; that he was in Nebraska

and Colorado; we proved him to have been there by the hotel-keepers on the stand, by his signature on the hotel registers, and by his own testimony. There was no escape whatever from it, and Mr. John W. Dorsey's theory as to why he signed those two affidavits on the same day disappeared before the plain truth of these three hotel-keepers from the Western country that these gentlemen are so anxious to develop, and John W. Dorsey stood before you as a liar upon the stand.

Not only that, but John W. Dorsey undertook to say that he relied upon Mr. Rerdell for information as to whether he was subcontractor upon that route. Whether that information was conveyed through Dorsey to Brady in that way I cannot say. But the story was from beginning to end a lie. John W. Dorsey was not subcontractor. Brady knew he was not subcontractor. The paper upon which Brady made the order showed that he was not subcontractor, because when there is a subcontractor his name appears upon the jacket.

And yet, those two inconsistent affidavits being before Brady, he chose to accept one of them. When there was in his possession the evidence that this man, John W. Dorsey, had sworn to two contradictory affidavits on the same day—two affidavits which stated very different numbers of men and horses then actually being used and the number required under the proposed schedule—he still chose to believe that the contractor was an honest man, and he accepted the one or the other of the affidavits of John W. Dorsey as the basis upon which he ordered expedition.

Somebody said while the case was going on, in the course of some of the by-play, of which we have had so much, "Why, the proportion is the same." Gentlemen, the proportion was not the same in any sense in which Brady was then treating the question. The question was how much truth was there in the affidavit. The truth was an absolute fact, as to how many men and horses were necessary. Both affidavits could not be true; both of them could be false. And yet one or the other of those affidavits was accepted by Brady as true, and upon that he made an order for expedition.

Now, upon route 38140, Trinidad to Madison, Mr. John W. Dorsey, although he was not subcontractor, in like manner made an affidavit which was accepted by Brady. I think I am not wrong in that.

Mr. KER. You are right.

Mr. BLISS. And not only that, gentlemen, of these affidavits, besides the two contradictory affidavits upon the Greenhorn route, we find that upon the route from Ojo Caliente to Parrott City Mr. John W. Dorsey in like manner made two contradictory affidavits. They were not made on the same day. One affidavit was made with the idea of a reduction to eighty hours, the other upon the idea of a reduction of fifty hours. The greed of the contractors had increased between the time that the first affidavit was made and the time the second affidavit was made, and they were going for a reduction of fifty hours. In one branch of the affidavit it states the fact that the number then being used was not necessarily the same. It was the number, as the regulation says, necessary upon the contract schedule. That did not vary, whether the affidavit was made the 1st of January or the 1st of February. And yet Mr. John W. Dorsey swore to two affidavits containing two entirely different statements as to facts, and Mr. Brady still accepted the affidavits of John W. Dorsey. On the principle that the contractor was always honest he accepted his affidavit, and upon that ordered large amounts taken from the Treasury.

You will bear in mind as to these double affidavits that, as I said, the question is not the proportion. The question is whether the mere existence of those double affidavits did not give to Brady conclusive notice that the man who could make those contradictory affidavits was not a reliable witness, and that his affidavit could not be relied upon as the sole basis which he was to accept in deciding how much money should be taken from the Treasury.

On the Tongue River route we find the same condition of things, only we find some variations. It is always pleasant, as we go along, to see the monotony a little varied. On the Tongue River route Mr. Miner, on the 30th of September, 1878, swore to an affidavit which was made the basis of taking over \$30,000 a year out of the Treasury, in which he stated the number of men and animals necessary to carry the mail three times a week as twelve men and thirteen animals, and the number necessary to carry the mail on a reduced schedule of sixty-five hours as one hundred and fifty men and one hundred and fifty animals. Now, incidentally in passing, it may be just as well for me to call your attention to a fact which is not of very great importance, but which I will mention. The regulations say :

The oath shall state the number of horses and men required to perform the service according to the contract schedule.

The contract schedule on that route was one trip a week in eighty-four hours. This oath on its face relates to three trips a week, and as it is claimed by the other side it relates to one hundred and eight hours, that being the time they allege which had been fixed. If that is so, the affidavit does not correspond to the regulations, and it is not the only one that does not. But I say this merely in passing. The affidavit stated the number of men and animals necessary to carry the mail on a reduced schedule of sixty-five hours as one hundred and fifty men and one hundred and fifty animals. The route was three hundred and three miles long. It took a man and an animal for every mile of that route to carry it in sixty-five hours, but twelve men and thirteen animals to carry it the same number of trips in one hundred and eight hours, or in eighty-four hours, taking the schedule time. Upon that affidavit Mr. Brady made an order, which by the jacket is dated the 4th of October, 1878, but the order did not go into effect until the end of December. That is on page 2139. First comes the ordinary heading that you have so often heard read, and then it recites :

Hon. J. P. Kidder, ex-Mayor Charles of Sioux City, postmaster Bismarck, president Northern Pacific Railroad, clerk district court, attorneys, Hon. M. Maginnis, citizens of Bismarck and Miles City, Gen. N. A. Miles, ask for three-times-a-week service and expedited schedule. Present schedule, three and a half days—

Which does not look much like one hundred and eight hours, by the way—

proposed, sixty-five hours. Contractor furnished sworn statement that twelve men and thirteen animals are required for tri-weekly on present schedule.

That is the indorsement upon the jacket. But Mr. Miner had, it seems, made another affidavit which, as I have told you, has disappeared. It is referred to upon another jacket which was made up for Mr. Brady, but which Mr. Brady did not sign. It is inclosed in the same jacket which he did sign. That jacket refers to another oath of Mr. Miner's, and states :

The contractor furnishes sworn statement that for service three times a week on present schedule 11 men and 12 animals are required—

The first affidavit stated that twelve men and thirteen animals were required. There was a little cheat there, but only a little—

but 37 men and 73 animals will be required on the 65-hour schedule.

The first affidavit called for one hundred and fifty men and one hundred and fifty animals on a sixty-five-hour schedule. The jacket was made up by Brewer, and Brewer swore on the stand that when he made it up this affidavit of Miner was there giving the reduced number. If he had made the allowance on that affidavit he could, at the outside, have given for expedition \$26,884. But Brady did not choose to take that affidavit. He apparently made way with the original affidavit, but apparently did not notice the record that was left behind it. He took the second affidavit of John R. Miner for one hundred and fifty men and one hundred and fifty animals, and upon that he allowed \$28,000, something over a thousand dollars in excess of the outside amount he could have allowed on the other affidavit of Miner, and then he plumed himself in his order and plumed himself on the stand here upon the fact that he allowed less than pro rata. Miner told you on the stand that that affidavit had not anything to do with the matter, because the department allowed less than that, and that the affidavit did not fix the amount in any manner. Yet all this time in the very jacket which Brady increased making this excessive allowance, which he wants you to believe was a small allowance, there was contained the evidence that Miner had filed another affidavit which was utterly inconsistent with it, and would have taken from the Treasury very much less money. This jacket is worth noticing in another respect. I read the jacket to you as it began simply to show you that at the time this missing affidavit was made the same papers were in the department on which Brady finally operated. The jacket referring to the missing affidavit says:

Hon. J. P. Kidder, ex-Mayor Charles of Sioux City, postmaster Bismarck, president Northern Pacific Railroad, clerk district court, attorneys, Hon. M. Maginnis, referring to personal interview of himself and General Miles last winter, citizens of Miles City, Gen. N. A. Miles, citizens of Bismarck, ask for tri-weekly service.

The first jacket I read did not say anything about citizens of Bismarck, but all the rest will be found in it. Brady chose to take the affidavit which gave the excessive amount. He chose to believe, with the evidence before him, that, although Miner had made those two inconsistent affidavits, Miner was an honest man, and that his affidavit was an affidavit that was to be taken and accepted as true, although in this case the evidence was before him that the affidavit which is now missing and which was apparently the one first made out would have taken less money from the Treasury than did the one upon which he acted. And then, too, he thought the affidavit of a contractor was to be accepted, because the contractor was presumed to be honest.

I called your attention as I went along to the double affidavits on the White River route. The affidavit of Perkins, the subcontractor, states one set of numbers, and the affidavit of Dorsey, the contractor, states another. All I can say about that is that Brady says he took the affidavit of the subcontractor. That I have shown you conclusively. It was the subcontractor who was performing the service. John W. Dorsey made the affidavit, which they claim was taken up in Vermont, as I recollect it. I think it is one of the same lot that was hatched out and put upon Rerdell at the time when Rerdell was not here, but I will not be positive about that. That was a case where, with two contradictory affidavits before him, Brady chose to take one. Brady was asked whether

he made any examination or test of these affidavits. He said he did not. I think I can satisfy you in a very few moments that he really did not make any test of them, and that if he was going to propound any such theory as he propounded here, he was a wise man in not making a test. He must have assumed, too, that neither you nor counsel would have the wisdom to make a little examination of these affidavits. I will ask you to bear with me for a few moments while I test some of them.

On the route from Pueblo to Rosita the number of trips was seven, which was not increased. The oath said that on the existing schedule of fifteen hours the number of men and animals was two men and six animals, making a total of eight; and on the schedule of ten hours there would be needed six men and eighteen animals, making a total of twenty-four. The distance over that route was forty-nine miles. Going over it once a day each way made ninety-eight miles of travel that the horses and men had to do on that route. If the forty-nine miles were done in fifteen hours they would be done at the rate of three and twenty-six one-hundredths miles an hour. If done in ten hours they would be done at the rate of four and nine-tenths miles an hour. Testing the affidavit we find that six animals were necessary on the then existing schedule and that those six animals had to travel a total of ninety-six miles in a day. That would give them an average of sixteen and one-third miles each of travel provided they drove single teams. Taking the statement of the oath as to the number of horses then necessary, each horse would then travel in going over the route in fifteen hours sixteen and one-third miles in a day. I do not think you will consider that an excessive distance. But when you take the same oath, which states that to go in ten hours would require eighteen horses, the result is that a horse from that time on would only travel five and four-ninths miles in a day. The horses to go over that route in fifteen hours would travel, on an average, sixteen and one-third miles a day; but if they were to go over it in ten hours they could only travel five and four-ninths miles a day. That is less than Stephen W. Dorsey, in his indignant letter to Joseph, tells him an ordinary horse walks in Colorado, as I recollect it, in an hour. An increase of speed from three and twenty-six one-hundredths miles an hour to four and nine-tenths an hour reduces the capacity of a horse from sixteen and one-third miles to five and four-ninths miles a day. The result is that each horse on a schedule of fifteen hours would travel at the average rate of speed five hours a day, and each horse on the proposed rate of speed would travel one and one-ninth hours a day. In twenty-four hours each horse would be used a little over one hour. That is a route on which Mr. Brady made the order for increase. I shall show you that the order for increase put the principal portion of the money into the pockets of the contractors who were sitting here in Washington, and gave little or none to the men who were actually doing the work on the road.

The route from Pueblo to Greenhorn was advertised as from Saint Charles to Greenhorn, and it was advertised as thirty-five miles. Subsequently the route was extended to Pueblo, and twelve miles were added on paper to the route. The distance was not increased. The distance from Pueblo to Greenhorn, as appears by the papers in the case, is stated as being only thirty-two or thirty-three miles, which is less than the advertised distance from Saint Charles to Greenhorn. However that may be, if you take the advertised distance, when they extended the route from Saint Charles to Pueblo Mr. Brady added four hours to the time for that supposititious extension of distance. The

result was that when the oath came to be made it was sworn that for three trips a week in sixteen hours' time there would be required one man and one animal, making a total of two; but for three trips a week on seven hours' time there would be required two men and four animals, making six. In the same way, assuming the distance to be thirty-two miles, as stated, the aggregate amount of travel over that route, three trips a week, going backward and forward, would be one hundred and ninety-two miles, which, on the affidavit specifying one man and one animal, would make the animal travel twenty-seven and forty-three one-hundredths miles a day. I think they did not understate the number of men and animals in that branch of the affidavit. When they came to the other branch of the affidavit their horses would have to travel only six and eighty-five one-hundredths miles a day. The speed before expedition was about two miles an hour. Afterwards it was something over four.

On the route from Toquerville to Adairville the oath says that to make seven trips a week in sixty hours it will require three men and six animals, making a total of nine, and to make seven trips a week in thirty-three hours it will require five men and eighteen animals, making a total of twenty-three. Just see to what results that leads. The route was one hundred and thirty-two miles long and the schedule time sixty hours, which made two and two-tenths miles an hour before expedition. After expedition, reducing the time to thirty-three hours, it became four miles an hour. On seven trips a week there was each day two hundred and sixty-four miles of travel upon that route. The route was one hundred and thirty-two miles long, and there was a round trip made each day. The six horses which they said were all that were necessary on the original schedule would have to travel forty-five miles a day. I am giving you these horses on the basis simply of single teams. When we take the increased number of horses each horse would then have to travel only fourteen and two-thirds miles a day. The oath was made with the idea of extending the trips to seven. The order that Brady made did not give them seven trips. The route was only increased to six. If the oath had been followed out and the order made for seven trips we should have had this absurd result: There must have been by those horses and those men sixty hours of daily travel each way; that is to say there must have been one hundred and twenty hours of daily travel by those five men and eighteen horses, and the result would have been that each man and horse would have had to travel eighty-eight miles in a day and they would have had to travel, at that rate of speed, forty hour in every twenty-four. The affidavit leads to that precise absurdity. There is no escape from it. Mr. Brady accepted these affidavits and did not look into them to see what they provided for on their face, or perhaps I ought to say a little under their face. He should have scratched them skin-deep to see what there was under their face. He did not have them examined or examine them himself, but he accepted them as the work of honest men because the men were contractors. I do not think because a man is a contractor he is necessarily dishonest or necessarily honest. Brady seems to have assumed that because he was a contractor, swearing to a matter which directly concerned his own interest, he was necessarily honest, and therefore his statement was to be accepted as true; and not only that he was necessarily honest, but that his judgment was necessarily good.

There are other routes here which led to very similar results.

Mr. WILSON. Before going into another route, had we not better take our recess?

Mr. BLISS. I am perfectly willing.

The COURT. We will take our recess.

At this point (1 o'clock and 3 minutes p. m.) the court took its usual recess.

AFTER RECESS.

The COURT. [At 2 o'clock and 10 minutes p. m.] You observe, gentlemen of the jury, that the recesses are a little longer than they have been. I have made them so because counsel who are making an extended argument need more time than during the introduction of the evidence. Probably the jurors need more time, too.

The FOREMAN [Mr. Crane]. You will not censure us, then, if we stay away an hour.

Mr. BLISS. [Resuming.] Gentlemen of the jury, it occurred to me during the recess that I had omitted to call your attention to a single matter, which I think of sufficient importance to be referred to before I go on. In speaking of the fact of the failure to produce witnesses as a matter which should be taken into consideration by you, I failed to call your attention to one point which I have on my brief, and that is this: You will remember how much time was taken and how much earnestness was exhibited by the gentlemen on the other side in their endeavor to get before you the statement of Mr. Belford on the theory of attempting to account for something that Mr. Rerdell said in his testimony about J. B. B., and for the purpose of showing that his statement was not correct. You will remember, too, how completely in the end that statement of Rerdell's was sustained. You may not remember that the gentlemen on the other side were quite earnest at one time to get in some questions about a memorandum that Mr. Rerdell was alleged to have shown to Mr. James and to Mr. MacVeagh in which there was stated to be some allegation in connection with Mr. Tyner, the former First Assistant Postmaster-General and some statement in connection with Mr. Turner. There was great earnestness to put it in at that time, and, properly, it was excluded by the court. But did you notice, gentlemen, any earnestness at all on the part of the gentlemen to produce before you one of the persons named in the pencil memorandum which Rerdell produced and which Rerdell stated that he received from Dorsey, and one portion of which is admittedly in the handwriting of Dorsey? That memorandum contained certain initials and contained certain names. Among others, it contained the name of a gentleman whose name is upon the petitions on an Oregon route, I think the route from Canyon City to Fort McDermitt. You will find his name swarming on the papers as recommending increase. I refer to Mr. J. H. Mitchell, an ex-Senator from Oregon. This memorandum which was produced by Mr. Rerdell contained a statement that certain things were to be charged to certain people. There was an account to be opened with certain people, and among others J. H. Mitchell is named there. Mr. Mitchell was in court here. Did you perceive any earnestness on their part—

Mr. HENKLE. [Interposing]. Is there any evidence of that?

Mr. BLISS. Of what?

Mr. HENKLE. That Mr. Mitchell was here in court.

Mr. BLISS. The subpoena of this court shows it.

Mr. HENKLE. That he was in court?

Mr. BLISS. Yes.

Mr. CARPENTER. There was no sum to be charged to Mitchell.

Mr. BLISS. Mr. J. H. Mitchell's name appeared upon the memorandum.

Mr. CARPENTER. There was to be no charge.

Mr. BLISS. I do not know what there was to be, but Mr. J. H. Mitchell's name was to be entered upon that book, according to the memorandum which Mr. Stephen W. Dorsey gave to Mr. Rerdell in his own handwriting. The name of J. H. Mitchell was to be put upon the book for something. It was not, I submit, to be put there for ornamental purposes solely. We have had no earnestness on their part to produce Mr. J. H. Mitchell here and to ask him whether that was a false statement as to him. We had them running off with regard to J. B. B. and assuming that that was J. B. Belford, but we had nothing about J. H. Mitchell. Now, gentlemen, do not understand me as saying that I suppose there was any improper payment to Mr. Mitchell. I have no right to assume anything of that kind. The question whether Mr. J. H. Mitchell's name was to be placed upon Mr. Dorsey's book, according to a memorandum which Mr. Dorsey gave Rerdell, was a pertinent question. I say nothing as to whether it was a proper thing or an improper thing. Mr. Mitchell may have been employed, as he had a right to be employed, and that account may have been for that purpose. But if that memorandum was not a correct memorandum given by Stephen W. Dorsey they would have put Mr. J. H. Mitchell on the stand that Mr. Mitchell might have sworn he never received any money from Stephen W. Dorsey; that he never received a cent from him in any way. If that had been done the inference would have been strengthened for you to believe that the memorandum was manufactured for the occasion. So I submit that the failure to call Mr. Mitchell is a matter which you should take into consideration when you retire to deliberate upon this case.

Now to resume the calculations with regard to these affidavits which I was considering just before recess. Let us look to see what results followed the affidavit of Mr. Miner, the affidavit which Mr. Brady acted upon in making his order on the Tongue River route. The affidavit was made for an eighty-four-hour schedule and not for a one-hundred-and-eight-hour schedule, as I noticed when I came to read the jacket. The jacket recites that it is three and a half days. It had escaped my recollection before. The affidavit was made on the basis of eighty-four hours three times a week, and he said it would take twelve men and thirteen animals, making a total of twenty-five; and for three trips a week on a sixty-five-hour schedule one hundred and fifty men and one hundred and fifty animals. The regulation that I read to you said it should be upon the contract schedule. If the contract schedule is followed, then it would be a schedule of eighty-four hours and one trip a week. But the affidavit is apparently based upon three trips a week. These affidavits, I may say in passing, are inconsistent constantly in that respect. Sometimes the affidavit is made where there is only one trip a week, stating the number of men and animals required for one trip a week on the then rate of speed, which I apprehend is the proper way. Sometimes it is made on the then rate of speed, but the number of trips which they propose to have is given. Sometimes it is made upon the then rate of speed but for a greater number of trips than are finally ordered. There are all those discrepancies in the affidavits. It is impossible for me to say what they always ought to be. I can simply say that they are the affidavits that Mr. Brady accepted and that these defendants

under a regulation which provided that the affidavit should relate to the contract schedule. The actual length of the route was three hundred and three miles. On an eighty-four-hour schedule the average rate of speed would be about three miles an hour, or a little more than three miles an hour. On the proposed rate of speed they carried it up about a mile an hour, making it a little more than four miles an hour. At three trips there would have been eighteen hundred and eighteen miles of travel over that route every week, which would have given two hundred and sixty miles, in round numbers, of travel every day. That would have involved for their thirteen horses a travel a very little under twenty miles a day each; nineteen and ninety-seven one-hundredths a day if they traveled with a single team. If they traveled with double teams, as the evidence shows they did, a portion of the time certainly, each horse would have had to travel about forty miles a day. On Mr. Miner's affidavit on a schedule of sixty-five hours, each horse would have had to travel only one and seventy-three one-hundredths miles each day. With the number that he stated on the then existing schedule each horse would have had to travel twenty miles a day. With the horses as he stated, upon the schedule proposed, each horse would have had to travel one and seven-tenths miles a day. Does not that consideration alone show you that if Mr. Brady had made any examination of this affidavit he must have seen that it led to an absurdity to say that it was necessary in going over that route to have such a number of horses that each horse would only have to travel one and seven-tenths miles a day? You could not make a horse walk so slow as that by any possibility. On the existing schedule, the number of horses being given, the average rate of speed that the affidavit disclosed would have required each horse to be going five and five-tenths hours in each day. On the schedule that Mr. Miner named each horse would have had to travel twenty-two minutes in a day—only twenty-two minutes in a day! Assuming that they traveled at the rate of speed which the affidavit discloses, and assuming that they had the number of horses that Mr. Miner said were necessary, each one of those horses would have had to travel only twenty-two minutes in a day, assuming that they went in single harness; or in double harness, forty-four minutes a day.

On the route from The Dalles to Baker City the schedule was one hundred and twenty hours. The length of the route was two hundred and seventy-five miles. The oath does not say how many trips a week there were in either branch of it. It says the number necessary is so many on a schedule of so much, and the number necessary is so many on a schedule of so much. The offer accompanying the affidavit, however, is an offer to make three trips a week. The contract schedule and the trips actually being made were two trips a week. If we assume that the affidavit proceeded upon the basis of two trips a week, and it could not have been less than that, because the then number of trips that they were making was two, over a route two hundred and seventy-five miles long, passing back and forth twice in a week, the distance would be eleven hundred miles of travel each week—or one hundred and fifty-seven and fourteen one-hundredths miles in a day. The evidence shows that on that route they always traveled with double teams. Taking the number of animals that they said were necessary on the then existing schedule the result is that each animal would travel thirty-one and four-tenths miles in a day. But if you take the number of animals that the oath says would be needed for the reduced schedule the result would be that each animal would travel only four and seven-

tenths miles a day. Each one of these horses going over that route, to carry the mail at the rate of speed called for in that affidavit, would be required to travel in a day only four and seven-tenths miles. There is in that case another thing that should be called to your attention. It is this: It is true upon some of the other routes, but it does not appear with the same prominence as upon this, that before expedition the time was one hundred and twenty hours, and the carriers traveled only in the day-time. They traveled five days of twelve hours each, making an actual travel of sixty hours, and laid over the rest of the time, which consumed the whole of the one hundred and twenty hours on the route. After expedition they ran both day and night. In point of fact, before expedition there was sixty hours of intermittent travel, intermittent in the sense of lying over nights. After expedition there was seventy-two hours of continuous travel, for they traveled day and night. And yet to change from sixty hours of intermittent travel to seventy-two hours of continuous travel reduced the capacity of a horse from thirty-one miles a day to four miles a day. These are figures which are deduced from the affidavits, and which are the subject of mere arithmetical calculation which anybody can make. They are a little difficult of course for anybody to carry in his head, and therefore I cannot expect you to bear the details with you to the jury-room. At the same time I think that they are facts which should to some extent find a lodgment in your mind, as showing you, as they ought to have shown Brady, that his theory of accepting the affidavits of contractors because they were honest men simply, and making no investigation, but simply making the order based upon the affidavits, was a theory not only obviously false and unbusinesslike in its effect, but that he had before him the means of seeing that it led to these absurd results. You will bear in mind that Mr. Brady said that occasionally he took a pencil and did a little figuring. Precisely what the figuring was I do not know. The probability is that he figured Brady's percentage.

On the route from Julian to Colton the distance was one hundred and twenty miles, and the schedule fifty-two hours. According to the oath, to make three trips in fifty-two hours one way and fifty-four hours the other, it took four men and five animals, making nine. But to reduce that fifty-four hours to thirty-six hours it took nine men and eighteen animals, making twenty-seven. Before expedition the speed was two and twenty-two one-hundredths miles an hour. After expedition, the oath being on the basis of thirty-six hours, it was three and twenty-three one-hundredths miles an hour. On that route you will remember Brady made an expedition to twenty-six hours in the face of all the papers, and that made of course an increase of speed to something over four and six-tenths miles an hour. Three trips a week involved seven hundred and twenty miles of weekly travel over the route, and that was equivalent to one hundred and three miles a day. That involved for the horses, before expedition, a travel of twenty and six-tenths miles a day. After expedition the horses only had to travel five and seven-tenths miles a day.

On the route from Redding to Alturas the oath does not state the number of trips. The contract was for two trips. It was increased to three trips before July 1, 1878, which was before the service commenced. I suppose the oath to be intended to relate to the then existing three trips, although it does not state the number of trips. Assuming it to be three trips we get ten hundred and seventy-four miles of weekly travel, or one hundred and fifty-three and one half miles a day, which would give for each horse something less than twenty miles of travel a

day. After expedition, according to the oath, each horse would have to travel only eight and a half miles a day.

I have some other memoranda of the same nature upon other routes, but I will not stop to read them now. I have read what I have, gentlemen, as I said, for the purpose of showing you that Mr. Brady had before him the means of ascertaining how absurd the claims of these affiants proved themselves to be. I think what I have shown you will satisfy you that Mr. Miner came very near to the truth when, out in Denver, he told Mr. Moore that the defendants were "all good affidavit makers." They were good affidavit makers, looking out solely to their own interests. They were good affidavit makers to make affidavits thin enough and transparent enough to deceive nobody except those who wanted to be deceived; and yet good enough affidavit makers to make affidavits upon which Mr. Brady promptly made orders which took from the Treasury hundreds of thousands of dollars.

What could have governed Mr. Brady in these acts other than corruption, as we say? Mr. Brady told you incidentally what sometimes governed him. He is entitled to a reference to that statement. On page 3405 the question came up as to Mr. Saunders:

Q. That being so, should a Senator or Representative ask an increase of you, say, upon this route, which you did not grant, what would govern you with reference to it?—A. Possibly he might not have been sufficiently earnest in the matter, or possibly he might have wanted too much done. We might have done some things he wanted done and not others. We could not give every man all he asked.

Nobody except a favored contractor, of course.

We had to distribute these little things.

Q. You had to distribute the plums. Therefore, when Senator Saunders came in and apparently sought an increase to six trips on this route, can you tell us why it was not granted?—A. I cannot. Possibly we were not in an increasing mood that day.

Q. Then you governed your increases by the moods that you were in on given days, did you?—A. Well, I am somewhat given to moods, and some days might be more liberal than other days.

Q. You think that may have been the reason why you did not make that increase?—A. I say it may have been. I do not know anything about it. I do not remember anything about it.

Q. If Senator Saunders made more than one application for that increase and did not get it, do you mean to say that it was because you remained in the same mood all the time?—A. I say I do not remember anything about it.

Q. But you know that at times you were governed by your mood?—A. Sometimes; yes, sir.

Q. It was principally the imperative mood, was it not?—A. Well, I was rather imperative, I confess, in a good many things.

That is the avowal of a public officer on the stand, a man who was charged with high public duties. He states to you that the question whether or not he should grant a request in connection with the mail service was governed by the fact whether he was in an increasing mood that day. He asks you to believe that he, the Second Assistant Postmaster-General, was governed in his action by moods. Gentlemen, it seems to me that is asking you to believe more than anybody in his senses would believe, unless he was driven to the wall by the surrounding circumstances. The late Mr. Greeley once said about a gentleman less distinguished than Mr. Brady that nobody ever took A B for a fool whatever they might say of him as a knave. I do not think anybody ever took Thomas J. Brady for a fool.

But Mr. Brady tells us also that he was looking at the matter having the interests of the contractors in view. That probably is a good deal nearer the truth than most of what he has said. He tells you that he was trying to help the contractors. He states on page 3397, referring

to the Tongue River route, that when the question came up of making an increase there he did not confine his increase to trips, and he tells why. A good deal of parade was made of the fact that General Miles recommended an increase upon the Tongue River route. You may look in vain, gentlemen, either in the evidence or among the papers on file—and of course the papers on file are the ones by which Mr. Brady was governed—for one word from Nelson A. Miles in favor of expedition on that route. He asked for increase of trips. He did not ask for expedition. General Sherman, in transmitting the petition, did not ask for expedition. He asked solely for an increase of trips. It is not the only route, as I shall have occasion to show you, where papers on file recommending increase of trips have been used as a basis for orders not only increasing the trips, but increasing the speed. With reference to the Tongue River route Mr. Brady said, on page 3397 :

But how to increase it by simply adding trips to it at the ridiculous figure at which it had been taken by the contractor was a stumbling-block. No contractor could even do the once-a-week service really across there at that price. They had probably bid upon it blindly, like a good many contractors, lumping the whole service, bidding so many dollars a mile, as is the common practice among contractors.

Then he goes on to say that the contractor, having made his contract and having, as he said, a bad contract, out of consideration for him he did not confine himself simply to increasing the trips, but he also increased the speed. He repeated that, I think, at another stage of the case. I read from page 3452, in connection with the same route :

You stated with reference to the Bismarck and Fort Keogh route :

“But how to increase it by simply adding trips to it at the ridiculous figure at which it had been taken by the contractor was a stumbling-block. No contractor could even do the once-a-week service really across there at that price. They had probably bid upon it blindly, like a good many contractors, lumping the whole service, bidding so many dollars a mile, as is the common practice among contractors.

“It was very evident that it could not be increased to three-times-a-week service and make an efficient service simply for three times what they had bid for once a week.”

Then you went on to state that you ordered expedition. Now I ask you in what way that tended to make an efficient service?—A. It tended to make a more efficient service, as a matter of course, to make it three times a week.

If the contractor was losing a thousand dollars on one trip a week he would add two trips so that the contractor would lose \$3,000.

It tended as a matter of course to make it a much more efficient service to make it a fast service, and that could not be done with any regard for the rights or safety of the contractor at the price, as I have said before, that they had originally bid for the contract.

Q. Then you considered that you were not to hold the contractors to the original terms of their contracts, but you were to make changes which should benefit them, did you?—A. I answered that before by saying that we would prefer to help the contractors to crushing them.

Mr. BLISS. I will ask for a direct answer to my question.

THE COURT. Is that not a direct answer?

There it stopped. In other words, he was looking not to the interests of the Government, but to the interests of the contractors, to whom he allowed larger sums than the service could readily have been obtained for. He was trying to help them without regard to the question of the lowest rate at which the Government could have obtained the service.

Let me say right here that Mr. Brady, when he was upon the stand, promulgated the idea that he was governed by some theory of his own in these expeditions, and was going to pay about \$30 a mile for the service. I shall have occasion to show you that this was a theory which he did not follow out. When I asked Mr. Brady the question whether

he was not on the stand before a committee of Congress with reference to the whole business of expedition, he said he was. I asked him if he did not know that during his entire examination, extending over days, in which he was accounting for all his acts in connection with expedition, he never lisped a word of this theory of \$30 a mile, and he was compelled to admit that he could not say that he did. Here was a man in 1880, while this thing was going on, before a Congressional committee, and being called upon to account for his acts and the way in which he had ordered expedition upon many of these various routes, he then gave various reasons, but he cannot say that he ever lisped at that time a single word about his theory of \$30 a mile. I do not believe that any human being ever heard of it until he stated it on the stand either on his direct examination or his cross-examination. However, that is a system the law does not recognize. The law says the expedition shall not be in excess of a certain amount. Mr. Brady said he thought \$30 a mile was a proper rate for service and he would go by that. Yet you have heard, by a letter in the handwriting of Stephen W. Dorsey to Mr. Joseph, that the average rate for mail service on star routes is only \$5 a mile. The whole thing about \$30 a mile is a sham and a fraud gotten up for the occasion, and should be dismissed like any passing whim of the moment.

Of course it is clear that Mr. Brady when he was making these orders for the benefit of the favored contractors could not make them without some pretense, some excuse, something to cover up the nakedness of his acts. Therefore, of course, there had to be papers. He was obliged to have some regard for appearances. He could not, for instance, order remissions in certain cases. The department never remitted for lost trips. If a contractor failed to make a trip he lost the price of the trip. He could not, under ordinary circumstances, remit for trips lost. The contractor must lose that money. That was an old and well-established rule of the service known to everybody. As is shown by papers put in by the other side, the contractors undertook to get remissions for lost trips, and Mr. Lake, whom Brady eulogized on the stand, put in a memorandum saying that he wanted to call attention to the fact that the contractors had had remissions for everything but lost trips, and were now seeking to get remissions for lost trips. In those cases where his attention was called to it upon the papers in that way Mr. Brady did not, perhaps, save in a single case, make a remission for lost trips. That is a thing he could not afford to do and keep up appearances, it was so clearly against the rules long established in the department. He had to be careful about appearances, particularly after the investigation in the spring of 1880, when public attention had been so fully attracted to the files in the Post-Office Department. He could not grant expedition without at least some kind of a paper giving some tangible evidence of its necessity. But he could give expedition on papers which were practically fraudulent, fraudulent in asking for expedition where there was no need of it; and he could make excessive allowances for expedition where there was an appearance of need. I think I have satisfied you that he did both of these things.

Now, let me call your attention to another one of Mr. Brady's theories, and show you how he was a victim of theories not followed out. He told you that he would have made every star route a daily route. That was his theory which he would have carried out if his career had not been prematurely cut short. He would have gone on and put daily service upon every star route in the country if the Treasury had held out. Yet when the question came before him for practical action, what do we find? We find that

he did not make the service daily. He went on taking his basis from these false affidavits which put large profits into the pockets of the contractors, and made orders for expedition and a less number of trips, running up the cost greatly in excess of the price of daily service. He spent money, as you all know, lavishly, so lavishly that, having made an estimate in December of the amount needed for the next fiscal year, before six months of the time had passed, he was obliged to go to Congress and ask an appropriation of a couple of million—a little couple of million—over and above what he had estimated for, the fact being that he had made these orders right and left, and put this money into the pockets of these contractors until the money was all gone. Then he went to Congress, and then he got the \$1,100,000 of the \$2,000,000 he asked for, and then he got that touching vote of confidence which he appealed to on the stand providing that nothing in the act of Congress should be construed as granting immunity to any officer of the Government for anything he had done, and forbidding him for the balance of the year to make any expedition for more than 50 per cent. of the original contract price. He got all that, as it seems, entirely upon his merits; but somehow or other Mr. Walsh was appealed to to pay money for a little corruption fund to enable that legislation to be gotten through Congress.

What did Brady do towards carrying out his theory of putting daily service upon all the star routes? On the Kearney and Kent route there was one trip at a cost to the Government of \$868 by the contract. One trip over seventy-five miles of the route to Loup City would have cost only \$561.20. Brady could have had six trips a week on that route for \$3,367. Instead of doing that he made it three times a week over seventy-five miles upon an expedited schedule, and the service cost \$4,302.65, or \$935 more than would have been necessary to have placed daily service upon the route. And yet Mr. Brady's theory was that he intended to put daily service on every star route.

On the route from Rawlins to White River one trip cost \$1,700. Six trips would have cost \$10,200. He could have put on six trips for that price. Instead of doing so he added two trips and reduced the time, and he spent in so doing \$13,606.25. He could have given his favorite daily service upon that route which led to nowhere but to a military post, to which a daily mail was of more importance than mere speed, and have saved \$3,406; but he did not do so.

On the route from Saint Charles to Greenhorn two trips cost \$548. He could have put on six trips for \$1,644. Instead of doing that he added a single trip, making two trips, and reduced the speed, spending \$3,945 in so doing, which was \$2,301 more than was necessary to have given six trips a week. He did that upon an affidavit which I shall show you directly was so thoroughly false that the number of men and horses required on the increased speed was not changed one particle. Not only the same number of horses, but the same identical animals jogged over that route year in and year out, after as well as before expedition. Mr. Brady not only abandoned his theory of daily service and spent \$2,300 more than would be necessary to have given daily service, but in point of fact the question of expedition there was almost entirely this: The route having terminated at Saint Charles, he added a fictitious twelve miles to the distance, and for that fictitious twelve miles added four hours to the time, although the distance after the twelve miles was added was less than the advertised distance. He added four hours to the time, and then it was necessary to get expedition in order to get rid of that four hours, and therefore he went on and paid the sum of \$3,945. Bear in mind, gentlemen,

that that was an addition of four hours, which was absolutely and entirely fictitious; fictitious by the very report of his special agent of the Post-Office Department, Mr. Adams, which report he had before him; fictitious by the reports of the postmasters; fictitious beyond all dispute. There is no question of papers that he never saw, or anything of that kind. He knew the distance to be fictitious, and yet disregarded that knowledge. Under the terms of the law and the contract, when he extended the route from Saint Charles to Pueblo he was probably compelled to allow for the extended distance, though that was really a fraud upon the Government. But there was plausibility in that. There was no necessity, however, for extending the time, nor was there any necessity when he came to grant expedition to count in that extended time. He says himself that he exercised his discretion on the various routes, when it became necessary so to do, and allowed less than pro rata. When he was called upon to make the order on this Saint Charles and Greenhorn route he should have said, "I will not give you pro rata for the fictitious distance on this route. I will bring you down. I will bring you down to a reasonable amount." He did not do that. He went on and abandoned his theory of daily service and put in the pocket of the contractor for expedition \$3,945.60, making a total upon that route of something like fifty-two or fifty-three hundred dollars, although there never was on that route a subcontractor who received over \$840. That is the undisputed evidence in this case. This mail was carried during the entire contract term of four years for \$840. Mr. Brady made an order for expedition carrying the amount up to some \$4,500, and of that amount all but \$840 went into the pockets of these gentlemen sitting in Washington, so far as Mr. Brady did not take out his toll as he went along.

On the route from Trinidad to Madison one trip cost \$3,286. He could have had six trips for \$2,068. Instead of that he spent \$4,290 in giving expedition. There, again, there was some fraudulent business in connection with the expedition. He could have saved \$2,220 of that amount if he had given daily trips and no expedition. But the necessity of expedition came from this state of affairs: Senator Teller and others having petitioned that Raton be put upon another route, Brady made the order putting Raton on this route and claimed to add in consequence about twenty-eight miles to the distance. In point of fact the schedules in his own office showed that he only added twenty-three miles. There was a cheat of five miles there. Having added the twenty-eight miles he then proceeded to allow six and three-quarters additional hours for performing the service, running the time up to nineteen and three-quarters hours. Having got it up in that way he gave expedition on the theory that they wanted to get over the route in the daytime. He paid \$4,290 for putting it back to twelve hours when the original schedule was only thirteen hours. The only excuse and the only necessity was that he chose to put Raton on this route at an alleged increase of twenty-three miles when it was really only fifteen miles, although the petitioners desired that Raton should be put on a route connecting with the railroad in the valley in which it was. The nearest post-office was not more than twelve miles off, and the line of the railroad not more than six.

On the route from Garland to Parrott City, which we have come to speak of as the Ojo Caliente route, one trip cost \$1,467.78, and six trips could have been had for \$8,800. Instead of giving those six trips Mr. Brady, abandoning again his theory of a daily service, made one trip into three, with an increased rate of speed. As I shall have occasion to

call your attention to it a little later on, the postmasters on the route told him that the rate of speed was impracticable, and it was in fact never made. Instead of adding on six trips at a cost of \$8,800, he ordered three trips and expedition and paid \$13,400. He could have given them six trips and saved \$4,626 for some other route. You will bear in mind that he stated on the stand that there was a considerable number of postal routes established by act of Congress upon which he did not put any service because he had not the money. And yet here he was abandoning his theory of a daily service and wasting money in this way for the benefit of these favored contractors.

On the route from Mineral Park to Pioche one trip cost \$2,982. He could have got six trips for \$17,892. Instead of that he spent \$19,300 in adding two trips with expedition. On the route from Julian to Colton one trip cost \$1,565. He could have got six trips for \$9,400. Instead of doing that he spent \$14,000 in giving two trips, which was \$4,700 more than what would have been the cost of six trips. On the route from Eugene City to Bridge Creek he could have got six trips for \$6,652.89 less than he spent for adding two trips, making three in all. He spent for adding trips and expedition \$21,460.89. He could have got six trips for \$14,880. On the route from The Dalles to Baker City he could have got six trips for \$24,800. He got one trip additional, and paid for the service \$31,000. On the route from Canyon City to Camp McDermitt he could have got six trips for \$17,328. He added two trips and paid \$18,600 for the service. On the route from Julian to Colton he could have got six trips for \$7,128. He added two trips and paid \$8,910 for the service. On the route from Redding to Alturas he could have got six trips for \$17,964. When I say he could have got it I mean taking his favorite rule of pro rata and multiplying the amount allowed for one trip by the number of trips proposed. Instead of doing that he paid \$35,928. On the route from Pueblo to Rosita he could have got six trips without expedition for \$2,328. Instead of that he gave them six trips with expedition, and spent in so doing \$8,148.

You see, therefore, gentlemen, that he did not follow out his theory about giving daily service to every star route in the country. He was lumping the service up on some favored routes in the hands of some favored contractors, and I shall show you plainly, I think, that he was doing it not even for the benefit of the men who were performing the service, but for the benefit of the men who were sitting here in Washington, and had no direct connection with the performance of the service.

Then, again, Mr. Brady disregarded the law with regard to productiveness. He does not pretend really to have paid much attention to the law which says that service shall be performed with due regard to productiveness and other circumstances, productiveness being the only circumstance specified in the statute. Mr. Brady is compelled to give the testimony which I will read, on page 3392:

Q. In making these orders for increase and expedition referred to in this indictment what regard had you for productiveness in connection with other circumstances; what weight did you give to that matter?—A. The other circumstances always had more influence with us than productiveness.

Then, further along, he says, on page 3402:

Q. Did you consider revenue then?—A. We did to a certain extent in the older States, where things were fixed and towns were built up and fenced in, but not always in the new countries. The other circumstances would operate there much more largely.

Q. Do you mean to say you did not consider the revenue at all?—A. I mean to say just what I have said, that in the older States the question of revenue was something to be considered. In the newer countries and territories, and throughout the South

largely, where the service was being built up after the war, the question of revenue figured very lightly.

Q. Did you consider it in every case?—A. I cannot say that we did.

Then he was asked, on page 3420, with reference to the Tres Alamos and Clifton route to which I have just referred, if upon that route he considered the question of productiveness, and he answered, "I presume not." Those are his declarations, and the results would go to show, as it seems to me that he was correct in those statements. For instance, let me call your attention to a few figures. On the route from Bismarck to Tongue River the original contract price was \$2,350. Brady ran it up to \$70,000, making an increase of \$67,650. Bismarck was the chief place, as you all understand, at the end of the railroad, and was the center of a large business derived from other sources. And yet including the entire mails over that route the revenue for the year 1879 was only \$3,000, for the year 1880 \$5,000, and then in the year 1881, under the fostering influence of expedition it fell off to \$3,900. That included Bismarck. The intermediate offices varied from \$710 to \$1,414 in their contribution to this amount. But however that may be, there was an aggregate of only \$3,000. The largest sum during that period was \$5,100 for any one year, and yet Mr. Brady added to the original contract price \$67,000 for that service.

On the route from Garland to Parrott City Mr. Brady added \$28,598 a year. The revenues of all the offices on that route were only \$402.26. In the year when the addition was made they ran up to \$935, and then increased after the development of Durango to \$3,800.

On the route from Mineral Park to Pioche Mr. Brady added some \$49,000 to the service. The aggregate of all the offices upon that route was about \$761. And the year after he made his increase the receipts fell off some \$200.

On the route from Tres Alamos to Clifton Mr. Brady added over \$26,000, and yet the aggregate of all the offices was only \$403.

On the route from Canyon City to Camp McDermitt Brady added \$47,278, and yet the aggregate income, the highest amount of income from all the offices, was only \$681. It ran up the following year to \$1,370, and then ran down again to \$935. He carried the amount up to something over \$50,000 upon that route, and that route, I call your attention to it, is the route upon which Mr. Vaile swore upon the stand that there was a profit of over \$20,000 in two months.

From Julian to Colton the highest income of any year was the year before Mr. Brady commenced to operate, \$524. Mr. Brady ran up the allowance to the contractor from \$1,188 to \$7,722.

On the route from Redding to Alturas the receipts of all the offices, including Redding, which was a terminal office and connected with a number of other routes, was only \$2,600, and Mr. Brady added to the sum allowed upon that route nearly \$36,000.

Now, that was having regard for productiveness with a vengeance. The fact is that upon these routes where the aggregate income was only \$41,654.44 for the year ending June 30, 1879, Mr. Brady added \$433,287.23 to the contract price. He multiplied that sum by more than ten times. The contract price was \$41,135, the productiveness was \$41,654. Mr. Brady made the Government pay \$433,287.23, and of that \$433,287.23, \$213,184 25 was for expedition. Just about half of it was for expedition. Take these figures in your minds, if you can, gentlemen. With reference to those figures, gentlemen, I ought to say that it is possible that, from the fact of a route being taken down and put up in price, there may be in one or two cases some error in my calculation. But

if there is any such error it can only be a comparatively small portion of the sum. I think I have allowed for all errors. I bore it in mind in making up the calculation, and I think I have allowed for it in the figures I have given you.

Bear in mind, gentlemen, that these revenues were before Mr. Brady or within his control. On many of the routes the very jackets upon which he makes the orders state the amount of productiveness. On others they do not, but it was always a matter within his control and of which he could have had knowledge. But Mr. Brady says himself that he paid very little attention, and in two cases he says he paid no attention, to the matter of productiveness.

But it has been said here in the progress of the case that this matter of productiveness is deceptive. It has been said, and it is true, that the productiveness means the amount of stamps canceled at a given office, and that while taking the country at large the aggregate of stamps canceled will show the amount of productiveness, yet at a given office it may be deceptive. We go further than that, and we say that there may be ordinarily more matter going out from one of these western offices and coming East, so far as it is an office communicating with the East, than there is coming into that office. That has been the claim. If that is true, then the statement of the productiveness shows a larger aggregate than it should, because it is the stamps that are canceled at the office that sends them out.

Let us see what the facts are in some other respects. And you will bear in mind, gentlemen, that so far, in everything I have said, I have confined myself to what appears of record. I have not even gone into what appears contradicted in the testimony anywhere. I have confined myself to what is proved by Mr. Brady's own admissions or to what is proved by the records of the Post-Office Department and of the contract office over which he presided. I am confining myself for the moment to that class of evidence. It is said, as I say, that this matter of productiveness is deceptive. Let us see. Mr. Brady had before him in his office the mail bills. It has been made a claim of virtue on his part that Brady established these mail bills. He had them before him. He was in the habit of examining them more or less, because you will remember that on the route from Mineral Park to Pioche he cut off, on the 22d of January, 1879, I think it was, \$49,000 of increase, because he said the mail bills showed that there was very little business. But he promptly put it on again on the 28th of January, on the ground, apparently, that he was doing, as he says, some injustice to the contractors by cutting it off. I shall have occasion to refer to that more particularly hereafter. But that indorsement is now referred to solely as showing that Mr. Brady did consult the mail bills. Now what do we find on that route?

On the Mineral Park to Pioche route we have upon this trial, put in by us and put in by them, a considerable number of mail bills. I have made a little abstract of those we originally put in, and this is what they show: They are for the thirty-nine days from the 16th day of November to the 24th of December, 1879. In nineteen of the thirty-nine days from Mineral Park there started absolutely nothing but the mail bills—no letter, no postal card, nothing. In twelve of the thirty-nine days there started one letter, and that letter is specified as going to an intermediate point. On three days there started two letters; one day three letters; on one day four letters; and on one day the gigantic number of five letters. The following day, for fear of exhausting the mail con-

tractor, there started only one postal card. On another day there started a postal card and letter. And on still another day there started a postal card and a mail register. That was the condition of things leaving Mineral Park.

For the same period, at Pioche, the other end of the route, on seven days nothing arrived, six of them being days when there arrived nothing but mail bills, the days when nothing left Mineral Park. There did something leave Mineral Park, but it got spilled out on the way and did not arrive at Pioche. On one day there arrived at Pioche twelve letters. All of those letters are specified as being from Saint Thomas, a way point. I asked Mr. Brady about these matters when he was on the stand, and his excuse was that he wanted to make this a grand through route, and therefore, after having taken off \$49,000, on the 22d of January, he put it up on the 28th because he thought it would be a grand through route and he would help it along. Twelve letters arrived at Pioche, all of them being letters from Saint Thomas. On six days there arrived four letters on each day, all of them from way points. On six days there arrived one letter; on four days there arrived three letters; on two days six letters; on three days two letters; on one day ten letters; on one day nine letters, and on another eight. You will perceive that the mail leaving Mineral Park picked up on the way, as a general thing, before it got to Pioche some additional letters, so that more arrived at Pioche ordinarily than left Mineral Park.

The result of that is, gentlemen, that during the thirty-nine days there left Mineral Park in all twenty-nine letters, three cards one register, and one newspaper—thirty-four pieces in all. And there arrived at Pioche one hundred and twenty-six letters, seven cards, four packages, and seven registers—making a total of one hundred and forty-four pieces, all coming over that route, leaving Mineral Park and arriving at Pioche. And in all, during the whole thirty-nine days there were one hundred and seventy-eight pieces of postal matter of some kind passed over the route both ways.

The other mail bills put in by the defendants I have not analyzed to the same extent, but I find this: That there left Pioche in January, 1880, in five days, sixty letters, and there arrived at Mineral Park during the same five days thirty letters; that there left Mineral Park in three days in January, 1880, three letters and one card. In March, 1880, there left Mineral Park in three days eight letters and a register. In September, 1880, the mail got up, and the result was that in four days there left Mineral Park fifteen letters.

Now, gentlemen, there is the record which was before Mr. Brady of all there was of mail matter upon that route. And yet that route is one which Mr. Brady ran up to over \$50,000; and his attention being called to the mail bills he put it down from the increase he had made. The original sum was \$1,100, I think; that he could not cut off. And so great was his indignation at what had been perpetrated upon him in causing him to make this increase that, in cutting it down again he actually violated the law and refused to give the contractor one month's extra pay. But on the 29th of January following, only seven days afterwards, his indignation had evaporated, and he put back \$22,000 of that \$49,000 that had been cut off, on the ground that this was a great through mail. He told you on the stand that he was working to make it a great through mail. It was a great through mail, but it was a mail that was intended to go "through" the Treasury, and that was all the "through" there was about it.

For carrying those letters I have specified to you Mr. Brady paid \$14.25 for each letter. From Eugene to Mitchell we have got the mail bills here in evidence for ninety-two days, being from July, 1880, to March 8, 1881—nine months. The mail traveled, I think, twice a week. If we assume that the letters sent from one end of the route and the letters received at the other end were different letters, there were carried over that route during those ninety-two days forty-eight hundred and thirty-six letters, being an average of fifty-two and one-half letters a day. For carrying those letters Mr. Brady ran up the original contract price from \$2,468 to \$21,460.89 a year. In other words, for carrying an average of fifty-two and a half letters each day he paid \$58.79 per day, and paid for each letter \$1.13. The total revenues of that route were only \$761.39 for the largest year during the term, and they ran down from \$761.39 the next year, when there was only \$597, under the fostering influence of expedition. The mail bills told Brady all this, and they told him also that this allowance was utterly unjustifiable on this route, and they told him a great deal more than this on other routes.

On Tongue River he ran it up to \$50,000 as late as May, 1880, and there went over that route only two way-pouches, as they are described in the mail bills, every day, and he paid for that \$70,000, the original sum having been \$2,350. That is the route in reference to which he said it would not have been just to the contractor to make him live up to his contract.

On the route from Garland to Parrott City, as it was originally let, though we have come to speak of it as the Ojo Caliente route, the mail bills show that in 1879 there was sent over the route one bag each day. I shall have occasion directly to call your attention to some of these routes, but I am now confining myself to the record evidence which was before Brady, because I want to show to you that Brady made these orders in an unjustifiable manner and under circumstances that can leave in your minds no doubt that he was influenced by motives other than those that ought to influence an honest public officer, and that he made those orders at the instigation and for the benefit of these other defendants, who reaped the profit from them. On that Ojo Caliente route, as I have said, the mail bills show one bag a day each way over the route. But from December, 1880, for two or three months, we find that there was a considerable increase. And if you bear in mind the evidence in the letters of Mr. Joseph and the oral evidence on the stand, you will remember that it was stated that during those months the route from Silverton to Parrott, which was a northern route, communicating with the east, was blocked, and the whole matter from the Silverton route was thrown down into this route, so that for three months the mail bills show an increase. After that it fell off, but the increased mail matter on the Ojo Caliente route was used as an argument for making expedition on that route, and then they turned around and not only counted the increased mail matter which was furnished from that blocked-up route, but they counted the same petitions. The same petitions were in several cases used for the orders for increase and expedition on both routes, the same reasons being given in both cases.

The mail bills on the Silverton route showed that Mr. Brady ran up the service from \$745 to \$14,900, and yet, as I have said, it was one bag a day passing over that route each day, and the aggregate income of the offices at the time the original order was made was \$402.26.

On the Rawlins and White River route (confining myself still to what

the mail bills show) in January and February, 1880, the very time when Mr. Brady was running it up to seven-times-a-week service, and after an order in March in which Mr. James told him to countermand it, the mail bills show that there passed over the route a brass-lock pouch and an iron-lock pouch. And yet Mr. Brady ran that service up from \$1,700 a year to \$13,706.25, and then added a further sum of \$18,275, and made, therefore, a total of \$31,981.25. And he did that on a route which led nowhere.

There was some attempt made to mislead here by the idea that these orders were made in consequence of the military being in there on account of the Ute outbreak. Why, gentlemen, the first order was made six or eight months before the Ute outbreak was thought of, and the last order was made more than a year after the military had been chiefly withdrawn because the Utes were entirely subdued. Those orders, then, could not have justified Brady's action in any way on account of the military service. They brought General Sherman here to testify, but when you come to test it by dates you find that the first order was six or eight months before the Ute outbreak, and the last was a year after the military had been withdrawn because the Ute outbreak was entirely over.

And I will say here, in passing, that it cropped out that at the last letting, commencing in July last year, the contractor was glad to get this route for \$7,000, upon which Brady had paid a total of \$31,981.25, and said that it was a very pretty route to run for \$7,000.

The total revenue upon the route, including Rawlins, which was on the railroad and had large service from other places, was \$1,255, and the revenue from the other offices was \$79.89.

These mail bills also show, on the route from Vermillion to Sioux Falls, the number of letters that were sent each way. The postmasters up there made a mistake in regard to the purpose of these mail bills. The mail bills were in fact gotten up not to show how many papers and how many letters were sent, but to show how many bags were sent, and to identify the fact if a bag started from Rawlins on a given day or hour when that precise bag arrived at the other end, White River. There was no idea of identifying the number of letters in the bags. But it never occurred to the postmasters out on these routes that anybody in Washington could think there was more than one bag. They thought it was the number of letters and papers that was wanted, and so they counted the letters and stated the number in the mail bills. That is the way we found the number on the route from Mineral Park to Pioche. The postmaster at Sioux Falls also fell into that error. But he pretty soon found that it was such fatiguing business to count them all that he abandoned it. But the mail bills gave us one little tell-tale fact, and that is, that the mail starting from Vermillion on a certain day had only ten letters. Remember, Vermillion was the point from which most of the mail started. That is beyond question, because it was on the railroad. The mail leaving Vermillion contained only ten letters on that day. And yet Brady added to that route some \$4,000. It was a small route, I think the original amount was something over \$3,000, and he carried it to something over \$6,000, and he did it in the face of the mail bills.

The mail bills also told him that from Saguache to Barnum, in November and December, 1879, and January, 1880, there went over that route, each way, a bag, and yet the original pay of \$3,426, at which the contract was let, was run up by Brady to \$23,431.12. Upon that route I

ought to say that there was a short time when the number of letters increased, but it very soon fell off again, so far as the mail bills show.

These, gentlemen, are the routes which I have specified, and are the routes upon which, so far as I know, except one, any mail bills are in evidence in this case. There is still one other route upon which there are some mail bills in evidence, I think the route from Eugene City to Bridge Creek; but, if so, I have mislaid my reference to it. Some of the mail bills were put in by the other side. But no matter by whom they were put in, they are undoubtedly correct, and some of them are shown to have met Brady's eye. All of them were accessible to him on the question of the authority upon which he could make an increase. Of course it was his duty to inform himself, and he cannot say, as he did say on the stand, that he had no means of finding anything except by sending out to the other offices, because here was a matter right where he could have put his hand upon it, and these mail bills would have told the whole story.

Brady acted also upon certain other papers, and those are the petitions, letters, and applications of Members of Congress and Senators. As to these Mr. Brady has some original views that he stated on the stand, and more truthful, if less original, than those that he propounded to Mr. Walsh. On page 3390 he is asked about some altered petitions, and he says :

Q. What, if anything, do you know as to the manner in which petitions were gotten up and by whom they were gotten up?—A. I know nothing about that whatever. I regarded a petition as of value because of the indorsement given to it, as a rule, by the Member of Congress or Senator. If they indorsed them that was a guarantee to me. If they sent them up, that was a guarantee to me. The recommendation of a member of Congress was of more importance to me than the recommendation or hasty report of a special agent, or anything of that kind. I thought the member of Congress knew the needs of his people better than anybody else. At least, it was his duty to know them.

Now, I think the court will be apt to tell you that the question of expediting or increasing mail service is not constitutionally within the ordinary duties of a member of Congress. But Mr. Brady says that they knew all about it. They represented a great people, and, therefore, he was governed by members of Congress and not by the petitions, apparently.

But Mr. Ingersoll has a little different view. On page 3235, we were informed, with a magnificent outburst :

Now, what I say is that no officer of this Government can afford to disregard the petitions of the people. Whether they are wise or foolish, whether they are extravagant or economical, whether they are honest or dishonest, the people are the masters of this republic.

The COURT. Who are the people?

Mr. INGERSOLL. The people who signed these petitions.

Bear in mind how the signatures to some of these petitions appeared.

The COURT. Ah!

Mr. INGERSOLL. They are among the people, and each name there is entitled to as much respect as though it stood for the President of the United States. That is my idea of a republic.

The COURT. Yes.

Mr. INGERSOLL. No man can be raised above me or above my rights in this country by holding any office, and no man can be put below me because I am elevated to office. Officers are only servants of the sovereign people. And when we rise above petition we rise above this Government and above our Constitution.

And yet Mr. Chandler undertook to tell you that because Mr. Brady was an officer he rose above being tried by you. His idea was that he must be tried by impeachment, by the Senate and by members of Con-

gress in whom Mr. Brady placed so much confidence. But he was too lofty to be tried by you as the representatives of the people:

The COURT. I want now to understand whether you say that the petition which you now hold in your hand was before the Second Assistant Postmaster-General before he made the order in question.

And then the matter is gone into further, and the court says:

This thing of calling a town meeting of half a dozen people or a hundred people who sign a petition, and then calling it the voice of the people——

Mr. INGERSOLL. [Interposing.] This is the voice of these people.

The COURT. Yes.

Mr. INGERSOLL. And they weigh as much as any other same number of people.

Brady says that the question with him about petitions from the people was the question as to whether they had the indorsement of a Member of Congress or a Senator. It was not the goodness of the maker of the paper that Mr. Brady was relying upon, but Mr. Brady looked to the indorser of the paper. There is a little discrepancy between Mr. Chandler and Mr. Brady here which is not for me, certainly, gentlemen, to reconcile. Either theory, I suggest, is tolerably absurd.

But Mr. Brady could not afford to be consistent even in that respect. He told you that he looked to the member of Congress, and yet when it came to the Vermillion and Sioux Falls route, where the member of Congress, Mr. Bennett, wanted an extension, he refused to give it, and when asked to explain why, he said that Bennett had suggested that he cut down this Vermillion and Sioux Falls route and thereby save money enough to give him the extension he wanted, but that he told him that he had put up the route for Mr. Kidder, the former Delegate, and he was not going to put it down for Mr. Bennett, who succeeded Mr. Kidder. Mr. Bennett having been elected by the great people that Colonel Ingersoll talks about subsequent to Mr. Kidder's term, Mr. Bennett's views were not entitled to any consideration from Mr. Brady, because he took his orders from the representative of some time ago, to wit, Mr. Kidder. And yet this same gentleman, Mr. Kidder, is the same Delegate who appears before you, gentlemen, at the end of June, 1878, as certifying that the route from Bismarck to Fort Keogh was an utterly unnecessary route, and practically asking that it be abolished, because he indorses such a petition, brings it to the department, and says he thinks it is so, although he is not entirely well informed, and yet two months afterwards insisting upon it that there must be added \$35,000 in the way of expedition. That is the Delegate whose views Mr. Brady preferred to follow rather than those of the subsequent Delegate, who was a later representative of the people, and whose authority was therefore of considerable more weight, according to his theory of what was to be done in such cases.

Mr. Brady's ideas about these members of Congress is followed up in some other statements. He seems to think it is necessary to carry out the proverb of speaking well of the bridge that carried him over. These same members of Congress whom he was gratifying by these increases were in Congress when he got that magnificent vote of approval to which he appealed, and therefore he considered that he must do what they wanted. Now let us see again what he says as to these members of Congress and petitioners, at page 3404:

Q. Did you consider the fact that, excluding the terminal offices, the entire revenues of all the other offices upon that route were, at the time of the increase and expedition, only \$227.48?—A. I do not know that I did. The probability is that the principal consideration acting upon my mind in that matter was the fact that it was a new country, and Senator Saunders and Mr. Valentine wanted it done very badly.

Mr. Valentine did not ask anything on that route. There is no evidence anywhere that Mr. Valentine ever requested anything of that kind. Mr. Saunders does nothing, so far as that order is concerned, except to indorse the petition, which was a petition for increase of service, and which contained nothing about expedition except the words "and thirteen hours," interlined, as the evidence before you shows, by Mr. Miner, and I think I shall be able to satisfy you that it was interlined after Mr. Saunders put his name upon that petition. He simply transmitted it without recommendation, and that was all the recommendation there was about it.

But about this business of Members of Congress and Senators, let us see what Mr. Brady did in other respects. On the route from Rawlins to White River, Senator Teller recommended one kind of increase and Mr. Brady made another. When I suggested that he explain that, he said :

It seems, as I see by these papers, that the strict letter of their recommendation was not followed.

He was following Members of Congress and Senators entirely. In the same way, on page 3415, Mr. Teller recommended that Raton be connected with the route leading over to Pulaski, which led to the west. Instead of doing that, and while it could have been put on for an expense not exceeding \$150 to \$200, as the evidence shows, Mr. Brady wrenched it around to the Trinidad and Madison route, and put Raton on that at an eventual cost to the Government of \$2,300 to \$2,400.

On the route from Silverton to Parrott City Mr. Brady still did not see how he could oblige the Senators. But you will find, gentlemen, that in every case where he fails to oblige the Senator or Member of Congress it is a case in which, if he had obliged the Senator or Member of Congress, he would have saved money for the Government and have taken money out of the pockets of the contractors. He could not oblige Senators under any such circumstances. For instance, Mr. Brady had run this route from Silverton to Parrott City down from thirty-seven hours to fifteen. He just made a fictitious addition of Animas City to it on the ground that Animas City added twelve miles, when the records of his own office showed him that Animas City had always been on the route, and his distance circulars contained the name of Animas City right along. Having added this fictitious distance of twelve miles, he put an addition to the time for that fictitious distance, and then he proceeded to expedite it from thirty-seven down to fifteen hours. Now, that route is one which you will remember crosses what is known out there as the Continental Divide—the backbone of the continent. It crosses it some ten thousand feet above the level of the sea. He put it out, reduced it to fifteen hours, and paid the contractor therefor \$10,549.50.

After struggling through the winter, Mr. Steineger, who was here on the stand, the contractor, says there was sent here a petition from the people out there at Silverton, and which was forwarded by Senator Hill of Colorado. Senator Hill says, at page 1857 :

[United States Senate Chamber.]

DENVER, COLO., November 8, 1880.

HON. THOMAS J. BRADY,

Second Assistant Postmaster-General :

DEAR SIR: I inclose a petition of the citizens of Silverton to the effect that the time from Silverton to Parrott City on route 38156 may be extended from fifteen to twenty-four hours from November 15 till April 15.

This petition is signed by nearly every business man in Silverton, and by many in La Plata County.

There is something from Mr. Brady's people and Colonel Ingersoll's people. Senator Hill then continues:

It is consistent with what many of them stated to me on the occasion of my recent visit to that part of the State. It is based upon the fact that it is nearly impossible to get the mail through when the snow is deep, and much of the time absolutely impossible to get it through in fifteen hours.

Steiniger, the contractor, paid last winter for carrying the mail over eight or ten miles of the route on snow-shoes during portions of the time all that he received for the whole route.

* * * * *

In my opinion the request contained in the inclosed petition is a reasonable one.

And that petition is one asking for that precise reduction. Mr. Brady did not make it. The petition asks for the extension of the time absolutely, without any question, but Senator Hill in his letter says that the people would be pleased if it could be extended without any decrease of compensation, and that was all the reason that Mr. Brady gave why he did not comply with that petition and extend the time from fifteen to twenty-four hours. He says that is the reason.

But you will remember, gentlemen, that upon the Eugene City route Mr. Brady found means to make an open-and-shut schedule, a longer schedule in winter and a shorter one in summer. He put it from sixty to forty hours, and he said as that averaged fifty for the whole year it would balance up. With reference to this letter the first thing suggested in the mind of either the witness or the counsel, I do not remember which, was that he could not extend the time beyond the contract time. He said that could not be done, and therefore it could not be granted. But unfortunately, gentlemen, the contract time in this case was thirty-six hours, and the request was only—Brady having put it down to fifteen hours—to carry it up to twenty-five hours, and Mr. Brady did not do it, and yet he had behind him the Senator from Colorado, and he had behind him the people of Colonel Ingersoll. And yet Mr. Brady did not see how he could possibly do it. Why? Because it would take some money out of the pockets of the contractor. You will bear in mind that on that route Mr. Steiniger was performing the service at about \$9,000, and Mr. John W. Dorsey was drawing between \$15,000 and \$16,000. Mr. Steiniger was performing the service, bearing all the fines and all the losses, as he swore he did, and which it appears incidentally amounted to considerable, and he was doing all that for \$9,000, while the pay of the contractor was about \$16,000. If Brady had complied with the request it would have taken something out of the pay of the contractor, and therefore Mr. Brady disregarded the request of all those people.

On the Vermillion and Sioux Falls route I call your attention to one matter, as I have the reference now before me, as throwing light upon Brady's inconsistency and upon his action. At page 1907 there appears a petition of all the postmasters asking that the time on that route be extended to sixteen hours. The route had originally been advertised as fifty miles, whereas, in point of fact, it was seventy-five miles long. It was let at fourteen hours for fifty miles. Brady reduced it to ten hours for seventy miles. Vaile told you on the stand that that reduction was entirely wrong; that the speed was too great; that nobody could make it; that his experience as a mail-man showed that, because there were some nine or ten post-offices on the route, and at each post-office they had to stop seven minutes. There were eleven postmasters

upon the route, and every postmaster made a request that the time be extended to sixteen hours. The original time had been fourteen hours, and it was reduced to ten. That petition was indorsed, as I said, by Mr. Bennett. Mr. Brady directed Mr. Brewer to write to Judge Bennett that it could not be done. Mr. Brewer wrote, as he says, and Mr. Brady signed the letter, which he wants you to believe he did not know anything about. That letter is at page 1939 :

15TH DECEMBER, 1879.

Hon. G. G. BENNETT,
House of Representatives :

SIR: You are informed that your communication relative to extension of time on route 35015, Dakota, signed by P. M., Vermillion, and others, has been received and filed. No such action can be taken, as it would change the terms of the existing contract and be an injustice to the other bidders at the letting of the route.

Assume that he could not extend the time to sixteen hours. But certainly he could have extended the time to fourteen hours, though it would have cost the contractor something. He could have said, and any honest officer would have fairly said when asked to do something, "According to my construction of my authority that is altogether too much. All the postmasters recommend the change to extend it to sixteen hours. I cannot extend it to sixteen hours, but I can extend it to fourteen hours, and I will do it." But Brady replies that it would be doing an injustice to other bidders. What regard did he have for other bidders on the Redding and Alturas route? Mr. Major asked that the service should be increased before the 1st of July, 1878, and it was increased without any opportunity for anybody to bid or do anything about it. What regard did he have for any bidder on any other route you ever heard of? Was there ever any regard for other bidders? Was there any regard for the Treasury? Was there any regard except for the favorite contractors? And yet this Mr. Bennett, this member of Congress, belonging to a class ordinarily entitled to so much deference, makes a request, but Brady does not grant it because he says it would be injustice to other bidders. Upon the stand, when asked something about it, he says, at page 3396 :

Q. Please state to the jury what it is.—A. Judge Kidder, who was then Delegate in Congress from Dakota, lived at Vermillion, and was very anxious to have a daily mail line to that place. I presume he thought, like most members of Congress, that it would be a benefit to him if he could give his own neighbors a daily mail. He was very anxious for me to get him up a daily mail to his town. I tried to do it. The contractors kicked against it—

Vaile, Miner & Co. kicked against it, he said—

because they said they were losing money on the number of trips they were then performing, and to make it daily would only make them lose so much more.

I will show you directly how much they paid to the subcontractors, and then how much they were losing.

Accordingly, we conjured up some plan to help them through. For this purpose of obliging Judge Kidder, and as a matter of course the people out there, we expedited the route in order to help the contractor a little. That was one of the principles we went upon in that department while I was there—

I think it was, only it was not to help the contractors a *little*—

to help a contractor rather than to compel him to lose money, if we could. We would rather help a contractor any time than to press him.

And incidentally, I presume, rather help themselves.

Therefore we got up the service in the way it was gotten up; it was increased and expedited. Subsequently Judge Kidder went out of Congress. Mr. Bennett came in

as his successor, and wanted the same thing done some other where. I told him there was no money to do it with. He suggested that we cut down this Vermillion and Sioux Falls route, and save enough money on that to do what he wanted done. I told Judge Bennett that I was not doing business that way—

He was not cutting down, that is very certain—

that I had put up that route for Judge Kidder, and I proposed it should stay just where I had put it; that if I could do what he wanted done I would do it subsequently, but that I would not cut down one service in order to put up another.

Now, that is Mr. Brady on the stand. How does it come that Mr. Brady in his letter to Judge Bennett says that he would not do it because it would be an injustice to other bidders? Was Mr. Kidder a bidder? Is there any evidence of that sort? Of course there is not. And yet Mr. Brady says that he did it in that way. I commend this to your consideration, gentlemen, not only as bearing upon this particular case, but as bearing upon the ideas which Mr. Brady avowed guided him in the postal service. Subsequently, at page 3458, I called his attention to this statement:

Q. Did you consider that it was your duty as Second Assistant Postmaster-General to put up the service for an individual?—A. I sometimes tried to accommodate my friends in that way.

Q. Under the contract, if expedition is ordered, the contractor has a right to throw up his contract; did you ever know such a case while you were Second Assistant Postmaster-General?—A. I do not remember any. Contractors were very well treated while I was Second Assistant.

Mr. BLISS. Yes; I judge so.

Now, there is Mr. Brady's statement of the way in which he regarded Members of Congress and Senators. It shows you just what principles governed him in his action.

Your honor, it is 4 o'clock, and I am just about to pass to another subject.

The COURT. Adjourn the court.

Thereupon (at 4 o'clock p. m.) the court adjourned until to-morrow morning at 11 o'clock.

TUESDAY, MAY 1, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. BLISS. I have had no opportunity, gentlemen of the jury, to examine the report of my remarks of yesterday, but I am conscious that I made one or two errors, or failed to make myself properly understood in one or two respects, and therefore I desire to refer again to those matters. In speaking of the question of the results which might follow from a slight change in stating the number of men and horses upon a given route by putting the fact too low or by putting the future too high I made my illustration in a general way, although I had figures on my memorandum. It occurred to me while speaking that perhaps my figures were erroneous, and I preferred to verify them. I will now again call your attention to the subject. Suppose an affidavit to state for the number of men and horses then actually in use five and ten, making a total of fifteen, and that the number that would be used on the proposed schedule would be ten and thirty, making a total of forty. The result would be if the original pay was \$2,000 that there would be an increase on that affidavit up to \$3,300. Now, if they understated only in the num-

ber actually used by three, leaving the same statement of the number that were likely to be used, the correct figure of \$3,300 would be carried up instead to \$4,166. If, on the other hand, they misstated in the figures that were likely to be used but correctly stated the figures that were used, misstating in the first instance by an addition of twenty in the aggregate, that would carry the total pay from what it should be, \$3,300, to \$6,000. If they made a misstatement in both branches of the equation by understating to the extent of only two the number that were actually used, and overstating to the extent of the proportion given the number that would be used, that would carry the amount of \$3,300 up to \$7,500 which would be taken from the Treasury. I merely call your attention to this matter as showing how important a slight error or a slight misstatement in either branch of the affidavit may be.

With regard to the order that I referred to as made on the White River route, I perhaps did not make myself understood when I claimed that it was made upon the oath of the subcontractor, Perkins. I intended to claim that the jacket showed that it was made on the oath of the subcontractor, and that Mr. Brady, in transmitting to Congress the statement of the fact, transmitted the oath of Perkins, the subcontractor, as that which was used. But I think I failed to suggest that it would probably be found that Mr. Brady was wrong both in the statement on the jacket and in the statement to Congress; and that in fact he did not take as the basis of the order he made the figures contained in the subcontractor's statement, but took the figures contained in the subsequent statement of Mr. Dorsey. While he recited that he took the figures from one statement he did, in fact, probably take them from the other.

I also perhaps ought to call your attention to the fact that I may have been misapprehended in my statement as to the regulations bearing upon the oath. I called your attention to the form of the regulations, and then I suggested that, so far as the regulations were concerned, the regulations called for the statement of a fact, to wit, the existing number of men and animals; and then called for a statement of opinion, to wit, the number that would be used:

When it becomes necessary to increase the speed, the contractor will be required to state under oath the number of horses and men required to perform the service according to the contract schedule and the number required to perform it with the proposed increase of schedule.

I was correct in my statement of the regulation, but I failed to supplement it, I think, by the suggestion that the statute under which that regulation was made does not look to any question of that kind directly, but it says distinctly that the Government shall not pay any additional sum unless the employment of additional men and horses is rendered necessary. The contractor may have sworn that additional men and horses would be rendered necessary, and he may in that case have deceived the Second Assistant Postmaster-General into making the order with that idea. But if it was true that the contractor had misstated the fact, and therefore there never had been any authority to pay more money for the increase of speed, because it did not require additional men and horses, although the Second Assistant Postmaster-General had been deceived by the misstatement of the affidavit, when that fact appeared, the right, without criminality, to continue to pay from the Treasury under an order which he had been deceived into making of course ceased to exist. In other words, the statute looks to the fact. What were the number of men and horses actually in use when the oath was made? What are the number of men and horses that will

be required on the proposed increase of speed? And although the Second Assistant Postmaster-General may by negligence or in some other way make an order assuming that there would be more men and horses required in the future than turn out to be actually required, whenever the fact appears that there has been an excess, then the order should be corrected if it is to conform to the statute, because the statute says he shall not pay for any increase of speed unless additional stock and carriers are required.

Now, gentlemen, when I closed last evening I was referring, if I remember right, to the subject of petitions, and I had called your attention to the fact of who the people were, and I had called your attention to the fact that Mr. Brady disregarded the members of Congress upon various routes. But independently of that, gentlemen, and independently of the signers of the petitions, I now desire to call your attention briefly to the kind of petitions which Mr. Brady used as the basis of his action. I will take in the first place the route from Canyon City to Fort McDermitt. We find there a series of petitions which are very suggestive. I will call your attention first to the petition known as 29 H. The body of that petition is admittedly in Mr. Miner's handwriting. It is the petition which upon one sheet contains six names, before the other sheets are pasted on, and the other sheets are on an entirely different kind of paper. The names are E. Hall, postmaster; James Robinson, James F. Cleaver, D. M. Clifford, Max. Metscham, and W. C. Allred. Those six names, we claim broadly, and distinctly, were written there by John R. Miner. Mr. Boone swears that they are in Miner's handwriting. Mr. Henkle, one morning, you will remember, placed Mr. Waugh on the stand with great flourish. Mr. Waugh was shown the paper. He said he had been familiar with Mr. Miner's handwriting for a great many years. He was then asked, with considerable triumph, whether that was Mr. Miner's writing, and he said it was. I can imagine, gentlemen, a little interview between Mr. Waugh and Mr. Henkle afterwards, in which, being remonstrated with for having deceived him, the witness might perhaps have suggested to him, "Why, I thought that was the kind of testimony you wanted me to give." It appears by the testimony of Mr. Miner's own witnesses and by the testimony of Mr. Boone that Miner wrote those six names upon that petition. They are the first names upon the petition. Mr. Miner, when he was examined upon that subject, was a little tender-footed. He could not quite say whether he wrote those six names or whether he did not write the names. On the whole I think he was a little inclined to believe that he did not write them. He was very confident he never wrote any other names on any other petition, but the fact of having written names upon this petition did not apparently make a sufficient impression on his mind to lead him to remember. He could not tell you whether he had signed it or not, definitely, but if he did it he never did it again. Subsequently, on cross-examination (I can not for the moment turn to the page), when Mr. Miner was asked to make an explanation upon that subject, he undertook to give some kind of an explanation. It is worth our while to consider that explanation. I think I can state it. I will not stop to look it up.

Mr. HENKLE. It was in his examination-in-chief.

Mr. BLISS. No, sir; in his explanation on cross-examination.

Mr. MERRICK. He said it looked like his, and he could not tell; that some of his friends said it was and some said it was not.

Mr. BLISS. And then he went on and said that all those names were upon petitions which were on file on this route, and therefore wanted you

to infer that he put those names on there for some proper reason. He went on to give his explanation by stating that they were names upon other petitions, and that he had put them there, if he put them there, because they were upon other petitions which he had taken the pains to copy. Then he went on and undertook to account for his reason for doing it, and to tell how it was that these names came at the top, and all these other names came in afterwards, and this was done by him not in Oregon, but right here in Washington, and the petition placed with other petitions sent from Oregon and filed in the Post-Office Department. When Miner undertook to explain why it must have been done, if he did it at all, he found himself in difficulty, and the court could not resist interrupting him by saying that it could not understand how that explained it, but it was a matter for the jury. I submit to you that you will not be able to understand how that explained it. It still remains a matter for the jury. I think it will be a matter which the jury will dispose of very quickly. As to the fact of these names being already upon other petitions, that is only interesting as going to confirm the view which we take and which will not be seriously denied, that Miner wrote these six names there, because an examination of the names upon the other petitions—I will not stop now to call your attention to them—will show that the handwriting of the names on the other petitions which have been sworn to by witnesses on the stand as being in the handwriting of the men respectively are entirely different from those upon this petition. The fact is, gentlemen, beyond all question in my opinion, and I think you will arrive at that conclusion yourselves, that Mr. Miner, having this string of names on petitions coming from somewhere, we do not know where, for, if I recollect right, these names it appears affirmatively were not recognized by witnesses from that region—

Mr. HENKLE. [Interposing.] On the contrary, it appears that they were recognized.

Mr. BLISS. I will not say whether that is so or not.

Mr. HENKLE. Your witnesses picked out a number of names of people living there.

Mr. BLISS. Allow me to say that I am going to talk now and will not be interrupted.

Mr. HENKLE. Then you must not misstate the testimony.

Mr. BLISS. I have not misstated anything. I have only given my impressions. My impressions are still that it appeared affirmatively that none of these names were known in that region.

The COURT. Counsel have a right to interrupt for the purpose of correcting a misapprehension of testimony.

Mr. BLISS. Undoubtedly. If Mr. Henkle will point out where it is so testified and call attention to it, I will yield my recollection to his. I will not yield my recollection and will not quietly submit to being interrupted unless I am met by the record.

Mr. HENKLE. I have said all I desire to say. You can go on.

Mr. BLISS. What I desire to say is this: That beyond all question I think you will come to the conclusion that Mr. Miner, having in his office here that list of names attached to some paper which petitioned for something different from what was asked for upon that route, wrote the heading to that petition and placed those six names there, forging the name of Mr. Hall, the postmaster, for Mr. Hall on the stand swore he did not sign it, and forging the other names, and then pasting on this lot of names which he had belonging to some other petition for some other purpose, either upon this route or upon another route, and put it into the department, giving Mr. Brady that paper as the basis on which

he was to act. You will bear in mind in connection with this petition what Mr. Moore said Mr. Miner told him and the instructions Moore said Miner gave him about manufacturing petitions.

But, gentlemen, let us look at another petition upon this route. I have here the petition marked 20 H. It is a petition also undoubtedly in the handwriting of Mr. Miner. You see the petition comes down to the bottom of the page and then you must turn over. In some way or other, and for some purpose or other, which I do not pretend to understand, I call your attention to the obvious fact that something has been clipped off at the bottom of the sheet. It looks to me very much as if the same thing had been done there. This sheet is not the full length. It looks to me as if, having that list of names prepared for some other purpose, and intended for some other purpose, Mr. Miner had gone on and executed some of the same handiwork in this case as in the other, and had written upon that side of the paper that petition, that side being blank, and then made all the names do service upon that petition.

Beyond all question something has been clipped off at the bottom of the sheet, and this has been put in as a petition upon that route. To show that that is not an entirely unwarranted assumption let me call your attention to another petition which I have here, where just the same thing has apparently been done. There is another petition, all in the handwriting of Miner. In the same way the sheet has been shortened from the ordinary size of the legal-cap sheet. In the same way it terminates at the bottom. In this case there is an address at the bottom, which is unusual, and then when we turn over we see that in the same way there has been something clipped off. The petition goes down on that side of the paper [indicating], with all of the names there. This petition is not upon the same route. It is a petition marked 106 A, and is upon the Kearney and Kent route. I now call your attention, gentlemen, to the petition 14 H, which is upon the Canyon City and Fort McDermitt route. 14 H is a genuine petition, but the evidence is by Mr. Boone, and I think others, that the words and figures ninety-six were inserted by Mr. Miner. Mr. Miner says it is not so. We also have the petition 15 H, which was altered in the same way, "ninety-six" both in words and figures having obviously been put in over an erasure, just as was done in the petition 14 H. I will not trouble you to look at the papers. I assert that anybody holding them to the light will see beyond all question that this writing was done over erasures. That is the record on one single route of John R. Miner. It is the record of John R. Miner's handiwork, as we say, in connection with the petitions upon the route from Canyon City to Fort McDermitt. You will bear in mind, gentlemen, that there is also upon that route the petition which contains the names of inhabitants of Utah. Those names were placed upon the petition as asking for service on the route from Canyon City to Fort McDermitt, being a distance of, certainly, six or eight hundred miles further west, and I do not know how much further south. The inhabitants of Southern Utah could hardly have been interested in the mail service out there upon the Canyon City and Fort McDermitt route in Oregon. I will not stop to direct your attention in detail to the petition. Those names, in like manner, were all of them upon three separate sheets which were inserted in the middle of a petition. It was a petition with some genuine names at the top and then on three or four separate sheets were the names of Utah men, and then came other names which I think were those of people in the locality, although I am not sure about that. That is the class of petitions

we find. Now, let us take up some petitions on the route from The Dalles to Baker City. The first is a petition drawn entirely in Mr. Miner's handwriting. You see it ends directly at the bottom of the sheet. Moreover, I think you will see from the way in which it is creased and folded that that side of the paper [indicating] was originally the outside, and not the inside as now. Then when we turn over we find the names coming right down, with these other sheets pasted on; but we find this very significant fact, as conclusive that there has been something cut off and that the paper has been tampered with, that not only has the sheet been shortened, but there is the tail of a long letter coming down from the portion of the sheet which has been cut off, and we find also that the first name has obviously been written up at the very top of the sheet which there has been something cut off from. I think, gentlemen, in view of what I have said and the suggestions I have made to you as to the other matters, that you cannot have much question that this has been done with some intention to deceive. The names were on hand beyond all question. This petition has been written on the back, and there was something there that did not suit their purpose, and, therefore, it had to be cut off, and in cutting it off they left the tail of the long letter. That tail proved a tell-tale. On that route, when we come to an honest petition, we then find the genuine signature of Mr. Hall, the postmaster. I will not stop now to call your attention to it, but it is so different from the signature upon the Canyon City and Fort McDermitt petition, where it was placed, that it would be conclusive even if we had not Mr. Hall's statement of the forgery that was committed.

Gentlemen, let us take another series of petitions upon which Mr. Brady acted. These that I will show to you are the only petitions which he had recommending the increase he made, except, I think, a letter from General Fremont. There may possibly have been a letter from somebody else, but, if so, it does not occur to me. One of these two petitions which I read is on the route from Pioche to Mineral Park, and the other is on the route from Mineral Park to Ehrenberg, one being from the north of Mineral Park and the other to the south.

Mr. HENKLE. Will you be kind enough to give us the numbers of those petitions.

Mr. BLISS. They are 17 K and 18 K.

This order, 17 K, reads:

We, the undersigned, citizens furnished mail by the U. S. mail, on route No. 40104—

The figure "4" is obviously written over an erasure; it has been altered from some other figure that was there. Then the word "Pioche" at the end of the line has been obviously written over an erasure. At the beginning of the next line the "Nev.," for Nevada, has also been written over an erasure.

to Mineral Park, in Arizona Territory, wish to have more frequent mails, and would respectfully request that the service on this route be increased to—

And now the following words, all of them, are obviously written over an erasure—

three trips on a schedule of sixty hours instead of eighty-four hours.

All the operative words and figures in that petition have been altered. The description of the route, 40104, has been altered; the terminus, Pioche, has been altered; the amount to which they wish trips increased has been altered; the schedule to which they wish it increased has been altered. And if you will notice the signatures you will see

that they have substantially all been signed by the same two or three different people. There appear here, at the beginning, six names, which I think you will consider were written by the same person. On the back side are eleven, also in the same handwriting; and then below that are five more, also in the same handwriting. I think that petition has been shown to you before, and its alteration is beyond all question.

Then upon the route from Mineral Park to Ehrenberg we have precisely the same condition of things:

We, the undersigned, citizens furnished mail by the U. S. mail, on route 40105—

The “5” is written over an erasure—

from Ehrenberg—

Ehrenberg is written over an erasure—

to Mineral Park in Arizona Territory, would recommend and request that said service be expedited so as to have the running time from Ehrenberg—

Ehrenberg written over an erasure—

to Mineral Park only forty-eight hours—

Both the “forty” and the “eight” are written over an erasure—
in lieu of sixty—

The “sixty” is substituted for eighty—

hours, the present running time.

All the operative words there are written over erasures, and every one of them is altered. The signatures to this petition (18 K) are identical with the signatures to the other petition (17 K)—the same handwriting, the same names, though in one or two cases the order of the names upon the petition is changed.

Now, as to these two petitions Boone swears that the interlineations in one were in the handwriting of Mr. Rerdell, and that the interlineations in the other were made in the handwriting of John R. Miner. And when Mr. Miner was on the stand he admitted his handwriting in the word Ehrenberg in one of the petitions. There is, therefore, no question that these are both altered petitions, altered by these defendants—for, bear in mind, gentlemen, that Rerdell is a defendant just as much as Miner is, except that he has confessed himself guilty in full, while Mr. Miner has admitted himself guilty only by the petty admissions that he has been compelled to make on the stand. One of these petitions was altered by one of the defendants and the other altered by another of the defendants. I shall have occasion, I think, to show you under what circumstances, as Mr. Rerdell stated, this alteration was made by him. The signatures to the two petitions are identical.

And that is not all. The evidence is absolutely conclusive, both from Mr. Wright and from Mr. Krider, that the signers of these petitions did not live on or near these routes; that they did not, in fact, get their mail upon these routes to which the petitions are made to apply; that they lived away down some eighty or ninety miles south, at or near a place called Signal; and the postmaster at Mineral Park said that he saw the letters that went through his office, and he never knew of any letters going through on that route to Signal, and he did not believe there ever did.

That is the kind of petitions upon which Mr. Brady acted. That is the kind of petitions which Mr. Miner and these other defendants submitted to Mr. Brady for his action. And that is the kind of petition, gentlemen, upon which Mr. Brady ran up the contract from somewhere

about \$2,000, I think, to something over \$52,000. He did that in two bites, it is true. He made two orders in connection with that—first, increasing it up to \$22,000, and then up to \$52,000. One of these orders was made absolutely and exclusively upon the petitions, and possibly upon a letter of General Fremont, and it seems to me that there is a letter from his favorite Delegate in Congress out there. But those are all there are, and upon those some \$20,000 or \$30,000 was taken out of the Treasury.

As to the subsequent order perhaps I may just as well call your attention to it right here, as finishing up in that connection. The other order, gentlemen, taking between \$20,000 and \$30,000 from the Treasury, was made upon this single letter which I hold in my hand. It is a letter from Sidney Dillon, president of the Union Pacific Railroad. On that letter Mr. Brady made an order taking between \$20,000 and \$30,000 out of the Treasury. And you will bear in mind, gentlemen, that Mr. Brady, on the stand, opposed railroads; he had nothing to do with the railroads; he was looking out for the general star-route service. And yet Mr. Sidney Dillon writes him a letter of this kind, stating that—

The Utah Southern Railroad will in a short time be completed to Frisco. From that point to Pioche, Nev., there is already established daily mail service, which will be rapidly taken up by our advancing railroad. From Pioche to Prescott—

As he calls it—

there is running a tri-weekly mail service on slow schedule. * * * I therefore respectfully ask that the service between Pioche and Prescott be increased to daily, thus giving us a continuous daily service from the Union Pacific Railroad to Southern Pacific Railroad at Maricopa Wells.

Mr. Brady gets that letter and he promptly does what I have failed to find upon any other papers in this case. He turns it over to Turner, and says:

TURNER: Make up case Pioche to Mineral Park.

BRADY.

He is going to have that attended to at once; there should be no delay about that. And he is the gentleman who did not believe in railroads; he did not act in behalf of railroads; he is the gentleman who acted in favor of the star routes.

But it so happens, gentlemen—and I now refer to 32 T—that when the president of the Northern Pacific Railroad, Mr. Frederick Billings, wrote him that he wanted an increase of service on the Bismarck and Tongue River route, this opponent of railroads, this favorer of star routes, turns over that letter and indorses upon it in his own handwriting:

BREWER: Increase Bismarck to Tongue River, as requested within, to six times a week.

BRADY.

Make the order to commence as quickly as contractor can put on the increased service. B.

He was going to have no delay there, but expedition squarely. And this is done on the petition of another railroad president.

Put that, gentlemen, if your please, in connection with one other fact to which I call your attention, and that is that Mr. Stephen W. Dorsey stated that when he wanted passes to send out any of his men over the road, and he had not a convenient pass of his brother's, he applied to Mr. Sidney Dillon or to Mr. Jay Gould—and Mr. Jay Gould also ap-

pears on one of the petitions on the Mineral Park route—and got passes from them. Of course it was “scratch my back and I’ll tickle your elbow.” “I will put up your service if you will give me passes; I will give you expedition and increase of service if you will give me the requisite share in the proceeds.” That is the kind of petition and the kind of letters upon which Mr. Brady acted upon that route.

As to this question of the alteration of petitions signed by parties who had no earthly interest, you remember the petition—I will not stop to get it out and go over it—on The Dalles and Baker City route that was signed by a lot of persons who appear as soldiers—corporals and privates of a company—who were not known at all in that region. They certified, I think, that they were citizens of that region—at any rate they connected themselves with it either as citizens or by stating that they got their mail on that route, and I think they stated that they were citizens, and yet nobody ever heard or knew anything of any such soldiers there in any way. They were connected with a regiment of which there was no evidence that it was ever there, and the parties who were here from that region knew nothing about them. McBean, Schultz, Fisk, and all those men whose names were on that petition, were familiar with that region there, had been deputy sheriffs and the like, and knew all the people there, saw these names and said: “We do not know any of these people; we do not recognize them as having ever lived there, or anything of the kind.” And that is the kind of petitions which were placed before Mr. Brady by the other defendants, and which were accepted by him as sufficient authority for taking these large sums out of the Treasury.

The Kearney to Kent route I will not take up your time by going over in detail again. But there is only a single paper on record which asks for expedition on that route. That petition bears the indorsement of Senator Saunders, dated on the 6th of February; the date of filing does not appear. We showed you by the men who signed the petition, by men who forwarded it, that it was sent here to John R. Miner without the only words that are now in it which would justify any expedition at all. The words “schedule thirteen hours” are inserted at the end of the line where there is a little blank space, originally left at the end of a paragraph. The original petition was sent there in Miner’s handwriting, but an inkstand got upset on it and the parties out there rewrote it, and, having got it signed, they sent it to Miner without any request in it for expedition. Somehow or other, subsequent to that time they gave the petition to Mr. Saunders, and Mr. Saunders indorsed it on the 6th of February. The words “schedule thirteen hours” in the petition are in an entirely different handwriting from the body of it, and are sworn to as being in the handwriting of John R. Miner. And, gentlemen, I shall have occasion to call your attention in another connection to one singular fact which I think will carry conviction to your minds, and that is, that the petition bearing Senator Saunders’s indorsement of the 6th of February being the only paper that said either thirteen hours or expedition, the date of the affidavit for that expedition—it being sworn to in New Mexico, I think—will be conclusive to your minds, brought in connection with another thing. I do not go into the details of it now, because I shall have to go over it in another connection, but I think it will be absolutely conclusive that those words “thirteen hours” were, as all the evidence showed, put in after the petition was signed; were, as all the witnesses say, put in after the petition was traced into John R. Miner’s hands.

They got so much in the way of altering petitions that Mr. Rerdell

being told by Stephen W. Dorsey, upon this route from Pueblo to Greenhorn, to go to work and alter the petitions, inserted the words "and faster time" just in the same way as the words were inserted in the Kearney petition, at the end of a paragraph where the line had ended. He inserted "and faster schedule," "on quicker time," though there was not any necessity for doing that, because if they had gone further down, after some argument in the petition, to the request for expedition, they would have seen that there was no necessity for that little forgery up there. Yet it was done from force of habit, I suppose, and from the feeling that it was well to keep their hands in.

So, in the same way, upon the petition on the route from Toquerville to Adairville. Here is a petition where the word "seven" and the figure 7 are obviously written over an erasure. Mr. Johnson, who drew that petition, states that those words were not written by him and were not there when the petition was signed. They were signing for a daily route, undoubtedly, but they regarded a daily as six times a week, because the petition specified that they were to connect with a route upon which, as Mr. Johnson stated upon the stand, there was six-times-a-week service. From force of habit in altering petitions, or rather because they did not want any ambiguity in it, Miner, I think it was—at any rate some of these defendants—altered that and put in the word "seven."

You will notice, gentlemen, that hitherto I have not called your attention to anything except record evidence or uncontradicted evidence. I have not gone into the great number of contradictions, and I have only gone incidentally into the oral evidence at all. I have confined myself to the papers which these defendants placed on file, to papers which Mr. Brady had before him when he made his orders. But simply, as bearing upon the question of this petition business and the ease with which they were gotten up, I call your attention to petitions upon the route from Vermillion to Sioux Falls, put in by the defendants. They are all in the same form, I think all in the same handwriting, so far as the bodies of the petitions are concerned; they were gotten up for signers, and they were signed. But the person who got them up left some blanks which he was not competent to fill, and the petition, as it was drawn up by him, read in this way:

It has already become a very important route, passing through the best part of the Territory. It carries the mail to—

And then there was room left to put in the number—

offices, and affords the benefits of mail communication to more than —— families.

All the petitions submitted at that time, being 82 R, 83 R, 84 R, 85 R, and 86 R, are in that precise form. The petitioners have all signed them, leaving all the blanks unfilled. And somehow or other these defendants have been guilty of an oversight in not filling them. But they got here, so that they appear here as requesting service upon the route, stating that it supplies "—— offices and carries mail to more than —— families."

As for this business of petitions, gentlemen, without going into the details, I think your memories will agree with me that the record is full of facts showing that the petitions were gotten up by these contractors themselves; that they instigated their getting up; that they did it as of their own motion; and that those petitions were not the free-will desires, under ordinary circumstances, of the people in the community whence they came, but were the sought requests of the contractors. Of course they had a right to go and get people to sign. Mr. Dorsey was

right when he said that there was an undoubted right of petition, and if your verdict shall be such as I trust it will be Mr. Dorsey may at some future time desire to exercise the right of petition himself. But however that may be, the petitions were gotten up through these defendants. Mr. Rerdell swears to Dorsey's directions to him in that regard. We produce Mr. Dorsey's directions to Mr. Joseph, requesting him to get up petitions. The letter has been read to you, in which Dorsey tells him that he has written General Hatch, and very soon General Hatch's letter appears on the record as showing the same thing. He had written to Mr. Barnes, the district attorney at Santa Fé, and Mr. Barnes pretty soon appears as petitioning for almost everything on the Ojo Caliente route, with which probably he had some connection, and on the Tres Alamos and Clifton, with which he was entirely disconnected. Mr. Barnes was United States district attorney out there, and Mr. Dorsey writes to him, and he promptly gets an answer. These petitions were gotten up at the instigation of these contractors. And that is not all, gentlemen. They were gotten up through a certain sort of compulsion exercised upon the persons who circulated them. Mr. Davis, Mr. Adams, and Mr. Perkins, on the White River route—not to go further—all state that they got these petitions up because they were asked to, and because such relations existed between them and Mr. Dorsey and these defendants, they being in a measure dependent upon these defendants, that they could not very well refuse; that they got them up, and did not trouble themselves at all as to whether they were justified or not.

Mr. Schultz gives you some interesting evidence upon that subject of getting up petitions, which I will stop for a moment to call your attention to. He says, on page 1720—it is but a single line, but it is very expressive:

There is no trouble about getting signers when you do not want any money.

He says he got them readily. Of course these defendants did not want any money from the signers, but they wanted the signers' names upon these petitions in order to use them for the purpose of getting money. Mr. McBean says that he signed and circulated some petitions. He said he did not care anything about it, did not know anything about it; he would sign for somebody to come out there and toot a horn. They were got up in the same way, through the instigation of these contractors appealing to the great people of Colonel Ingersoll, and then they were brought here, and as far as possible the indorsement was secured of the great people of Mr. Brady, and then they were a sufficient cover to enable Mr. Brady to have some pretense of gratifying the wishes of these other defendants.

Without stopping to take out the petition on the route from Eugene City to Bridge Creek, I want to call your attention to it. It appears that none of the signers lived east of Springfield, which was within twenty miles of the west end of the line.

On the White River route, Secretary Teller upon the stand here told you that the petition was a false one in stating the condition of the country, the mines, &c. Secretary Teller said there was not anything of the sort there.

And here, gentlemen, perhaps, as I am considering these petitions, I may briefly refer to another question connected therewith, and that is this: the names of the persons signing the petitions asking for an increase of service, an increase of trips, are made to do service upon the jackets, and, as a possible backing for Mr. Brady, as recommending the

expedition. There are some marked instances of that to which I desire to call your attention. For instance, take the Bismarck and Tongue River route. On the jacket the statement is paraded that General Miles asks increase of trips and expedition, and as I recollect it the General of the Army is also brought into the same connection. And yet the General of the Army does nothing except to transmit with his indorsement the petition made with General Miles's indorsement. And now I have here in my hand all of the several letters and indorsements of General Miles. They are 25 T, 28 T, 29 T, 30 T, and 36 T. They are letters or indorsements, and all of them, without exception, are limited absolutely to requests for increase of trips, and the increase of trips is specified, as for instance in 25 T, he asks that the trips be increased to three or six times a week; but there is not a word about expedition. In the letter of the War Department transmitting the letter of General Miles asking that it be increased to tri-weekly or daily mail it is said:

The General of the Army recommends tri-weekly mail.

In the indorsement upon the petition of General Miles (36 T) it is said:

I earnestly indorse the above petition, and add, &c.

That petition is one which asks for a daily mail; does not ask for expedition at all. Another letter, of which there is a copy here, transmitted through the regular routine, says the same thing. It relates entirely to increase of trips. The only other indorsement of General Miles is upon a petition for tri-weekly or daily mail. And yet these letters are all made to do service before you here as Mr. Brady's authority for expedition, for increase of trips, and for increase of speed. Increase of trips, if he carried it up to six times a week, would not have made the payment to the contractors upon that route \$15,000. Mr. Brady told you himself that the more service the contractors got at that rate the worse it would be for them; that to multiply losing trips could only make a greater loss, and that was better than his ordinary arithmetic. And yet, using these papers in connection with others, which do, I say frankly, ask for expedition, and these being really the most important and weighty in the lot, Brady orders expedition that carries the route up to \$70,000 a year, and it is put upon the jacket that these gentlemen recommended expedition.

Mr. HENKLE. Do you mean to say that Mr. Brady prepared those orders and knew what was in them?

Mr. BLISS. I make no claim as to what General Brady prepared or did not prepare. I say that he signed a jacket; that his name appears upon it, ordering so and so. And Mr. Brady cannot come here before this jury and claim that the Second Assistant Postmaster-General, important enough, he says, to be a factor in the politics of a great State, important enough to be supervisor of internal revenue, and important enough to be consul at an important commercial point—he cannot come before you and make a claim that upon orders which took \$70,000 out of the Treasury he signed his name without knowing anything about what was in them.

On the route from Pueblo to Greenhorn we find the Hon. Mr. Teller and the Hon. Mr. Hill cited as recommending increase of expedition and of service, and yet you will find in fact that they did not recommend anything but the increase of service. They did not ask for increase of trips. And there is another petition of a gentleman—Mr. Chilcott—who was then filling a county office in Colorado, and who subsequently became United States Senator—

The COURT. [Interposing.] I think you said something you did not intend to say.

Mr. BLISS. What?

Mr. MERRICK. You said there was an increase of expedition advised.

The COURT. You represented that the recommendation was for increase of expedition and not increase of service.

Mr. BLISS. I got it just the wrong way then; it was the other way. The petitions recommend an increase of trips. Now, that is the kind of petition and the kind of papers which these defendants have submitted, and that is the kind of petitions upon which Mr. Brady based his action.

I now pass to another matter, as showing the course of things in the department under Brady at the instigation of these defendants. I wish to call your attention for a moment to the way in which no attention was paid to the remonstrances of people who certainly were entitled to some consideration. At any rate, they stated facts which should have put the Second Assistant Postmaster-General upon investigation. I confine myself—as the court has required us to do—entirely to those papers which were received before orders were made by Mr. Brady. Anything afterwards, remonstrating against action already taken, was excluded on this trial.

On the route from Pueblo to Rosita, as early as August 30, 1878, a gentleman, who frankly gives his name as a contractor upon another route, and shows thereby that he had knowledge of the subject and the facts, calls his attention to the fact that there is being circulated a petition to have the schedule changed on the route from Pueblo to Rosita from once a week, as it now is, to three times a week. He says (page 865):

You are aware there is now a daily mail from Pueblo to Rosita, by way of Cañon City, and all the mail for Rosita goes and comes by way of Cañon City, and would continue to do so if there was a daily mail from Pueblo to Rosita by way of Greenwood. The object in having the service increased is not to better accommodate the people, but for the increased pay.

There was notice, as early as August 30, 1878, to Mr. Brady, by this contractor upon the other route, calling his attention to the precise condition of things which we have shown you existed upon that route. We have shown it to you by the parties who carried the mail upon both routes. We have shown by the postmaster at Pueblo that all the mail going over that route practically, except a mere rivulet that was occasionally turned in upon this Pueblo to Rosita route, intended for Rosita and points below, passed from Pueblo out on the railroad, and, although traveling more miles by railroad than would have been covered by going from Pueblo to Rosita, yet arrived at its destination sooner.

And in that connection, gentlemen, there is a very noteworthy thing here. On page 868 we find a jacket. The reading of the jacket will call your attention to some other letters and remonstrances upon this route. After giving the number of the route, the termini, the length of route, number of trips per week, the contractor's name (Miner), and pay per annum, it says:

Postmaster at Greenwood, the only intermediate office on the route, states that: "My duty to the department requires that I should suggest the discontinuance of the present mail service (weekly) from Pueblo to Rosita, as we now have a tri-weekly service from Florence to Greenwood, by which we receive all our mail."

Greenwood was the only intermediate office from Pueblo to Rosita. Greenwood got its mail from Florence, a nearer point upon the rail-

road, and therefore did not need the service, and the postmaster at Greenwood calls Mr. Brady's attention to that. Having called his attention to that, there is a jacket made up, and that jacket quotes the letter of the postmaster at Greenwood:

Mail matter from Pueblo to Rosita—

It continues—

is transmitted from Pueblo to Cañon City on the Denver and Rio Grande Railroad, and from there to Rosita, *via* route No. 38132, thirty-one miles and back, six times a week.

Length of this route fifty miles, and from Rosita to Silver Cliff (which office it is supposed to benefit by increase of service to daily and expedition), nine miles, making distance from Pueblo to Silver Cliff fifty-nine miles.

Concealing the fact apparently that it was by railroad.

By the present service on route No. 38132, Silver Cliff receives supply from the railroad by a traveling distance of thirty-one miles.

All that is recited upon the jacket, and then it is recited that—

Increase of service and expedition is recommended by Hon. H. M. Teller, U. S. S., and Hon. James B. Belford, M. C. Hon. W. H. Hyde, mayor of Pueblo, also recommends improved service petitioned for.

That jacket without date is placed in another jacket, which Mr. Brady uses as his authority for directing the increase of service over that route to six trips a week, and to pay the contractor \$2,328 additional for the increase of trips, and to reduce the running time from fifteen to ten hours, and to pay the contractor \$5,432 per annum additional for that, running up from the original allowance, which is here on the same jacket, of \$388 to a sum over \$8,100, and doing it in the face of a jacket contained in this jacket on which he made his order, on which there is the recital of these facts which showed to anybody that the order was an utterly unjustifiable order; and yet he did it, as the jacket states, on the recommendation of Mr. Teller and Mr. Belford. The order itself is made, I think, upon no other papers than those I have referred to, except the affidavit, but it is possible there may be others. At the same time, however, there was before Mr. Brady not only the letter of the postmaster at Greenwood, in which he says that his duty to the department compels him to state that the route is unnecessary, but there is quoted on the jacket another passage from the letter, in which he says:

So long as we have the mail promptly by other routes, the service from Pueblo to Rosita is superfluous and a needless expense to the Government. I do not make this suggestion at the instance of any interested parties, but simply as a saving to the department.

If he had known the way business is done in the Post-Office Department he would have been perfectly aware that to make that statement would render it certain that no attention would be paid to his suggestion, for all the suggestions that they attended to were the suggestions of interested parties. Not only does he make that suggestion, but another postmaster at the same place subsequently calls attention to the same condition of things, stating that the service is utterly unnecessary. I think the letter from the second postmaster was not written until after Mr. Brady made the order.

On the route from Ojo Caliente to Parrott City Mr. Trew, the postmaster at a terminal point, wrote to the department before the order was made, substantially saying that the route was of no importance.

On the White River route the postmaster at one of the offices wrote to the department calling attention to the fact that it was desirable, instead of having the time shortened, to make the time five days, and

he went into an argument upon that question. You remember I showed Mr. Brady that letter when he was on the stand, and Mr. Brady got very indignant with that postmaster because he spoke of five days, and subsequently, somehow or other, he spoke of one hundred and eight hours, and Mr. Brady said that that postmaster did not know the difference between five days and one hundred and eight hours, and then he threw the letter to one side, off on the floor, with an indignant air that the man should not be able to make better arithmetic than that. And yet Mr. Brady had been giving large sums from the Treasury upon arithmetic undoubtedly worse than that. And even after that Mr. Brady was not sure that he did not mean days of twelve hours until I called his attention to some things in the letter utterly inconsistent with that idea. He then said he did not pay any attention to that. He was postmaster out there, and he paid just as little attention to that as he did to the direction of Mr. James, his superior officer, to revoke the order upon the same route.

On the route from Ouray to Los Pinos, gentlemen, you will remember that, having originally made a one-day route from Ouray to Los Pinos, they changed a six-day route so that it passed over some thirty or forty miles of this route, and from that time there was but one mail pouch went over that route. But one mail pouch went over it six times a week, I think. The letters over both these routes were put in the same bag and were carried by the same carrier upon the same horse. Mr. Brady's attention was called to that by a letter from a postmaster out there who had been stirred up. That postmaster, not considering it possible, after the six-day route was put over the same territory precisely as the other route, that the one-day-a-week route could remain, had failed to make his monthly report of arrivals and departures upon the one-day route. He was punished up for that delinquency by the Second Assistant Postmaster-General's office, and he was requested to inform the department as to why he had not done it. He then writes to Mr. Brady a long letter and explains the whole thing. He gives him the correspondence showing the condition of things and showing that that route is being run utterly uselessly to the Government, and that it was putting so much money into the pockets of the contractor without any excuse whatever. But that order remains unrevoked by Mr. Brady; that condition of things remains unchanged for considerably over a year, and it remained unchanged, as I recollect, until about the time of the Congressional investigation, which caused somewhat of an overhauling in the dirty house of the Second Assistant Postmaster-General.

Mr. Brady also made a series of orders which resulted in no benefit to the Government, but which resulted in taking from the Treasury large sums of money and putting them into the pockets of these defendants. For instance, on the route from Pueblo to Greenhorn, the original schedule was twelve hours, I think. An extension of time was made in consequence of this fictitious increase of twelve miles for extending the route up from Saint Charles, and they carried it up to fifteen hours. Then they expedited it down to seven hours, and paid for that large sums of money. And yet the evidence before you shows beyond all question that the mail was being carried ordinarily and generally in eight hours' time before any order for increase was made or any order for expedition. It was not being carried in seven, but was being carried in eight hours; and though at the same time the contractor had a right to take more time, and if he did so could not be fined, of course, yet, as a general thing, he did it in eight hours.

However that may be, it is said to be desirable to have this increase and expedition in order to make it certain that the mail should arrive in the day-time for the convenience of the farmers, and that was probably in a measure true. And yet you will bear in mind that the number of people who would be benefited by it, other than the contractors, was very small; the amount of mail matter was very small, and the number of people living along the route was comparatively small. But there is this significant fact in connection with that case: that though he made the expedition at a large expense, giving some \$3,000, I think, therefor, yet the man who performed the service was receiving only \$840.

There was a schedule of arrivals and departures made on that route which resulted in the mails arriving at Pueblo, the terminal point upon the railroad, just about an hour after the mails east and west had left, so that they could not go forward for twenty-four hours afterwards. The mail going from Pueblo had to lie over twenty-four hours. Yet Mr. Brady paid this large sum upon papers which recited that it was desirable to have a connection with the east and the outer world; and upon papers some of which are signed by persons living in New York, on the ground of wanting connection there, he gave an order of expedition, and yet he did not secure any expedition whatever. The mail lay over, and left just at the same time going east as it would have left if no such order had been made.

On the route from Vermillion to Sioux Falls precisely the same condition of things existed. The expedition gained nothing except what was gained by the people along the route getting their mail possibly in a somewhat shorter time.

On the route from Ojo Caliente to Parrott City there was a condition of things which I must call your attention to for a moment. Brady made an order for expedition, in spite of the remonstrance of the postmasters, which took from the Treasury a great deal of money, running up the allowance, as I recollect it, to \$10,000 or to \$15,000. And he made the order, as it was apparently claimed, on the ground that at Ojo Caliente it connected with another route which was a six-day-in-the-week route. And yet we put witnesses upon the stand and produced to you the record evidence to show that Ojo Caliente, not being on the railroad—it was then some twelve or fifteen miles from the railroad—had no connection absolutely at that time with the railroad except that by private enterprise a mail was carried once or twice a week over towards Taos, striking the railroad, but that the mail route which connected with the railroad was a route that diverged somewhat to the south from Ojo Caliente and struck the railroad lower down, and that was only a once-a-week route. We produced the clerk with the route register, and we put that in, showing conclusively that there was no such mail, and that there was no connection whatever. (See page 1203.)

On the route from White River to Rawlins there was the same failure to connect. The mail arrived at Rawlins, which was on the railroad, the other end having no connection whatever, being a place in the mountains or in the air, with no communication whatever beyond it. The mail arrived at Rawlins just two hours after the train left, and his expedition therefore gained absolutely nothing. There was some attempt, after we showed that state of affairs, to make out that that came from the desire of the postmaster at Rawlins not to be waked up in the night. That led, however, to our putting in the evidence showing that the postmasters sought a change of schedule, and that Mr. Brady had not made it, and it led also to

an investigation and discussion of the subject, which enabled us to call the attention of the court and of yourselves, gentlemen, to the fact that under the statute the duty of making the schedules rests with the Second Assistant Postmaster-General. That is provided for by the statute, and is not a regulation of the department. He is the man who has charge of making the schedules, and it is his business, as an honest and efficient officer, whenever he makes expedition on any particular route, to see that that connection is made.

Mr. Chandler told you in his opening, when he was anxious to make out that there should not be any attention paid to the remonstrances of these postmasters, that the postmasters did not know anything about the connections all the way through; that the Second Assistant Postmaster-General, sitting here in Washington, has a knowledge of these things; that he must judge of the system under that statute, and that you have no business to pay any attention to these postmasters, who do not amount to anything. That was Mr. Chandler's opening. And yet when we came to the evidence, then counsel got up and argued that Mr. Brady has nothing to do with this business, but that was a matter resting with the parties out there. The fact is, you will find, gentlemen, that Mr. Brady knew what it was necessary to know with reference to all the practice and to all these orders. He knew what it was necessary to know to put money into the pockets of these contractors. He knew what it was necessary to know to prevent him from stopping money from going into the pockets of these contractors; and when any further knowledge than that was necessary, he took care, according to his counsel and according to the gentlemen here concerned, not to have any knowledge of it.

I have called your attention, gentlemen, to the facts which stared Mr. Brady in the face when he made those orders as to the amount of mail-matter, so far as that amount was disclosed by the mail bills. I called your attention also to the knowledge which stared him in the face so far as the productiveness of the routes was concerned. I mentioned that on some of the routes the jackets themselves had the productiveness or the want of productiveness indorsed upon them, and yet Mr. Brady paid no attention to the indorsement. I find on examination that on eleven of the routes the jackets did contain a statement of the revenues. In cases where orders were made upon eleven different routes the orders contain a statement of the revenues. In the other cases they apparently do not, but they were always accessible to Mr. Brady. Now, as to the amount of mail matter apart from the question of the mail bills and simply as showing how the oral evidence bears out the statement of the mail bill. You remember that on the Mineral Park and Pioche route Mr. Brady made two remarkable orders. On the 22d of January, 1880, he made this order:

The mail bills received by the inspection division showing little mail matter passing over this route, as per files of said division, and that the service is most irregularly and inefficiently performed: Ordered, That service on said route be reduced from the 1st day of February next to what it was at original letting, both as to trips and speed, without one month's extra pay.

Then, in black ink:

From February 1, 1880, reduce service from seven trips per week to one trip per week, and increase running time from sixty hours to eighty-four hours, decreasing contractor's pay \$49,051.33 per annum, being amount allowed by orders bearing date December 31, 1878 (No. 11446), and July 23, 1879 (No. 6834), for increase of trips and expedition of running time, without one month's extra pay on service dispensed with.

The order of December 31, 1878, was the order made upon those two altered petitions on the Mineral Park and Pioche and Mineral Park and Ehrenberg routes, one of which was admittedly altered by Miner and the other by Rerdell. The order of July 23, 1879, was an order made solely upon the letter of Sidney Dillon, president of the Union Pacific Railroad. Brady revoked both of those orders without one month's extra pay on the service dispensed with. That was the indignation of Mr. Brady on the 22d of January, 1880. It was not a sudden indignation of that day only, because on the preceding day Mr. Brady had made in his own handwriting the longest memorandum that I have found by him among the papers in this case. It is marked 25 K. He there writes out substantially the order made on the 22d of January. But on the 28th of January, either the row that Mr. Brady had had with the defendants—there is some indication among the papers of a temporary row—or possibly the pendency of the Congressional investigation, caused the making of another order. The order of the 22d of January was just succeeding Mr. Brady's first examination before the committee, and preceded his second examination, as I recollect it. At any rate it was pending his examination, when he had been called upon for the records of the office with reference to the increase upon this and other routes. That order was then made cutting off \$49,000, and leaving only twenty-odd hundred dollars. But six days afterwards he recites :

An order was issued bearing date January 22, 1880, to reduce the service from seven to once a week. In view of the fact that this route forms a part of the direct line of communication between the Central and Southern Pacific Railroads, it is deemed advisable to maintain three times a week's service.

1st. Rescind order bearing date January 22, 1880 (No. 633).

2d. From February 1, 1880, reduce service four trips per week, and deduct from contractor's and subcontractor's pay \$29,733.33 per annum, being pro rata, without one month's extra pay on service dispensed with.

He left them with about twenty-two or twenty-three thousand dollars still, and you will see why he did it. He recites that his first order, having been made upon the basis of the mail bills, showing there was no mail matter, that now, in view of the fact that this route forms a part of the direct line of communication between the Southern and Central Pacific Railroads, that order should be rescinded ; and yet the very mail bills to which he referred, and which he had obviously seen and studied, showed him there never had been a letter passing over that route from the Central to the Southern Pacific Railroad, and that in thirty-nine days there had been nineteen days when no letter whatever had gone over that route, and that there had been absolutely no mail matter going over the whole length of the route. Yet notwithstanding the mail bills which had met his eye, because he recites that he had seen them, and notwithstanding the fact that he had taken off the expedition and the trips because there was no mail matter, he then put on three trips with expedition. The mail bills showed him that the statement of his last order was not true and that the line was not one over which any through mail passed. When Mr. Brady came on the stand he asked you to believe that he made that order because it was represented to him that it would not be fair to the contractors to cut them off as he had originally cut them off. He did not say on the stand that he did it on account of the through mail. He did at one time refer to that matter, but he said it was represented to him that it would not be fair to do it ; and he lugged in here, entirely without justification, and apparently with a desire that you might think there was something reflecting upon him, Senator Plumb of Kansas as a man whom he said came to

him and represented the necessity for this order. I do not believe he did. But suppose he did. What had Senator Plumb of Kansas to do with representations with reference to a route from Mineral Park to Pioche? And what had Mr. Brady to do with reference to what was justice to the contractor when there was such great injustice done to the Government in making the order and in paying the contractors, as he did, about \$13.67 a letter for every letter carried over that route during thirty-nine days. I ought to say about this mail matter that Mr. Kri-der, the postmaster at Mineral Park, told you that there was almost absolutely no mail matter through; that they did not get the mail matter from the north, but from the south, from Prescott, connecting with the railroad. Mr. Caldwell Wright, who was a witness from there and who had occasion to know about the contents of the mail, said distinctly that mail bags sometimes did not contain anything, just as the mail bills showed you that for nineteen days out of thirty-nine that was the case.

On the Tongue River route Mr. Pennell tells you that there was one small sack. The mail subsequently increased until there were two sacks, and down quite late in the term the amount of the mail matter, according to the evidence, was carried up to two hundred or three hundred pounds a day going west. Coming east it was almost nothing. That was the evidence of Mr. Pennell, Mr. Barnes, Mr. Lambert, Mr. Lounsberry, and Mr. Swift, and that evidence is all confirmed by the mail bills on that route. On the route from Rawlins to White River the mail varied from fifty pounds one way, including the weight of the sack, to ten pounds the other way. They told us that at one time during the intermediate period there was a large number of soldiers in there. But that was not the time when either one of these orders was made for increase on that route. One order was made long before the soldiers went in there, and the other order was made after the soldiers went out. In the interim there were, however, twenty or thirty companies of soldiers in there, and several hundred letters went in on one trip. But as I said, gentlemen, before the soldiers came there the evidence is that there were not over twenty letters a day, the mail varying, as I said, from ten pounds in one direction to thirty, forty, and fifty pounds in the other direction. Mr. France, the postmaster, told you there were from fifteen to twenty letters on that route, and that was all. On the route from Vermillion to Sioux Falls I call your attention to the fact that there was one of the mail bills that showed that on that day there were three letters starting from Vermillion. You will bear in mind that that was the route upon which we had for a witness the bright young boy who was so indignant at the idea that he slept with the mail bags. On the route from Eugene City to Mitchell Mrs. Powers told you that the mail as far as McKinzie Bridge, which was about one-third of the way, consisted of ten or twelve letters, and beyond McKinzie Bridge it varied from six letters to none. This is the "Gum-boot route," gentlemen. I think I have summed it up in that statement. All the mail was carried in the leg of an India-rubber boot. Mr. McBean, before the service commenced, told Mr. Moore upon that route that he could carry all the mail in his pocket. Mrs. Powers told you there was very little mail. Mr. Powers told you the same thing, and the mail bills show, in fact, that there was almost no mail going over that route beyond McKinzie Bridge, which was at the base of the mountains on the west side. On the route from The Dalles to Baker City Mr. Fisk told you there was twenty pounds on an average, and Mr. Hall, the postmaster at Canyon City, the middle office—I

am speaking now of the mail passing from The Dalles going east—that two-thirds of the mail that started from The Dalles came only to his office. It appears on that route, gentlemen, that there was absolutely no through mail. The through mail all went around by way of Pendleton. That was so true that the stations within ten miles of each terminus of the route sent it around, going back to the end of the route, and then on the other route. They could transmit the mail quicker, better, and more certainly in that way. On the route from Tres Alamos to Clifton the evidence is that there was about half a mail-sack of matter. I think there was also some evidence that at one time, quite late in the contract term, after the route was changed to Wilcox, some one saw several bags of mail matter. I am giving you this evidence, which is all uncontradicted. There is no dispute about it.

On the route from Julian to Colton the evidence is that the mails weighed from thirty to sixty pounds going south from Colton, and that beyond Jacinto they were less than that. Going north they varied from ten to twenty pounds. Sometimes for a certain portion of the route, from Julian to the first station out of Julian, they even weighed as high as thirty pounds. That is the outside limit given them. On the Silverton route Mr. Cornell tells you that there was a pouch weighing not over forty pounds. I have already called your attention to the mail bills on the Ojo Caliente and Parrott City route, and they are confirmed by the evidence of Joseph and Jaramillo. On the Kearney and Kent route Mr. French told you that when they were running once a week perhaps a hundred pounds started out from Kearney, but when they got to Loup City, which was the point to which the expedition was carried, they had only ten or fifteen letters and twelve papers, and most of those they had picked up at a way station where there was service from a railroad coming across the line. Subsequently there was a time when the mail starting from Kearney increased from one hundred to one hundred and fifty pounds, a large portion of which, however, was paper mail. On the Greenhorn and Pueblo route the witnesses put it from eight to ten pounds, and at certain stages from twenty to forty pounds one way, and the other way it was put at from two to eight pounds, respectively. On the Rosita route Mr. Tuttle, who carried it, says that it was most of the time from two to ten pounds, and that was all chiefly left at Greenwood. Sometimes they had three or four letters for Rosita, and occasionally they had a letter or two from Rosita coming back; but that was the general result of it. Mr. Gooch, on the same route, said there were from three to five pounds, of which four or five were letters. Mr. Walters, the postmaster at Greenwood, says that what passed through his office must have been ten or fifteen pounds, with probably four or five letters. I have called your attention to Mr. Marks's testimony. On the Toquerville and Adairville route we are told that the mail started with one hundred pounds, and that from one-half to one-third of it was intended for Kanab, while to Pahreah, the end of the route, there was almost nothing. Going back, the mail was very much smaller, because there were no papers to go east on the route. On the Fort McDermitt and Canyon City route Mr. Brown, the carrier, said that there were from five to ten pounds of mail, and that it was the largest going north, and that there was on one occasion one hundred and fifty pounds, but he said that was dry-goods. Mr. McBean was carrying the military mail, as it was called at the north end, to Camp Harney. When Camp Harney had the companies of soldiers there Mr. McBean said the military mail consisted of only twenty to forty pounds. That is the statement of the mail matter. Now, bear in mind, gentlemen, upon the routes which I have specified

the mail matter, both by the mail bills and by the oral evidence before you, was as I have stated, and yet to carry that mail matter the service was run up from \$41,000 to four hundred and twenty-odd thousand dollars, and of that amount \$217,000 to \$220,000, as I recollect it, was for increase of speed. That was done for the purpose, or for the pretended purpose, of carrying this little petty mail over these routes.

Your honor, I am about to take up another subject. Shall we stop for recess now?

The COURT. Yes, we will take our recess now.

At this point (1 o'clock p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. [Resuming.] Gentlemen of the jury, I referred just before recess to Mr. Brady's holy indignation on discovering, early in January, 1880, that there was practically no mail matter passing over the route from Mineral Park to Pioche, and his reference to the mail bills which he said satisfied him of that fact. For the purpose of refreshing your memory as to these mail bills, I ask you to look at this one which I have here and which is marked 63 K. It is a mail bill on route 40104, from Mineral Park to Pioche, and started from the post-office at Mineral Park on the 3d of December, 1879:

Mail consisting of this bill was dispatched this day at 6 a. m.

WILLIAM M. KRIDER, *P. M.*

Below:

Post-office at Pioche, Nevada, December 7, 1879. The mail accompanying this mail bill, consisting of this bill only, was received this day at 6.15 o'clock p. m.

CHARLES F. MEYERS,

Postmaster.

Then, gentlemen, Mr. Meyers was guilty of a piece of impertinence which certainly ought to have ended his career in the public service. He actually inserted upon this mail bill something which he was not called upon to do, and which forced itself upon Mr. Brady's attention. He made this little note at the bottom:

This route costs the Post-Office Department over \$25,000 per year.

The only trouble was that his \$25,000 was not half enough. He ought to have stated that it cost \$52,000 a year.

With reference to another class of orders which Mr. Brady made, I call your attention to the admitted evidence that upon the route from Canyon City to Fort McDermitt the service was not put on, according to Mr. Vaile's own admission on the stand, over the whole route until the 1st of January, 1879. Yet prior to that time, the postmasters having officially notified Mr. Brady that there was no service upon the route, and there having been complaints upon the route, and there having been evidence of that fact filed, Mr. Brady, without reference to that evidence and on the ground that there was a demand for more service and for increase of speed, making no mention at all of the fact that the service had not all been put on, and on the theory that the service had commenced on the 1st of July, 1878, Mr. Brady, before any service had been commenced on the southern part of the route, went to work and made an order for increase of trips and increase of expedition upon that route, whereby he took from the Treasury a very large amount of money.

He asked you to believe, and he claimed that that was a provident and an honest exercise of the power that was lodged in him, that when a contractor had shown himself so faithless that he had not performed the service for six months after he was bound under the contract to do it, and when Mr. Brady had failed to exercise his right and failed to perform his duty of declaring that man a failing contractor and forcing the service to be properly performed, Mr. Brady deliberately waited until these parties could get up the petitions and get up all the necessary machinery for the increase. That was the route upon which Miner was making these forged petitions which I showed you. While they were getting up all the machinery for the increase of service, Mr. Brady forbore to declare them failing contractors, and then, when they got the forged petitions well arranged and filed in the department, Mr. Brady came in and condoned all that had passed, and made an order for increase of service on that route. They came in and made an affidavit, which affidavit alleged, in substance, that to perform the then existing service required so many men and so many animals, when there had not been any service performed upon the route at all.

That is one class of orders Mr. Brady made. Mr. Brady made another class of orders, to which I shall call your attention, and that is, orders which were practically impossible to be performed. It might seem at first glance that if an order of that kind was made directing the mail to be carried over a given route in twenty hours when it could not be done in less than thirty hours the Government suffered nothing by it. But entirely apart from the disarrangement of the postal service that might result, you will bear in mind that the evidence before you shows that when a contractor is ordered to perform expedited service, and he fails to perform it, and he comes in with the affidavits from his carriers and certificates from others along the route that he was prevented by unforeseen circumstances, the Government does not fine him for not performing that extraordinary speed. It deducts for the trips that he absolutely misses, but if he makes a trip in four times the number of hours required he gets credit for the trip and gets credit for the expedition, provided he brings in affidavits showing that he was prevented in some way from performing the service, that, in other words, it was not his fault that he did not perform the service. You will bear in mind also another thing: that the contractors were to be paid large sums of money for expediting the service, and if orders were made for time that could not be performed remissions were made, and the result was that the Government paid out all the money and got no service for it. You will bear in mind also another thing: that when Mr. Brady ordered impracticable service it was the subcontractors who were to pay all the fines and penalties. It was the contractors sitting here in Washington who were to receive their profits, no matter how much might be taken away from the subcontractors. It was provided that the subcontractor should pay the fines. I think poor Joseph on one occasion was fined all of his pay. At any rate, if not fined all of it, he was fined so near to it that Mr. Stephen W. Dorsey wrote Mr. Joseph an appealing letter, telling him he must look out and not be fined so much, that he would be fined all of his pay and some of the pay of the contractors too; and in that case what would become of the contractors' profit? Mr. Brady made these orders for expedition, and so long as there was not an absolute failure of service, or, in other words, an absolute failure to perform the trips, and so long as the failure to perform trips was not so great as to eat up all the money that was to go to the subcontractors, the contractors, Mr. Brady's friends and pets here, were not affected at all.

They got their large profits, and it was the poor subcontractors that had to suffer. On the route from Ojo Caliente to Parrott City Mr. Brady ordered the service to be reduced to fifteen hours. They will say to you, gentlemen, with reference to these impracticable orders, as we call them, that in point of fact it was only so many miles an hour. That is true. But it was so many miles an hour of travel night and day. On this Ojo Caliente route the evidence is uncontradicted that it was impossible during a large portion of the time to travel nights, particularly in the winter; that there were no roads and no bridges, and that when the streams rose the carriers were obliged to leave the trails and wind their way around up in the mountains, doing as best they could, and that travel at night was absolutely impossible. Therefore when it comes to be said, as I presume it will be said, that to reduce the time on the Ojo Caliente route to fifty hours was simply to reduce it to three or four miles an hour, you must remember that that means so many miles of travel in each hour of the twenty-four, and that travel at night was impossible upon that route. Mr. Brady made this order for fifty hours, and he sent out schedule after schedule. We put in four of them here, I think. He sent these schedules to the postmasters, asking them to fix a time for arrivals and departures on that route on the basis of fifty hours. Each one of these schedules was returned in succession with the statement of all the postmasters upon the route—there is no question about that—that fifty hours' service was impossible, and that they could not make any schedules better and shorter than the schedules they did make, which provided for five days, I think, on an average. Finally, Mr. Trew, the postmaster, said that so many of those schedules were sent in that way, which they kept replying to in the same form, that as they still persisted in coming he threw them in the waste-basket and paid no attention to them. Mr. Brady finally got around that action of his postmasters by misconstruing one of their schedules providing that the mail should leave at a certain time on a certain day and arrive at a certain other day. The schedule provided that the mail should leave on Monday, Wednesday, and Friday and arrive on Tuesday, Thursday, and Saturday, and he took the Thursday as being fitted for the arrival of the mail departing on Wednesday, when the postmasters obviously intended it under the schedule for the departure of the mail on the preceding Monday, and Brady therefore assumed that he had got the fifty-hour schedule, or a schedule somewhere in that neighborhood, and let it go at that. In fact the service never was performed in fifty hours. The evidence about that is conclusive. There were fines imposed upon the subcontractors until they were in succession fined out of existence, and poor Jaramillo finally paid \$500 to be released from his obligations under his contract, and then he released also all claims on the United States. Having gotten him to do that these gentlemen then turned around and promptly got a remission of some twelve or fifteen hundred dollars of the fines which had been imposed upon poor Jaramillo, and inasmuch as he had not only paid \$500 to be released from their claims, but had also released all claims upon the United States, they put that twelve or fifteen hundred dollars into their own pockets. On the route from Eugene City to Bridge Creek Mr. Peck, in his application for remission, states that the time to which Mr. Brady reduced the service was impracticable and impossible, and upon that statement asked and received a remission. Upon the route from Silverton to Parrott City I have already called your attention to the fact that the reduction to fifteen hours was certified by everybody to be an impossible time in which to perform the service in the winter. On the route from Vermillion to Sioux Falls Mr.

Vaile himself tells you that the order reducing the time to ten hours, I think it was, was simply for an impracticable service, and that it could not be done; that the route was seventy miles long, and there were ten offices on the route, and at each office the postmaster was entitled to detain the mail seven minutes. Yet with that condition of things you remember that is the route on which Mr. Brady preferred the dead dog to the live animal. He preferred Mr. Kidder who had gone out of office, and would not interfere with the arrangement he had made, to Judge Bennett, who was in office, although all the postmasters represented the schedule as impracticable. On the Bismarck and Tongue River route Mr. Lounsberry, the postmaster, certainly not in our interest, in his mail bills which are in evidence here, and in his monthly report for January, 1880, on page 2888 of the record, says that the time is impracticable, and that no man could perform the service in that time over that route. The defendants came to the stand and said, "Yes, we were fined a great many thousand dollars on that route." When we came to examine into the matter we found this condition of things: they were fined on that route during the administration of Mr. Brady but \$13,000. All the other fines imposed were imposed after Mr. Brady was turned out of office. I think of the \$13,000 there was remitted subsequently every dollar for loss of time. Of course it was impossible to remit for loss of trips. That Mr. Brady could not do without a flagrant and open violation of the custom of the department. That would have been an action that he did not dare to take.

Mr. HENKLE. I do not want to interrupt you, but it may be that I will not argue the case at all. I want to call your attention to a statement you have just made to the jury, that Mr. Lounsberry testified that this was an impossible schedule.

Mr. BLISS. I said that in Mr. Lounsberry's monthly report, on page 2888, he said so. You will find it there.

Mr. HENKLE. Lounsberry on the stand said that there were certain times when it was impossible to perform it on that schedule.

Mr. WILSON. At the same time that the railroads could not run their trains.

Mr. HENKLE. At the same time that the railroads could not run their trains. That was all that he said.

Mr. BLISS. [Reading:]

No person can perform this service in winter time on schedule time—

That is a general statement—

and during much of last month it would have been impossible for man or beast to travel.

He says distinctly that no person could perform this service in the winter time on schedule time. He does say that no man could perform it in such weather as they had. He then goes on and says that during much of the weather they have had it was impossible for man or beast to travel. The first statement is—and I submit that it is borne out by the evidence—that no man could perform the schedule time on that route in winter.

Mr. HENKLE. I only want it stated fairly.

The COURT. What does he call winter?

Mr. BLISS. I do not know.

Mr. HENKLE. He said on the stand that at the same time this route could not be performed on that schedule the railroads could not make their trips.

Mr. BLISS. Where does he say that?

The COURT. Something was said about certain intervals between the 1st of December and the 1st of April.

Mr. BLISS. If you want what Mr. Lounsberry said I will give it to you :

Q. Did you recommend the department to increase the number of trips on that route?—A. I did.

Q. Did you recommend the department to expedite the time?—A. I did.

* * * * *

Q. You made those recommendations to the department in good faith and for what you considered to be the best interests of the Government and the public service?—

A. I did ; giving all matters all the consideration that I would give now, excepting as to time. Perhaps I might not have recommended that time, in view of the facts which followed but so far as the service was concerned I certainly should make the same recommendation now under the same circumstances.

Q. You say, in view of the facts which followed, you might not have recommended the same time that you then recommended. Will you explain to the jury what you mean by that?—A. I found subsequently that it was absolutely impossible to carry the mail in winter time on the time recommended.

The winter time generally ; not particularly.

I do not think any power under heaven could have put that mail through in sixty-five hours during the winter, and therefore I would not recommend that it be done.

That is on page 2194.

Mr. MERRICK. And on page 2195 is the same.

Mr. WILSON. That was after he had recommended that service.

Mr. BLISS. Precisely ; but the point I make, may it please the court and you, gentlemen of the jury, is this : that Mr. Brady ordered an impossible time, and this postmaster told him in his monthly report that he had ordered an impossible time, and yet Mr. Brady did not change the time. Mr. Brady proceeded to leave the time just as it was and to remit to these contractors all the fines imposed upon them for not making the impossible time, and therefore continued to pay out of the Treasury for service not rendered, because the time was not made. He did that, gentlemen, and yet he wants you to believe that that was the practice of an honorable and honest Second Assistant Postmaster-General. If he was misled in the first instance by Mr. Lounsberry, we say he ought not to have been when the notice came to him. It was his business to have taken the back track, and not certainly to have gone on and remitted for all the lost time which they made.

But, gentlemen, leaving those matters of detail, we say that even assuming that Mr. Brady was deceived in making the orders that he did make, so far as being deceived in increasing the trips and deceived in decreasing the time, that in his orders he allowed extravagant and illegal amounts. Assume that the affidavits were true. Assume, if you choose, that everything that appears upon the papers was true and believed by him to be true. We still say, nevertheless, that his action was unjustifiable. You will bear in mind that under the statute he could legally allow nothing extra for expedition unless the number of men and carriers was increased. You will bear in mind that if the number of men and carriers was increased the statute then gave him a limit beyond which he must not go, to wit, the increased number of men and carriers. He could allow the proportion which the increased number of horses and carriers bore to the original number of horses and carriers. What was the fact ? On the route from Pueblo to Greenhorn he reduced the time from sixteen hours to seven hours, and he allowed at that time \$2,630.40. He did it on the affidavit of Miner that one man and one animal were necessary to carry the mail three times a week on the then schedule, and that on a schedule of seven hours the number was two men and four

animals. Neither one of these branches of the affidavit was true. They were both false, and in both cases the falsity was against the Government. Withers, Sears, Farrish, McDaniel, and Higgason, all of them, who were successively carriers upon that route, said that, in point of fact, on the original schedule one man and two horses were used at that time, and that one man and two horses continued to be used under the reduced schedule; and not only that, but the same horses, and at various times the identically same man, continued to perform the service. Therefore there was no increase of men and carriers upon that route whatever. Precisely the same number of men and horses were used before the increase as after. That, you will see, was a direct illegality, because the statute says :

No extra allowance shall be made for increase of expedition in carrying the mail, unless thereby the employment of additional stock and carriers is made necessary.

There is not any dispute about this, gentlemen. There is not a contradictory witness from beginning to end upon this subject. Withers, Sears, Farrish, McDaniel, and Higgason, all of them carriers successively during the contract term on this route, swore to those facts. Yet Mr. Brady paid out on the route for the expedition, on the theory that the affidavit was true, \$2,630.40. In passing, let me say, gentlemen, that the pretense rendering expedition necessary upon this route was only because of a paper increase of twelve miles. I admit that on account of this addition it was fairly within the terms of the contract to pay the contractor for the extra distance; but it did not necessarily involve an increase of four hours in the time. If that increase of four hours of time had not been made there would have been no pretense or excuse for the expedition. On the route from Toquerville to Adairville the affidavit did not conform to the regulations. Very many of these affidavits did not conform to the regulations. This is one of the things which we ask you to bear in mind as showing what practice prevailed during the carnival of corruption that existed in the Second Assistant Postmaster-General's office under Mr. Brady, and how completely the affidavits that were presented failed to conform even to Mr. Brady's own regulations. The regulation is :

When it becomes necessary to increase the speed on any route the contractor will be required to state under oath the number of horses and men required to perform the service according to the contract schedule.

You will bear in mind that the contract schedule is for so many trips, leaving at such a time and arriving at such a time. Therefore the contract schedule fixes both the number of trips and the hours. The affidavits are very frequently like this on the Toquerville and Adairville route :

The number of men and animals necessary to carry the mail on route 41119, seven times a week, on the present schedule, &c.

It never was seven times a week on the long schedule. There is no pretense of that. The regulation looks to the affidavit giving one fact, to wit, the number of men and carriers that are used on the existing schedule with the existing number of trips. Now, on the Toquerville and Adairville route, as I recollect it, at that time there were only three trips being made. This affidavit says that the number of men and animals necessary on the long schedule and seven trips a week is so many, and the number necessary on the short schedule, seven trips a week, is so many. You will see there, gentlemen, at once, that the affidavit does not comply with the regulation. That regulation, Mr. Chandler told you, was binding upon the Postmaster General and the Second Assistant

Postmaster-General—as binding as the law. In differing from the regulation it defeated the whole object, or the whole pretended object, of the regulation because it became an affidavit which in both its branches was a mere matter of opinion. On its face it purported to be in that way. It never had been run seven times a week at that time. Therefore to say that so many men and horses were necessary for a seven-times-a-week service on the long schedule was a statement of the contractor's opinion, and to say that so many men and horses would be required on the short schedule was a statement of the contractor's opinion. That is one of the affidavits in pretended conformity to the regulation, to which it did not conform at all. When you come to look at it in connection with the statute which says not what is sworn to but what is the fact shall govern, the question is how many men and horses are necessary on the existing schedule and how many men and horses will be necessary in fact on the proposed rate of speed and the proposed schedule. Therefore, gentlemen, you will see that as to these affidavits there is a difficulty in making any comparison to show their falsity with absolute accuracy; but I think I can do something in that direction. On this route from Toquerville to Adairville, if we should assume that this affidavit was intended to be in compliance with the regulations, and therefore to give the number of men and horses that were used on the long schedule on three trips a week, and the number of men and horses that would be used on the short schedule and seven trips a week, we would find this condition of affairs: The original price having been \$1,168 for one trip there was allowed for expedition by Mr. Brady \$12,718.22. Taking the facts as they were, the oath states that the number of men and horses required on the present schedule is three men and six horses, making nine. In point of fact the uncontradicted evidence is that for three trips, assuming the affidavit to apply to three trips, though it appears on its face to apply to seven, the existing number of men and horses was four and ten, making fourteen; having sworn that for seven trips it only required nine, yet in point of fact for two trips it required fourteen. Now, bear in mind, gentlemen, what I called to your attention yesterday and again this morning—the result of even a slight difference, or rather a slight misstatement; an understatement of the number of men and horses actually required. Here was an understatement of at least five. They stated it as nine when it really took fourteen. Then they said that for seven trips on the short schedule it would take twenty-three men and animals. As to that the evidence is that that portion of the affidavit is about right. It took, in fact, seven men and fifteen animals, making twenty-two, according to the uncontradicted evidence before you. That being so we arrive at the result which I will give you. I have the details here, but I will not weary you with them. The result is this: Judging by the affidavit, Mr. Brady allowed \$12,718.22 a year. Judging by the fact, he could not have allowed over \$5,256 a year. There was over \$7,200 of clear stealing on the difference between the affidavit made by Peck, or purporting to be made by Peck, and the real fact as it was, the real fact as Brady might have found it out from the men who were performing the service, and as he might have found it out by communication with his own postmasters, whom he despised. On the route from Trinidad to Madison John W. Dorsey as subcontractor, which he was not, made the oath. He said it would take for three trips in sixteen hours' time one man and four horses, and for three trips in twelve hours' time—you see this affidavit is a little different in form, but I will not stop to get it out—five men and seven horses. According to the evidence we find this condition of

things: De Busk says that Mr. Duncan, who was the first man who drove under the contract, used three men and three horses where Dorsey says there were five men and horses. Dorsey made the factor five instead of six, and understated it to that extent. De Busk says he used six. Burgman put the figures at seven. The result is, giving Mr. Brady and the contractors the most liberal allowance possible, that we find this condition of things: There was allowed by Brady for expedition upon that route \$2,758.05. There ought not to have been allowed over \$255.08. On the Ojo Caliente route the affidavit is for three trips on the present schedule, but when it was made there was only one trip on that schedule, so that the affidavit does not comply with the regulations. But taking it as it is and comparing it with the facts in the case, we find that Mr. Brady allowed \$8,457.84 for expedition, and yet, giving him the benefit of the most liberal allowances made in his favor by any of the witnesses, he could not have allowed on the actual facts over \$3,233.68, being a difference of something over \$5,200. On the Redding and Alturas route we find things pretty thoroughly mixed. The oath says "on the present schedule," without specifying the number of trips. The number of trips at that time was three and the hours one hundred and eight. Assuming the oath to refer to that, we find that the oath gives three men and eight animals as necessary on the present schedule, a total of eleven, and says that to reduce it to seventy-two hours it would require six men and eighteen animals, making twenty-four. If those figures were correct then the allowance for expedition might have been \$21,230.19; but upon this jacket we find the figuring to be that the allowance for expedition could have been \$10,419.12, understating the allowance that might have been made for expedition. But it goes on and immediately states that the allowance for three trips could have been \$19,401.12, when in point of fact the allowance that could have been made for the trips could not have exceeded about \$17,000. It is all mixed up in the statement, therefore it is naturally mixed up in the order which Mr. Brady made. Mr. Brady there committed another illegality. The order is:

■ Increase the service three trips per week and reduce the running time from 108 hours to 72 hours, allowing contractor \$26,946 per annum additional, being less than pro rata, but in accordance with his written agreement, from December 16, 1878.

That is an allowance of \$26,900 for a reduction of twenty-six hours and for an addition of three trips, and yet the law says:

Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service—

That is to say, shall not be in excess of pro rata—

and when any such additional service is ordered the sum to be allowed therefor shall be expressed in the order and entered upon the books of the department.

Gentlemen, there is not any escape from it. If \$26,946 is claimed to be the amount for the increase of service, then it is in excess of the proportion allowed by the statute. If it is not solely for increase of service, as it clearly is not, but is for a combination of trips and expedition, then the order does not comply with the branch of the statute which directs that the amount to be allowed shall be specified in the order. There is no possibility of escaping from that dilemma. The order is an illegal order on its face in one form or the other. I have not been able to find an arithmetician who was able to work the problem out so as to tell me just how much of that sum belongs to service and how much belongs to expedition. The best calculation that I have been able to make upon the subject is, that taking the oath as true, which obviously is absurdly false, there might have been allowed for

expedition \$29,230.18; but if you take the facts as they were, the number of men and horses actually used and the number of men and horses which after the order was made were required to be used, there could not have been allowed over \$5,826, where there might have been allowed \$21,230.18 under the oath. Under any circumstances, treating as coming into the \$26,900 all the pro rata that could come for trips, his order, instead of being for less than pro rata, is beyond all question an order greatly in excess of pro rata. Under any circumstances it is an illegal order in not stating the amount allowed for increase of service. If it is claimed that the \$26,000 is the amount allowed for increase of service then it is an illegal order, because the amount is beyond the amount which the statute permits. On the route from Eugene City to Bridge Creek the oath is a little different in form apparently, and yet we may get something from it, bearing in mind that although there was only one trip being then performed, it is an oath which was framed on the idea of three trips apparently. On the oath Mr. Brady allowed \$14,486.10 as the amount for expedition. Taking the undisputed fact as to horses and carriers as they were before and after expedition he could not legally have allowed more than \$2,991.23. On the route from The Dalles to Baker City the oath speaks of the number necessary without specifying the trips. There was allowed upon that oath by Mr. Brady \$18,648 for expedition, and yet, taking the most favorable evidence that can be got on that subject in any manner, we find that there could not be legally allowed over \$4,144. I have the details of the calculations, but probably they would find no lodgment in your minds and I will not therefore read them. I simply say that I have taken the oaths and had them tested each way, and I find that the amounts upon all the routes that I have mentioned agree with the amounts which the oaths purport on Brady's jacket to call for. Then I have taken the evidence in the case. I have taken the statement of the man who gave the lowest number of men and horses on the existing schedule, and the man who gave the highest number of men and horses on the proposed schedule, so that in both cases I have counted against the Government, and the results to which I have been led are those that I am giving you. On the route from Julian to Colton the oath is defective in the same manner. It speaks of three trips on the present schedule when in point of fact only one was being made. Mr. Brady could, under the oath, have given for expedition \$7,128. He gave \$7,128. Although the oath differed in the details the error was on each side, and therefore it agreed with the facts in its results. On the route from Silverton to Parrott City Mr. Brady allowed \$10,549.51. The oath is there made for seven trips on the present schedule, but seven trips were not then being performed. That is another case of the oath not conforming to the regulations or the statute. Under the oath Brady could have allowed \$10,549.51 and he did allow it; yet under the facts he could only have allowed \$4,576.74, making a difference there of about \$6,000. On the Vermillion and Sioux Falls route he could have given, under the oath, \$3,680, and he gave it; under the facts he could have given only \$374.13, making a difference there of some \$3,200. I will not trouble you by going through and making an analysis of the amounts that might on other routes have been given under the oaths and under the facts. I simply give you those as specimens, and I say to you that they show beyond dispute that there was gross violation of the law upon Mr. Brady's part uniformly and constantly, and that the violation in every case was in favor of the contractor. You never find a mistake

against a contractor. You never find a mistake in favor of the Government. It is all the other way.

But, gentlemen, Mr. Brady was not content with extravagance and illegality as exhibited in this form. He showed it in other forms. On the route from Toquerville to Adairville, on the 19th of June, 1879, the appointment office reported that the terminal office of Adairville had been discontinued. John W. Dorsey was out there and made a subcontract about that time, and he made it based upon the idea that there would be a discontinuance of Adairville, and that the route would terminate at Pahreah, and in that way ten or twelve miles of the route would be cut off. He made his subcontract upon that basis, and in one of his letters to Johnson, the subcontractor, he refers to that fact. On the 19th of June, 1879, twelve miles were in fact cut off the end of the route. On the 8th of July, twenty days afterwards, Mr. Brady made an order for expedition, and he made that order for expedition over the entire route. In other words, the contractor was to be paid for an increase of speed over the twelve miles of the route between Pahreah and Adairville which had been abolished twenty days previously, and of which notice had been given. He made that order on the 8th of July. The actual order in the Second Assistant's office cutting off those twelve miles was not made until the 14th of July, six days after Mr. Brady's order for expedition, though they had had notice twenty days previously of the cutting off of that distance. But the order for expedition did not take effect until the 1st of August. The order taking off Adairville took effect at the same time, though made on the 14th of July. Yet Mr. Brady paid on the order for expedition the month's extra pay reckoned upon the sum to be allowed for expedition after the 1st of August, when there was no possibility of going over that portion of the route in that way, and not upon the amount that was actually being paid at the time when the office was abolished. The result, gentlemen, was this: that the month's extra pay was reckoned on \$20,894 instead of on \$3,504. It was the difference between dividing \$20,894 by twelve and dividing \$3,500 by twelve. It was a small steal, but it was a steal. I have told you how Raton was put on the route from Trinidad to Madison. I am not going over the story again to tell you how unnecessary it was. It was declared that Raton added twenty-three miles, although the schedule of distances from their own postmasters showed it only added sixteen miles. The route was let as forty-five miles and at thirteen hours, and they added twenty-three miles, which brought it up to sixty-eight miles. Then there came in expedition, and the result was that of the amount allowed for expedition \$900 was absolutely for the alleged increase of distance for Raton, which did not exist to the extent named. I ought to say, because I shall probably be followed by gentlemen who will be accurate with regard to these details, that one of the orders connected with Raton is an order not made by Brady, but an order made by French. It is an intermediate order, but Mr. Brady adopts whatever may have been in French's order by including it in his order for expedition.

In the same way, on the route from Silverton to Parrott City an allowance is made for ten miles' extra distance for Animas City, when in point of fact the schedules in the department at that time showed that Animas City was a post-office receiving its letters upon that route, and the carriers always went by Animas. That carried the total distance up to sixty-five miles.

I have not said anything, gentlemen, as to the construction of the act of April 7, 1880, because I perceived that in my absence, during Mr. Ker's remarks, it was the subject of some discussion between counsel

and the court. All that I desire to call your attention to was this: that after that act was passed large increases were made on the Ojo Caliente route, as appears by 11 F; on The Dalles route, as appears by 19 L; on the Canyon City route, as appears by 19 H; and on the Redding route, as appears by 28 G. There were also two increases upon the White River route, one upon the Mineral Park route, and one upon the Tres Alamos and Clifton. All of which were in fact, and apparently in form, violations of that law.

Mr. WILSON. Will you allow me to interrupt you?

Mr. BLISS. Yes.

Mr. WILSON. I would like to know whether in these cases, to which you are now referring, you claim that there was increase of trips with expedition.

Mr. BLISS. I am going on to speak about that. As I said, they were in fact, if not in form, violations of the law. The orders describe them as increases, and yet the statute says, as I recollect—perhaps Mr. Ker can give me the precise language of that statute of April 7, 1880—it says in fact that it shall not exceed 50 per cent. of the contract price, I think.

The COURT. The letting.

Mr. MERRICK. The original letting.

Mr. BLISS. [Reading:]

Not exceeding 50 per centum upon the contract as originally let.

Mr. WILSON. What page?

Mr. BLISS. Richardson's Supplement, page 514.

Take for instance, if you choose, the route from Canyon City to Camp McDermitt. There is an order made upon the 16th of July, 1880; of course after the passage of that statute. It is an order in form for an increase of trips, and it says that the trips shall be increased four, and that there shall be allowed for the four trips \$28,666.66. Now, for four trips, of course, as they cannot allow beyond pro rata, that must be allowing over \$7,100 per trip for those four trips. And yet the original contract price for one trip was \$2,888. They allowed, in fact, for an increase of trips at the rate of over \$7,100 when the original contract price was only \$2,888. And yet they urge here that that is not a violation of the law which says that you shall not allow for extra expedition more than 50 per centum of the price at the original letting. They claim that it is not an allowance for expedition, because they describe it as an increase of trips. If that were the correct construction I do not see why they might not upon a given day make an increase of 50 per cent. on expedition, keeping themselves within that statute, and then at a later period on the same day increase the trips, and in that way claim that by cutting that cherry in two and describing it as expedition they are within the law. Now, gentlemen, I am not going to spend any time in arguing that with you. I simply desire to call your attention to the fact that in that way, under the pretense of increases of trips, there were taken from the Treasury by Mr. Brady in violation of the spirit of the law, beyond all question, the following sums:

On the Ojo Caliente route, by an order made in February, 1881, he took for four trips \$17,910. That, of course, is at the rate of somewhere about \$4,500 per trip. And yet the original contract letting per trip was only \$2,745.

On the route from The Dalles to Baker City, Mr. Brady, by an order made on the 16th of July, 1880, added one trip and took from the Treasury \$10,360. And yet on the contract letting one trip was only \$4,144.

I call your attention to the fact that on the route from Redding to Alturas, on February 11, 1881, Mr. Brady took from the Treasury for increase of one trip \$5,988. And yet \$5,988 was the precise sum which, under the contract letting, was payable for two trips.

On the route from Rawlins to White River, by an order made on the 8th of March, 1881, which Mr. Brady did not revoke when Mr. James told him to, he took from the Treasury, under pretense of four trips, \$18,275, amounting to somewhere about \$4,500 a trip. And yet the original contract price per trip was \$1,700. And, as we say, under the construction of that law, beyond all question he could take only \$850 for expedition, and in point of fact he allowed \$18,275.

On the route from Mineral Park to Pioche there is a little whipping of the devil around the stump. Brady, on the 28th of January, corrects his order of the 22d of January. On the 22d of January he cut off expedition and all extra trips over and above the contract price. On the 28th of January he allows for a reduction to sixty hours and for six trips a week \$29,733.33. There was no expedition. At that moment, when he made that order, there was no expedition, no increase of trips. And yet he goes to work and makes an allowance—no matter what the form of the order is, it is in effect an allowance—for \$29,733.33, when he could have allowed but \$1,450. That order is in the form of rescinding the order that he had made on the 22d of January, and then going on and making another order. It is not rescinding part of the order and leaving the rest to stand, but it is absolutely rescinding that order and making a new one. It therefore stands as a new one.

On the route from Tres Alamos to Clifton, on the 11th of February, 1881, Brady made an order for increase, four trips, allowing \$15,950.62, and yet the original contract letting for one trip was only \$1,568. Now, whether the law is to be evaded in that way, whether you can get around it by simply first expediting the service and running it up above ten or fifteen times the amount of the original contract letting by saying that you have paid nothing for expedition but you have paid it for increase of trips, is a question of law which I do not propose here and now to argue. I call your attention to it merely in this point of view: that, no matter in what way you look at it, it was in fact either a violation of the law, or it was a violation of the absolute and obvious intention of the legislators in that respect. What they intended was to put a stop to these extravagant increases, and they supposed they had done it by the language they had used. I doubt whether any language could have stopped Mr. Brady.

I call your attention, on the route from Pueblo to Greenhorn, to another instance of Mr. Brady's extravagance, even though it was in little matters. When the route terminated at Saint Charles and before it was extended to Pueblo, the route over that additional twelve miles was being carried by one E. M. Ames, under a temporary contract made with the postmaster at Pueblo, at the rate of \$275 a year, and he gave notice to Mr. Brady, by a paper which we produced here, that he was carrying it at that rate. He also gave notice of an offer to continue to carry it at that rate. Now, Mr. Miner says that Mr. Ames was his carrier, and not only his carrier but he was his nephew, and that he had authority from him to sign his name; and it appears in a certain case that Mr. Miner does sign his name to withdraw his subcontract. There was also a subcontract with Ames, which subcontract contained a provision that he was to perform the service over the whole route for the sum of five hundred and odd dollars, and that if it was extended to

Pueblo he was to perform the additional service for some \$60 or \$70 more, as I recollect. That subcontract was on file, placed there, Mr. Miner says, to cut out some post-office drafts. However that may be, it was there, and showed those two facts, showed the temporary contract that Mr. Ames was performing, and Ames's offer shows that he was willing to perform the service for the whole term for something less than \$100. And yet, when they extend, the route from Saint Charles to Pueblo, Mr. Brady makes an order allowing—there is allowed for that extension \$328.80. I said Mr. Brady allowed, and then I stopped, because I am not positively certain but that order was made by Mr. French, as various small ones were. But having been put up in that way to \$328.80, when it came to expedition the result was that that \$328.80 was multiplied under Brady's order, and it figured, in connection with the whole thing, at something over \$1,000 as applicable to that portion of expedition. Yet that service, on the subcontract on file, could have been obtained for \$100. Three hundred and twenty-eight dollars and eighty cents was paid for it.

On the route from Kearney to Kent, I think it was, that Fitzalon was added on the 3d of May, 1878. September 24, following, an order was made first giving fifteen miles more of distance and allowing therefor \$112.42. We say that the uncontradicted evidence is that Fitzalon involved no increase of distance. They went through Fitzalon before; they went through Fitzalon afterwards. It is right to say that the other side have mixed this up in connection with the Cedarville business. But however that may be, they went through Fitzalon before the order was made, and they went through Fitzalon after the order was made, and they went through it in precisely the same way. When it came to expedition the result was that the addition of the fictitious fifteen miles cost the Government \$664.48, when expedition came to be applied over that distance.

Another form of illegality in connection with these things is in making orders retroactive. The statute, as you remember, says:

No compensation shall be paid for additional regular service rendered before the issuing of such order.

It is a statute providing for increase of compensation, for increased service. Compensation for additional service shall not be in excess of a certain sum, and—

No compensation shall be paid for additional regular service rendered before the issuing of such order.

Now, Fitzalon having been put on this route on the 3d of May, 1878, Mr. Brady on the 24th of September, 1878, ordered that \$112.24 should be allowed for it as from the previous 1st of July. He did not need to go back any farther, because the 1st of July was when his pets, these present contractors, commenced the service. Remember that Fitzalon was on the route before this contract commenced, and yet there having been no specification in there of allowing anything more for it, for the reason that there was no reason for allowing anything more, because it was directly on the route, on the 24th of September, 1878, as I say, Mr. Brady ordered that \$112.24 should be allowed for it, and made it retroactive back to the 1st of July.

On the Raton route, Raton was put on the route April 24, 1879. And yet by order it was paid for from the 1st of July, 1878.

Pagosa, so far as we can find, was never in any form placed upon the route from Ojo Caliente to Parrott City. There were two or three roads there running at different distances over the mountains, and differently

available at different seasons of the year. The route by Pagosa was, if not the longest, certainly not the shortest. There never had been any order putting it on. And yet the order there is made increasing the allowance for Pagosa, and antedated, I think, nearly a year; that is my recollection. The order for the extra allowance was given on the 24th of April, 1879, to commence on the 1st of July, 1878. There never was any formal order, apparently, putting Pagosa on the route. We had the clerk here with the route-book containing all the orders, and that did not appear. Pagosa had, however, been recognized in some of the distance circulars as apparently on the route. The distance circulars give us the distance by Pagosa, and give us the distance the other way, and the contractor had during a portion of that time, beyond all question, gone by Pagosa. At the same time there had been no order putting it on the route and no allowance of money for it. And yet on the 24th of April, 1879, Mr. Brady ordered \$190.62 a year to be added to it as from the 1st of July, 1878, notwithstanding the statute stated that—

No compensation shall be paid for additional regular service rendered before the issuing of such order.

And this order making that extra allowance for Pagosa is made two or three days before Mr. Brady makes another order granting expedition upon that route. So that he makes the order retroact about ten months, and just at the time he is fixing a nice little deal to give them expedition, and that extra fifteen miles in there makes a very pretty record in counting up the money.

Then, gentlemen, on that same route, you remember that on the 26th of February, 1881, Mr. Brady ordered four trips over the whole route at a cost of \$17,910.72, and he directed it to antedate one month and eleven days over the whole route.

Mr. WILSON. What route is that?

Mr. BLISS. That is the Ojo Caliente route. He did that upon petitions which asked only for an increase of trips over fifty-nine miles of the two hundred and seventy-five miles of the route. I think it is somewhere about two hundred and seventy-five miles. By that order he paid out from the Treasury \$2,011.46 illegally, beyond all question. Of that amount the subcontractor, the man who was doing the service, got only a little more than half and these contractors got the other half for doing nothing.

Now, that particular order, gentlemen, is attempted to be excused by a telegraphic dispatch, which is upon page 4346 of the record, and which Mr. Brady sent to Mr. Sanderson, who was then apparently performing the service under some subcontract with the contract or upon the route. But that dispatch read thus:

[By Western Union Tel. Company.]

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., January 13, 1881.

To J. L. SANDERSON,
936 Chouteau avenue, Saint Louis, Missouri:

You are hereby authorized to begin daily service from Chama to the nearest point on the Ojo Caliente route, 25 miles, and increase service to daily on Ojo Caliente route from the junction made to Animas City, from the 15th instant.

THOMAS J. BRADY,
Second Assistant Postmaster-General.

Charge P. O. D.—T. J. B.

That dispatch authorized them to make daily service over a new route until they struck this route, and then to make daily service from

the point where they struck this route until they got to Animas City. And without stopping to show you the map, the fact about it is that the distance from where they struck Animas City is something less than sixty miles. Therefore, that telegraphic order can only be reckoned as authority for an increase of trips over those sixty miles, and it cannot be, by any pretense whatever, regarded as authority for the increase over the balance of the route, some one hundred and sixty miles more.

That order, let me say, is not only an order made in violation of the spirit of the act of April 7, 1880, but it is an order for increase of trips from Ojo Caliente, when I have already shown you that for fifteen miles between Ojo Caliente and the railroad at this end there was at that time no connection except once a week.

Perhaps here, gentlemen, it is just as well to call your attention to one or two figures that I have. Mr. Brady made in all, for increase of trips, twenty-six orders that are in evidence in this case. All of them allow pro rata. He made orders for expedition which, on their face, allow pro rata; that is to say, they say on their face they are pro rata, and the pro rata is governed by the affidavits. If he had made orders not by the affidavits but by the facts, every one of his orders for expedition but one would have been in excess of pro rata. He made ten orders for trips which included expedition because there had been previously expedition ordered, and therefore the amount for that expedition went into the aggregate, which he then multiplied by additional trips. On three trips it appears on the papers that for expedition he claims to have allowed less than pro rata. Those are Tongue River, Dalles, and Julian.

As to the Tongue River order he claims to have allowed for expedition less than the pro rata amount, basing it upon Miner's absurd affidavit of one hundred and fifty men and one hundred and fifty horses. If he had placed it upon Miner's other affidavit, which other affidavit was not correct, but at any rate very much less, his order for expedition would have been in excess of pro rata.

On the route from Julian to Colton he claims to have allowed less than pro rata. Judged by the facts he allowed just pro rata.

And on the route from The Dalles to Baker City he claims to have allowed less than pro rata, when, judged by the facts, he allowed greatly more than pro rata, something like three times pro rata.

There are three orders which violate the statute to which I have directly called your attention, in not specifying the amount allowed for trips. They are combined. The order includes expedition and trips, and notwithstanding that the statute says expressly that the amount allowed for additional service shall be expressed in the order, it is not so expressed. Those three routes are from Mineral Park to Pioche, Canyon City to Fort McDermitt, and Redding to Alturas, and in each one of those he says he allowed less than pro rata. As near as I can make it, on the route from Redding to Alturas he allowed greatly more than pro rata, while on the Mineral Park to Pioche and Canyon City to Fort McDermitt he did allow something less than pro rata, but that is dependent upon the question whether I am accurately calculating the division as between trips and expedition according to the way that he reckoned it.

I will pass briefly over this, for I am taking more time than I anticipated.

There is other evidence that Mr. Brady had before him that he was allowing, when he made this allowance for expedition, greatly more than the law required and more than he was justified in allowing, because it

was greatly more than the Government needed to have paid. That evidence we find in part from the papers on file in the department and in part from the papers in evidence here. In many cases it appears from the subcontracts themselves, the subcontracts made in accordance with the subcontract law, many of them being on file in the department. There was a direct provision in them that the man who was to perform the service was to get very much less than the amount that the Government was to allow. Sometimes it is put in as a percentage; he was to get only a percentage of the amount to be allowed. That is the case in the subcontract upon the Kearney and Kent route; true also in regard to the subcontract upon the Rawlins and White River route; true also upon the Redding and Alturas route. In the Redding and Alturas route the amount put in to be allowed is not declared to be a percentage. In the others it was. But on that route the provision in the subcontract is that the subcontractor was to be allowed \$4,000 in gross, provided expedition was made to a certain amount. That showed that the parties who were performing the service, and who were to perform the service, were to get only \$4,000 in case of expedition. And yet in the face of that provision in the subcontract on file, Mr. Brady allowed for expedition and trips together, putting it into one order, \$26,946. Under the subcontract law, when a subcontract was on file, Mr. Brady was compelled, when he made an order for expedition, to provide that so much should go to the contractor and so much to the subcontractor, the man who was performing the service. But bear in mind, gentlemen, that Mr. Brady was to allow from the Treasury only the amount necessary to procure the service to be fairly performed. Yet on the Ojo Caliente route Brady, in an order dated 26th of February, 1881, directs that \$17,910.72, shall be paid from the Treasury for increase, and he provides in the same order that the man who is to do the work shall get only \$1,066.64 for it.

They tell you that he had no hold on the subcontractors, and that he had a hold on the contractors. But you must bear in mind that, while that is true in one sense, the subcontractor was willing to perform the service and subject himself to all fines and deductions. The contractor was to have no fines and deductions. It would have been very easy for Mr Brady to say to the contractor, if he had been an honest and faithful officer, not in collusion with them: "I have here on my files the evidence that that service can be performed for \$10,000. I cannot give you \$18,000; I will give you \$10,000; or if you choose, I will give you \$12,000, and if you do not like that throw up your contract." But no contract was thrown up. Mr. Brady did not act in that way. He gave these men up to the very outside of their own affidavits, which stated the amount they claimed, and then he gave a beggarly fraction of it to the man who was actually performing the service.

Under the same circumstances, on the route from Eugene City to Bridge Creek, Brady put into his order that the Treasury was to pay \$14,486.10 to the contractor, and yet the man who performed the service was to get but \$6,971.02 for it.

On the Redding and Alturas route Mr. Brady paid from the Treasury \$5,098 to the contractor, and the subcontractor was to get only \$2,000.

I have called your attention to the fact that on the Greenhorn route Mr. Ames was the subcontractor, and that he was getting \$548. But if it was extended to Pueblo he was to have \$612, or an addition of only \$64. When Mr. Brady extended it to Pueblo he added \$328.80.

These are subcontracts, gentlemen, that are on file, where Brady's

order had to direct this division between the contractor and subcontractor, and where he cannot plead that he knew nothing of the facts. But the others not on file, which we put in evidence, show precisely the same condition of things.

It appears, for instance, on the Toquerville route—and there is something perhaps worthy of note in that connection—that Mr. Johnson was to have \$1,000 additional if the route was increased to four miles and upwards. The contract gave him for one trip \$1,127; for three trips \$3,381; for six trips \$6,381; for seven trips \$7,444. And if the speed was increased he was to get \$1,000.

That contract was so satisfactory to Mr. John W. Dorsey that he burst out into correspondence and wrote back to Mr. Johnson that the contract “brought it nearer to pro rata than any I have made since I left home.” And yet under that contract Brady made an order under which John W. Dorsey & Co. got \$19,311.33, while Johnson, the subcontractor, got only \$8,444; and he did all the service, ran all the risks of the fines and deductions, and he paid all the fines and deductions.

On the Canyon City route in the same manner the service was performed for \$10,000. Brady paid for it \$50,166.66, and Vaile says that there was \$20,000 profit. The subcontractors got \$10,000. Brady paid \$50,166.66. That left \$40,000, and of that \$40,000 Mr. Vaile says there was \$20,000 of profit. Where did the odd \$20,000 go? Does it not come pretty nearly to Mr. Walsh’s 30 per cent.?

At another time upon that route McBean and Brown were together paid \$11,000 for a service for which Brady was paying \$21,500.

On the White River route Foote & Dalton were paid \$10,000 for what Brady paid \$13,706.25.

On the Ojo Caliente route Jaramillo was paid \$6,200 for what Brady paid \$13,434.04.

Joseph, on the same route, at an earlier stage, was paid \$2,360 for one trip, \$3,800 for two trips, and \$5,300 for three trips. Brady was then paying \$5,252.42, and he then added enough to it to make it up to \$14,710.24, of which Mr. Joseph got only \$6,252.42. And when Mr. Joseph remonstrated upon the subject there came a letter from Mr. Stephen W. Dorsey which is worth reading. Bear in mind that \$14,710.24 was being paid, and Mr. Joseph was getting only \$6,252.42. He had apparently written to Mr. S. W. Dorsey and at page 1104 we find Mr. Dorsey’s answer:

Your statement that it would cost \$12,000 to run this service in fifty hours is equally absurd.

Brady was paying \$14,710.24, and Mr. Dorsey says:

Your statement that it would cost \$12,000 to run this service in fifty hours is equally absurd. That would be at the rate of \$26 per mile per annum—

Brady says \$30 was a proper rate. Mr. Dorsey says—

while the average cost of horseback service is less than \$5 per mile per annum.

Now, there is the difference. Mr. Dorsey was getting his \$14,710.24 from the Treasury, and when his subcontractor remonstrated with him, saying that it would cost \$12,000, Mr. Dorsey replies that the statement that it would cost that to run the route is absurd. And yet you are asked to believe that Mr. Brady’s order allowing that amount to Dorsey and his associates was a proper and honest order.

On the Silverton route, on page 1861, Steineger appears as receiving \$9,400 as subcontractor, while Brady was paying \$16,512.28. At an earlier stage only \$5,400 was paid to the subcontractor, while Brady was paying \$16,512.28.

On the route from Kearney to Kent it appears that French got \$1,587.40 for service for which Brady was paying \$4,302.65.

On the Greenhorn route Farrish, McDaniel, and Higgins each successively got \$840 for performing the service for which Brady was paying \$3,945.

On the route from Eugene City to Bridge Creek Mr. Powers got \$12,000 for performing the service for which Brady paid \$21,460.89.

On the route from Trinidad to Madison the subcontractor got \$2,402.30, while Mr. Brady paid \$4,290.30.

On the Pueblo and Rosita route Mr. Brady paid \$8,148, and by the subcontract it appears that the subcontractor took it at \$3,100, and he had so good a thing that he let it to a sub-sub. at \$2,600. Two thousand six hundred dollars was the amount actually paid for performing the service, and yet Mr. Brady paid for that service \$8,148.

Now, gentlemen, can these things be justified by any consideration consistent with Mr. Brady's capacity and Mr. Brady's honesty. I submit that they cannot.

On the question of pro rata, to which I have made a little reference, Mr. Brady claims, or his counsel claim, that under the contract the parties were entitled to the pro rata on any increase of service; that if they had taken a contract at \$1,000 they were entitled, under the terms of the contract, when one trip was added to the \$1,000, to be paid \$2,000; when three trips, \$3,000. That that allowance was an extravagant and unnecessary sum abundantly appears in the papers in this case.

We find by the subcontracts which Mr. John W. Dorsey made with French that he provided, for one trip, \$700; for two trips, \$1,300; for three trips, \$1,800; for six trips, \$3,300; and he said those are the terms, and the man who will accept those terms gets the contract.

On the route from Toquerville to Adairville we find a somewhat similar sliding scale: One trip, \$1,127; three trips, \$3,381; six trips, \$6,381; and seven trips, \$7,444.

On the Ojo Caliente route, Joseph's subcontract: One trip, \$2,200; two trips, \$3,800; three trips, \$5,300.

On the route from Redding to Alturas we find: Two trips, \$5,500; three trips, \$7,500; six trips, \$15,000; seven trips, \$17,000.

And so it goes on all the way through, showing that the contractors, the defendants, the subcontractors, and everybody recognized the fact that, as a matter of justice and fair dealing, when the trips are doubled it does not necessarily involve a doubling of the expense; that there is, as every one must see, a certain amount of increase which does not involve a proportionate amount of expense; that it does not increase in proportion with the increase of trips. But that is claimed to be defended by the fact that there is a provision in the contract which says so. There was no provision in the contract which obliged Mr. Brady to make increases. It was perfectly possible for him to say, "I will not make this increase and give you these additional trips which you are moving heaven and earth to get, unless you take it upon fair business principles at something less than pro rata. If you claim under the contract, I cannot, as you say, force upon you increase of trips, unless you get pro rata, but I can refrain from giving an increase of trips." That was possible to do. That assumes that the contract was in accordance with the law. But, gentlemen, you will see that the law does not say that it shall be given pro rata.

The law says that—

Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service.

It places the outside limit beyond which it shall not go. There is incorporated in the contract a clause saying that in case of increase they are to have the extreme outside limit; and that being in the contract, of course, in some measure, acts as a shield to protect Mr. Brady from any charge of criminality in that connection. He had no right to regard it, even if it was in the contract. If the contract contained an illegal clause he had no right to follow it. All I have to say is that if this were the only charge against him, if this were the only blot upon his escutcheon, if that were the only thing to lead you, as it has led us, to believe that he was guilty of corrupt misconduct as Second Assistant Postmaster-General, we certainly should not be here presenting this case to you. But being here, considering these matters in connection with others, we think he is not entitled to the same presumption from his actions in connection with them that a man with an unblotted escutcheon would be who had done such a thing.

I ask you to bear this fact in mind: that these contractors were originally getting from the Government less than they had to pay to get the service performed, and that Brady promptly came to their assistance and transformed their losing contracts into largely gaining contracts.

On the route from Pueblo to Rosita they got originally from the Government \$388, and they had to pay to the subcontractor \$700. Mr. Brady carried that amount up to \$8,148, while they paid the subcontractor \$2,600. They got a profit of over \$5,000 upon a contract which originally was losing them something over \$300. On the Silverton route they got originally from the Government \$1,488, and they had to pay \$2,280. (I am speaking now of subcontracts which are in evidence here.) Mr. Brady carried the amount up to \$14,870.01, multiplying the original \$1,488 by almost ten. And while they had to pay originally \$2,280, they now paid no more than \$9,400 to the subcontractor. So that the contract, which was originally a loss to them of nearly \$800, was paying them a profit of something like \$5,400.

On the route from Eugene City to Bridge Creek the original sum from the Government was \$2,468, and they had to pay for having the service performed \$2,700. Brady kindly increased the amount the Government paid them to \$21,460.89, almost multiplying it by ten, and then they paid out only \$12,000, leaving a profit of \$9,400 on a contract which was originally a loss to them of between \$200 and \$300.

On the route from Mineral Park to Pioche they lost originally about \$1,800. Mr. Brady paid originally \$2,982, and it was increased to \$49,051.33. The exact amount they paid to the subcontractors after the increase we have no means of ascertaining in this case.

On the route from Rawlins to White River the original contract was \$1,700, and it cost them to get the service performed originally \$2,500. And yet they finally received from the Government \$31,981.35, of which they paid out for getting the service performed something less than two-thirds.

That I may not have to trouble you to-morrow with any of this class of statistics, let me call your attention to two little fragments of evidence which have crept into this case, and which will take me but a moment. It is evidence which shows how extravagant Mr. Brady was by his secret orders, made without competition, as compared with what might have been obtained by open and public bidding.

On the route from Julian to Colton it crept in incidentally that the service is now being performed for \$2,400 a year on a thirty-hour schedule. Brady paid for a twenty-six hour schedule \$8,910.

On the White River route it appears that the service is now being performed under advertisement and public bidding for \$7,000 by a contractor who says it is a very pretty schedule and a very pretty contract to have. And yet Brady was paying \$13,706.25. The present schedule is a changing schedule, less in summer and more in winter; but applying to it the average which Mr. Brady claimed to apply in his order on the Eugene City and Bridge Creek route, and which he said made it all the same, the old schedule and the existing schedule are substantially identical.

Shall I stop now, your honor.

The COURT. Adjourn the court.

Thereupon (at 4 o'clock and 2 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

WEDNESDAY, MAY 2, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. BLISS. [Resuming.] May it please the court, and you, gentlemen of the jury, I have discussed substantially all that I desire to call to your attention in connection with the financial portion of this case, and the evidences of Brady's extravagance for the benefit of these defendants; and it must naturally have occurred to you, as it would occur to any one, in connection with the facts, that Brady's action in that respect could not have been the action either of a careful or of an ignorant man, but was the action of an interested and a corrupt man—an action for the benefit of these defendants. I now wish to call your attention for a few moments to some of the papers upon which Brady acted in one or two cases. I have already called your attention to the fact of his granting expedition and assigning as authority for it petitions or letters which asked only for increase of service. On the Kearney and Kent route I called your attention to the fact that there was no paper on file asking for expedition, except the single altered petition into which the words "schedule thirteen hours" were inserted. Upon the route from Trinidad to Madison, Mr. Brady, on the 22d of April, 1879, ordered an increase of two trips, and on the 9th of May, 1879, ordered expedition, the two trips costing \$1,021.50 additional, and the expedition costing \$2,758.05. The order for expedition was made upon two papers, and two papers only, so far as I can find. Those papers are, first, a letter from Mr. Belford, which is found on page 1020 of the record, in which he asks an increase of speed, not naming the time; and, second, a letter from New York, from Mr. J. B. Chaffee, in which he asks that the service be increased. Those are the two letters and the only two letters. There is nothing I am aware of on that route asking for that increase except simply the letter of Mr. Belford and the letter of Mr. Chaffee. Mr. Belford was then a member of Congress. Mr. Chaffee had been a Senator from Colorado, but had removed to New York City, and wrote from New York City. On the Mineral Park and Pioche route I called your attention to the fact that there is a single letter from the Delegate, a letter from General Fremont, and a bogus petition, in which Mr. Miner admits he inserted the word "Ehrenberg," accompanied by the other petition on

the other route in which Mr. Rerdell made the insertion. That is all there is for an increase of twenty-two or twenty-three thousand dollars; and all there is for the subsequent increase of \$29,733.33 on the same route is the letter of Sidney Dillon. When Mr. Brady operated in that way, and dealt in that way, and acted on his moods, and spent the public money in that way, is there any reason to be surprised that, having made an estimate for the amount needed from Congress, and Congress having given him all the money he asked for, although being economically inclined, and that being almost the only appropriation which they did give up to the full amount that was asked, before six months of the year had passed he found himself threatened with a deficiency and he was obliged to go to Congress and ask an appropriation of \$2,000,000 more. Pending his attempt to get that appropriation through Congress he was obliged to cut down all the star-route service in the country that was over one trip a week by one trip a week, and he was obliged to allow therefor to the contractors the month's extra pay upon the entire star-route service of the country for service not rendered, because he directed that it should not be rendered. He was obliged to incur all that expense, and then, having done that, he did finally, by aid of the fund to which Mr. Walsh was invited to contribute \$8,000, the corruption fund for Congress, get an appropriation of about \$1,150,000. Is it any wonder, gentlemen, in view of the way I have shown you that he went on and distributed the public money, that he incurred a deficiency? Is it not rather a wonder that Congress even gave him that qualified approval which he took so much pleasure in upon the stand, saying they did not approve any of his acts, but would authorize him to have \$1,100,000 more, and forbid him to expedite any more routes to an extent of more than 50 per cent. over the original contract price.

Mr. WILSON. Allow me to interrupt you. Do I understand you to say that Brady made a general order cutting down all the star-route service one trip?

Mr. BLISS. Yes.

Mr. WILSON. Can you show me that order?

Mr. BLISS. I cannot show you Mr. Brady's order, but there are in evidence, as the jury will remember, printed letters of these defendants which they sent to all their subcontractors, notifying them that Mr. Brady had made an order reducing the service by one trip. On the stand, I think, I asked him about the same thing. It is my recollection that I did. The subcontractors were notified of the reduction, and they were told that it was done pending the Congressional appropriation, and they were advised to tell their people to get up petitions to Congress so as to aid in getting the appropriation through. In one or two cases the subcontractors were told that the service would not be off but a little while and there would not be any great loss to them, because they could make use of the time in bringing up their stock. The order of Mr. Brady upon that subject of course is not in evidence. There are in evidence in several cases the orders of Mr. Brady cutting off service on specific routes, and there are several of those circulars sent out by Miner and the others which stated that that was the condition of things, and they stand uncontradicted.

Now, gentlemen, Mr. Brady did all these things upon the oaths to which I have referred. As to those oaths I desire to call your attention to one or two things, taking the oaths in the aggregate. I have here, gentlemen, all the oaths that were used in this case. There was expedition upon eighteen of the nineteen routes, and upon two or three of them there were double oaths

filed. I want to ask you, gentlemen, to examine these oaths as a whole. You will find beyond all question, as your eyes will show you, that every one of these oaths, with two exceptions, have been either altered by operative words being written over erasures, to wit, the numbers of men and animals, or else altered by having obviously been written in blank, and the blanks subsequently filled, as Mr. Miner was compelled to admit upon the stand was the fact—every one of these oaths which was submitted to Brady other than two, I think, to wit, one made by Miner and one made by Vaile. It does not occur to me that there are any other exceptions to that rule. All the rest are altered in that way. Now, we can well understand, gentlemen, that there may be cases where a party having written an affidavit of this kind may have made some error in the writing, or something of that sort, and may have changed a figure occasionally to correct his error, but it is not within the bounds of reasonable probability, gentlemen, that these parties would on all of these oaths make mistakes of that kind and have to correct them. It is only consistent, I submit, with the theory that these oaths are not what they purport to be, that they were false, forged, changed, and altered at some time and somewhere, and that they carried to Mr. Brady the evidence that they were in that form. I ask the jury to take them and examine them. (Submitting oaths to jury.) Yet Brady chose to act upon those oaths and to accept them as oaths made by reputable people. I submit that the very inspection of them will satisfy you that they are all wrong, false, altered, and changed, and that they come directly within the provisions of the statute which I will now read:

SEC. 5418. Every person who falsely makes, alters, forges, or counterfeits any bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, or utters or publishes as true any such false, forged, altered, or counterfeited bid, proposal, guarantee, official bond, public bond, affidavit, or other writing, for such purpose, knowing the same to be false, forged, altered, or counterfeited—

Mr. MERRICK. [Interposing.] Colonel Bliss, will you please suspend. The jurors are looking at the papers and are very much interested in them.

Mr. BLISS. Yes. I desire to have them examine the papers carefully.

Mr. CARPENTER. They have not seen them more than fifty times.

Mr. BLISS. I desire to have them see them again in the aggregate. [After a pause.] Gentlemen, I am anxious to get on, and I will therefore again call your attention to this statute:

SEC. 5418. Every person who falsely makes, alters, forges, or counterfeits any bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, or utters or publishes as true any such false, forged, altered, or counterfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for such purpose, knowing the same to be false, forged, altered, or counterfeited, or transmits to or presents at the office of any officer of the United States any such false, forged, altered, or counterfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited for such purpose, shall be imprisoned at hard labor for a period of not more than ten years, or be fined not more than one thousand dollars, or be punished by both such fine and imprisonment.

Mr. VERNON [a juror]. Excuse me. We do not have time to look over these oaths.

Mr. BLISS. I am perfectly willing to give you more time. I supposed you were anxious to have me get on.

Mr. SHIELDS [a juror]. Permit me to ask a question in regard to these papers.

The COURT. Yes.

Mr. SHIELDS. Who is responsible for this work; whom do they purport to be signed by?

Mr. BLISS. Part of them are signed by John W. Dorsey, part of them by John M. Peck, part of them by John R. Miner, and there is one that is signed by Harvey M. Vaile, which is not altered, and one that is signed by Perkins, the subcontractor.

Mr. SHIELDS. The cause of my asking is so many different handwritings.

Mr. BLISS. Mr. Wilson, you asked me where my authority was for the statement that Mr. Brady made an order reducing this service. I find it on page 669:

WASHINGTON, D. C., *February 20, 1880.*

DEAR SIR: By a general order of the Postmaster-General issued to-day all mail service, except railway and steamboat, will be reduced to one trip per week, commencing March 1, 1880. You will take notice thereof, and from that date make only one trip per week on route No. 34149, from Kearney to Kent.

This reduction is in consequence of the failure of Congress to appropriate a sufficient sum to pay for service on any greater basis for the remainder of the year ending June 30, 1880.

It will be well for the people of your section to send to the member of Congress from your district such petitions as will express their opinions on the subject of this reduction.

Truly, yours,

JNO. R. MINER, *Ag't.*

Mr. WILSON. That is all there is of it, is it not?

Mr. BLISS. There are several more of them. I assume that you gentlemen are not going to say that John R. Miner lied.

Mr. WILSON. That is not all there is of it?

Mr. BLISS. No, sir; that is not all there is of it. There are several others.

Mr. WILSON. Give us the balance.

Mr. MERRICK. I think you have got enough until you come to reply.

Mr. WILSON. All right. I will reply.

Mr. MERRICK. Go on, colonel, if they can't take Miner's word for it.

Mr. WILSON. He said the Second Assistant Postmaster-General made the order.

Mr. BLISS. The paper is 38 A, a printed paper with John R. Miner's signature to it. I have just read it. Gentlemen of the jury, there is the paper. [Exhibiting paper to the jury.] There is John R. Miner's signature to it, and I ask the jury to look at it.

Mr. WILSON. If you have any more I would like to know what they are.

Mr. BLISS. There are several more like that.

Mr. WILSON. I think there are not any more.

Mr. BLISS. I have shown you, gentlemen, all the affidavits upon these routes except the affidavit upon the Vermillion and Sioux Falls route, which was made by Vaile, Vaile being the subcontractor and having no relation according to the regulations to the route. The regulations required the contractor to make the affidavit. Vaile did not come within the reason that Brady gave on the stand at first, because he was not the man who was performing the service. Vaile did not pretend that he ever performed the service. He says that he made the affidavit with no knowledge of the route, and that he never had been in that region; but he imagined—that is the language he used—from his experience in the mail service that he could make a correct statement. I have shown to you by the actual facts as to the number of men and horses that were used that his imagination was

a lively one, and that he could not and did not make a statement that was anywhere near correct. That oath was not altered. The extraordinary oath of Mr. Miner upon the Tongue River route is not altered; not altered, gentlemen, because he had already made another affidavit which stated the number at about one-half what was stated on this affidavit. That other affidavit had been filed in the department, and an abstract of it had been carried on to a jacket made up for Mr. Brady to make an order upon. That affidavit disappeared, although Mr. Brewer told you it was there at one time. Then came Mr. Miner's affidavit, with the extraordinary number of one hundred and fifty men and one hundred and fifty animals on a route that was three hundred and three miles long. That affidavit of Mr. Miner's on that route was not altered, and I think it probably may be said that the affidavit which I now hold in my hand does not so plainly appear to have been altered as some of the others. It is the affidavit on route 38135, from Pueblo to Greenhorn, made by Miner. My own judgment is that the words "one," "two," and "four" were inserted in blanks which existed before; in other words, that the affidavit was in some form first written, and those words subsequently inserted. But I am bound in frankness to say that is not so entirely clear as it seems to be upon some of the other routes.

Now, as to these affidavits, gentlemen, let us see what the condition of things is. I was asked who made these affidavits. The affidavits on the White River route, on the Silverton route, on the Trinidad and Madison route, on the Ojo Caliente route, on the Mineral Park route, and on the Tres Alamos route were all made by John W. Dorsey. On two of those routes, the Ojo Caliente route and the Pueblo and Greenhorn route, he made two affidavits each. The affidavits on the route from Kearney to Kent, from Toquerville to Adairville, from Eugene City to Bridge Creek, from The Dalles to Baker City, from Canyon City to Fort McDermitt—

Mr. HENKLE. [Interposing.] You said John W. Dorsey made the two affidavits on the Pueblo and Greenhorn route. Miner made those affidavits.

Mr. BLISS. I meant the Pueblo and Rosita route. The affidavits on the Kearney and Kent route, upon the Toquerville and Adairville route, upon the Eugene City and Bridge Creek route, upon The Dalles and Baker City route, upon the Canyon City and Fort McDermitt route upon the Julian and Colton route, and upon the Redding and Alturas route, were all made by John M. Peck. The affidavit upon the Vermillion and Sioux Falls route, as I have told you, was made by Mr. Vaile and is unaltered. The affidavit upon the Tongue River route was made by Mr. Miner. Mr. Miner also made the affidavit upon the other Pueblo route. I think that and the Tongue River affidavit are the only ones which Mr. Miner made in this case. That is my recollection.

Mr. HENKLE. Two; on the Pueblo route and on the Tongue River route.

Mr. BLISS. Mr. Miner therefore, when he told Mr. Moore out in Denver that these defendants were all good affidavitmakers, was speaking perhaps in a measure rather more for the others than for himself. But he made up for the lack of the number of his affidavits by the quantity that he put in, as his famous affidavit for one hundred and fifty men and one hundred and fifty horses on the Tongue River route will show. On the White River route Mr. Perkins, the subcontractor, made his affidavit out in Rawlins, and he forwarded it here to these parties in blank, with no figures or letters relating to the operative parts. That paper

was filed by some one of these parties in the department, and is the paper which is referred to upon the back of the jacket upon which Mr. Brady made his order for expedition on that route. It is the paper which he certified in his letter to Congress he used upon that route. And yet it is claimed that by the calculation it will appear that he used the other affidavit of John W. Dorsey which is filed on the same route. However that may be it makes no difference so far as my present purpose is concerned. That affidavit was a false, fraudulent, forged, and altered affidavit of Perkins. It was transmitted within the language of the statute which uses the word "transmit" to the Post-Office Department for the purpose of obtaining upon it a fraudulent allowance from the Treasury of the United States. There cannot be any escape from that. The evidence is undisputed. I do not care whether you say that Mr. Rerdell sent it there by the direction of Mr. Vaile, or Miner, or Dorsey, or how. I shall have occasion to call your attention in another connection to this matter. I do not care how it was sent there. It was received there. Mr. Perkins says it was in blank, and Mr. Smith, the notary who took it, swears it was in blank when he took the oath, and Perkins swears he sent it back here in blank, and then there is evidence as to the handwriting in the oath where it was filled up. I have forgotten precisely whose handwriting it was stated to be, but I shall have occasion to call your attention to it hereafter. It was filled up in the handwriting of some of the defendants here. That oath so received here by these defendants was transmitted by them to the Post-Office Department and intended to be the basis of action of the Post-Office Department. Mr. Brady said in his jacket that it was the basis of his action. Mr. Brady said in his notice to Congress that it was the basis of his action. The calculation would seem to show that he used the affidavit Mr. Dorsey filed in the same case; but however that may have been, the question whether the fraud succeeded or not through the act of these parties in transmitting the forged document has nothing to do with the statute. They committed forgery; they violated that law; and they therefore, we shall insist to you, brought themselves within the strictest construction of the conspiracy statute which may be asked for by the other side—that the conspiracy must be a conspiracy to commit an offense made a crime by the statute. That is true of the Perkins affidavit. Have you any doubt that it is true in a large number of these other affidavits? I shall have occasion later on to analyze them in connection with the action of these different defendants in the case. But have you any doubt from the evidence before you, from an examination of the papers and from the dates of the jurats made out in New Mexico and the dates of the papers here, as have already been shown to you, but to which I shall call your attention again, that a large number of these affidavits were in fact false, forged, and altered affidavits? They were transmitted admittedly, because as to the bulk of these affidavits they are accompanied by letters, which I have here, signed by the different parties transmitting them. Miner wrote the one I hold in hand in Peck's name, saying he transmits a proposal for carrying the mail. They are indorsed at the Post-Office Department as proposals received from these parties. The evidence that these parties transmitted them is absolute. There cannot be any escape from it. They are letters in the undisputed handwriting of these different parties that were sent to the Post-Office Department, and that were there used as the basis of orders which did in fact defraud the Government of the United States. They were not only intended to defraud the United States, but the fraud was successful, as I have shown you.

These affidavits were thus in that way made to carry out the fraud, and these parties, therefore, are very clearly, and beyond all dispute, within the language of the section I have read. Of course they are not on trial now for a violation of that section. They are on trial now for a violation of the section which declares that it is a crime to conspire to defraud the United States. One construction of that statute is that to defraud the United States must be to defraud it in a manner made a crime by some independent statute. If that is the proper construction, and if the court will so instruct you, then, going no further, these affidavits would come directly within that statute. But, gentlemen, further than that, how does John R. Miner stand with regard to the petitions on the Canyon City and Fort McDermitt route? The statute says any false, forged, or altered *writing*, after enumerating all these other papers. The petition, 29 H, on the Canyon City and Fort McDermitt route is a paper which Mr. Miner himself will not undertake to say he did not alter. He will not undertake to say that he did not alter it and put those six names there. Anybody can see that those names are all in one handwriting. Anybody can see that those names are not in the handwriting of the men they purport to be written by. They differ from the genuine handwriting of the same persons on other petitions that are in evidence before you.

But Mr. Hall, the postmaster, happened to be here, and on the stand he swore that that was not his signature, and that he never authorized John R. Miner to place it there. He forged the name of Hall to that paper. He dare not say under oath that he did not. His chosen witness, Mr. Waugh, whom he put upon the stand, said he was familiar with his handwriting, and he said "Yes, that is Mr. Miner's handwriting." Can there be any escape from the fact of the transmission by Miner to the department of forged and altered papers?

Take the route from Kearney to Kent. There is a case in which Miner denied that he inserted those words. Mr. Boone and others say that it is Miner's handwriting. The words were inserted after the petition was signed and forwarded here, beyond all dispute. The man who wrote the petition, the man who sent it here, and some of the men who signed it, all say that those words were not there. That petition was sent here to John R. Miner, was gotten up in obedience to his request, I think; at any rate, it was sent here to Miner, and that is the sole basis for an order involving the payment of large sums of money from the Treasury. The addition is sworn to be in the handwriting of John R. Miner. The next we know of it it is on file in the Post-Office Department as a voucher upon which to get an order, which it did get, upon a route which John R. Miner was managing, and from which John R. Miner was deriving the benefit, and from which he did derive the benefit during the entire contract term. It was John R. Miner's route in his association with Vaile, Vaile taking his portion of the plunder and Miner taking the other. That petition was a false, altered, forged petition, and it was filed in the department, as we say, by John R. Miner as a false, altered, and forged petition.

As to alterations of other petitions, there is the alteration that Rerdell made upon the petition upon the Pueblo and Greenhorn route. And bear in mind, gentlemen, that we treat Mr. Rerdell always as a defendant in this case. He is not subjected to your action, because he has chosen to plead guilty. But he is a defendant, and he stands up and admits having altered these petitions. He says he did it by the direction of Stephen W. Dorsey. I shall have occasion to call your attention to something on that subject by and by. There are three or

four other cases of altered petitions on the Canyon City and Fort McDermitt route, as to which the evidence is not so direct, and yet from the mere exhibition of the papers, I do not believe you can have any doubt that these papers belonged to a list of names which had a blank on the back of one of the sheets, and that over that there was written the form of a petition, and the names were made to answer the purpose of recommending something which they were never intended to recommend. There cannot be any escape from this in the case of two or three of the petitions on that route, and that is the same one upon the petitions on which Mr. Miner was altering and forging names. I will not say that there cannot be any question about it, but the evidence shows that the figures 96 and the words "ninety-six" upon two of the petitions are very clearly written over erasures; there is no escape from that. And the evidence is—Miner denies it, of course—the evidence of Boone, I think it is, and Rerdell is that those alterations are in the handwriting of Mr. Miner. However that may be, they are papers that went into the possession of Mr. Miner; papers upon a route that was managed for Miner and Vaile; papers upon a route where the amount was run up to \$50,000; papers upon a route where Vaile told you upon the stand that there was a profit of at least \$20,000; papers upon a route where the subcontractors got only \$10,000, leaving the balance of the \$50,000 to be accounted for as expenses by way of getting orders in the department, or in some way maintaining their influence in the department, which Mr. Dorsey told Mr. Moore was a matter of expense, or in paying those expenses which Mr. John R. Miner wrote about to Mr. Hayes, out in California as being necessarily incurred here in doing their business. Some way or other that money went. The money was obtained upon that series of forged and altered petitions. Some of those petitions were undoubtedly forged and altered by Miner; and all of them were filed in the department by him. And yet he comes before you now claiming that he has done nothing for which he ought to be held responsible at the bar of this court, just as he told you on the stand that though he paid \$1,800 to settle an indictment against him for defrauding the revenue, yet he was not guilty. Now, gentlemen, do honorable and high-minded men pay \$1,800 when they are indicted but are not guilty? I submit that the story is obviously false. It is a proper story to come from the lips of a man who stands, on indisputable and uncontradicted evidence, guilty of the violation of a statute of the United States which, if proved, would render him liable to ten years in the penitentiary.

All these affidavits, as I say, are full of that sort of thing. I will not stop to enumerate them; I have gone over them in detail in calling your attention to them, but I submit that they establish a case of gross and persistent violations of the law.

Now, gentlemen, up to this time I have, with very few exceptions as to very slight points, confined myself absolutely to record evidence and uncontradicted evidence. I have, in everything I have asked you to consider, I think, referred to no case in any way about which there is any dispute, except Miner's denial of the thirteen hours on Kearney and Kent petitions, and some denial as to what passed with Moore. I think everything else I have said has been based upon record evidence or the uncontradicted evidence of witnesses whom we placed upon the stand—the stage-drivers, the carriers, the men from the West—and there has been no contradiction of any of them.

Leaving out of view entirely the question of whether Rerdell is to be believed; leaving out of view entirely the question of the contradictions

of these defendants upon the stand; leaving out of view entirely the prevarications that they were guilty of; leaving all these questions out; leaving Moore's testimony out, leaving out the testimony as to what John W. Dorsey said out on the Bismarck and Fort Keogh route; leaving out the testimony of what was told to Major and to McBean; leaving all that out of view as claimed to be either contradicted by the witnesses on the stand, or not to have been authorized to be stated by the parties who stated it; and what do we find? It will do us good, it will assist you in the decision of the case, to pause here, I think, and see how the case stands just upon that ground; how it stands when we have gone thus far with the record evidence and uncontradicted and undisputed oral evidence so far as it has come before you.

Do we not find that Brady resorted to expedition as the regular practice of the department, when he ought to have confined himself to that simply to cure sudden and unexpected emergencies that had arisen? The evidence shows—and he will not say that he did not—that he resorted to expedition to twenty times the amount ordered by his two immediate predecessors in a corresponding period of time; that he resorted to it as a rule and not as an exception.

Have we not shown you that he spent large sums of money under orders for expedition where no expenditure was needed, because the service was rendered in just the same time after the order was made as before? Take the Redding and Alturas route; there the subcontractors were performing the service, and were happy to perform it in connection with their stage service, at a reduced rate, at a rate of speed less than that which Brady ordered it reduced to. They made no complaint; there never was any complaint anywhere on the subject. And yet these defendants came to Brady, and they got from Brady an order for the payment of a large sum of money to them for an expedition which they never made, because expedition implies gain over the existing schedule, and there was no such gain. On the contrary, the mail was always being carried on less than the expedited schedule. And he did that with papers on file in his department showing that on the question of expedition only \$4,000 of money could go to these parties. On the Pueblo and Greenhorn route there was no practical gain, though there was in form some gain in time.

Have we not shown you that he paid large sums of money where there was no gain, because he disregarded the question of connections? Though the mail was carried over the route at greater speed, it arrived at the terminus and there had to remain about twenty-four hours until it could be taken up and carried on beyond.

Have we not shown you, gentlemen, that he paid large sums of money where there was absolutely no mail carried over the route, and where by his own declaration he admitted that there was substantially no mail?

Have we not shown you that in every single little item, the addition of a post-office or taking off a post-office, or making expedition, when there was about to be a change on the route, the care in making an order of expedition in order that the contractor might get his month's extra pay—have we not shown you that in all these respects Mr. Brady regarded only the interest of these contractors, and not the interest of the Government? Have we not shown you that he made supposititious additions, like Animas City and Brighton and others, where the mail had all the time gone directly through the same places, and made extra allowances to the contractors for those supposititious additions, and then that he used those supposititious additions as an excuse

for extending the schedule time, and then that he turned around and, because the time was so long, expended large sums of money in expediting? And in one route, having expedited it from thirteen hours to fifteen hours, he paid this money for expedition and reduced it back only to twelve.

Have we not shown to you, gentlemen, that by his own avowal he utterly disregarded the law as to productiveness? The law says that he shall regard productiveness and other circumstances, and yet by his own avowal on certain of the routes he made no pretense of regarding productiveness. Have we not shown that in no case is there any evidence that he took productiveness into consideration, save on the route from Mineral Park to Pioche, where he said, on the 22d of January, that there being no mail, and therefore no productiveness, he cut off \$49,000 of expedition and increase of trips that he had put on there, and having done that on the 22d of January, on the 28th of January he put back something over \$22,000 of that, though he himself had said six days before, that there was no mail and no productiveness on the route?

Have we not shown you that when he was asked to add such a place as Raton to one route, to which it could have been added by going six or eight miles to the railroad, at an expense of a couple of hundred dollars, he wrenched around the Trinidad and Madison route and added twenty-three miles to the distance, though in point of fact, as the record of his office shows, it only added fifteen miles, and then, having done that, he, in consequence of that increase of distance, carried the schedule up to nineteen and three-quarters hours, and then having got it up so that the mail could not go over the route in one day, he turned around and spent large sums upon expedition, so as to get it over the route in the same day, as it would have done if he had added Raton on the route in accordance with the petition and the request of Senator Teller?

Have we not shown you that in such cases as on the route from Toquerville to Adairville, when the First Assistant Postmaster-General had notified him as early as the 19th of June that the terminal office was abolished, that there was no service, no mail to go over ten miles at the end, yet thirty days after he is so notified he makes an order for expedition over the entire route, which expedition was not to take effect until the following 1st of August, and then, a few days afterwards, comes an order formally cutting off the ten miles which the First Assistant Postmaster General had told him had been practically cut off thirty days before that, and that formal cutting off was also to take effect on the 1st of August, this accompanied by the fact that the contractor must have a month's extra pay upon the rate of pay for the expedited service, instead of the rate of pay for the service in the time they were performing it, making a difference to the Government of some \$1,200 to \$1,500?

Have we not shown you, gentlemen, in all cases save in two or three exceptional ones, and those exceptional ones surrounded by frauds, as in the case of Miner's affidavit on the Tongue River route, that in every one of them Mr. Brady ordered pay up to the very limit of the sum which, under the statute, he could pay assuming the affidavits that he had before him to be true? The statute says you shall not pay beyond a certain sum. He says, "I will take the affidavits before me as true. They show that the sum that I can pay is so much, and I will pay that extreme sum." Have we not shown you, gentlemen, that he did that in almost every case? He did it in every case where there was an increase of trips, as to which, as I told you before,

there might be some pretense of excuse for it, but as to the expedition there could not be any pretense of excuse whatever.

Have we not shown you that in direct violation of law he made several orders which were retroactive, to take effect and take money from the Treasury as of a time before those orders were made? Have we not shown you that that was so on the expedition ordered on the Ojo Caliente route, for the addition of Pagosa, the addition of one other place—Brighton, I think it was—the orders all made to take effect prior to the time when they were made, in direct violation of the provisions of the statute?

Have we not shown you, gentlemen, that he did not comply with the law in the form of his orders? The statute says that the order for increase of service shall state how much is allowed for such increase, and in at least three cases, beyond all dispute, the order is made without giving anything of the kind.

Have we not shown you the violation of the spirit, if not the letter, of the law in the orders he made granting expedition to a greater amount than 50 per cent. of the amount at the original letting?

Have we not shown you that he acted upon affidavits which, in form, violated the regulation which Mr. Chandler told you, and undoubtedly truly, was binding upon Brady as well as upon everybody else? The regulation required that the affidavit should state the number of men and horses necessary upon the then present schedule, and yet affidavit after affidavit does not pretend to do it in that form.

Have we not shown you, gentlemen, by his own admission, that he made this expedition entirely upon the oaths of these contractors; that they knew nothing of the business; that he did not care whether they knew anything of the business; that he knew they were not themselves performing the service; that he knew they had never been upon the routes; and that he knew that those oaths were made by men who were swearing in their own interest? And yet on the theory that they were necessarily honest men he accepted those oaths without inquiry, and gave up to the extreme limit of what was possible under the law to give to them. Have we not shown you, gentlemen, that those oaths were in fact false—false almost without exception?

On the Pueblo and Greenhorn route the oath stated that a certain number of men and horses would be needed; and yet the undisputed evidence of every carrier who was ever on the route during the contract term is that no more men and horses were used after the increase than before; that the number of men was precisely the same, and the horses were identically the same. They jogged over the route in the same time and in the same way. And yet Mr. Brady made an order for increase, misstating the number of men and horses that were then actually in use, and also misstating the number of men and horses that would be required. He made an order which took from the Treasury a large sum of money, though the statute says there should not be any money taken from the Treasury in such cases except for the use of an additional number of men and horses.

Have we not shown you, too, that he made these orders upon affidavits that had been filed in his office, when he had before him also contradictory affidavits by the same men, made on the same day, when both could not be true? When Mr. John W. Dorsey swore, on the 21st of April, 1879, that a certain number of men and animals were then necessary to carry the mail on that route on the then present schedule, and then at a later hour in the same day he swore that a different number of men and animals were necessary to carry the mail on the same

schedule, both of those oaths could not be true. Yet Mr. Brady admittedly made his order for expedition upon one of them. He made no inquiry, and he assumed that the man who could make two contradictory oaths upon the same day was an honest man, swearing fairly, not deceiving, and not acting in his own interest rather than the interest of the Government.

On the Ojo Caliente route there were also two oaths. Those two oaths, however, were not made, I think, on the same day. They related, so far as the then present schedule was concerned, to the same schedule, the same number of trips, and so far as that portion of the affidavits is concerned they were equally contradictory. They were both before Mr. Brady, and he treated the man who could make those two affidavits as a reliable man, and his affidavits as the only authority upon which he could take money from the Treasury.

Have we not shown you, gentlemen, that on the Bismarck and Fort Keogh route, there having been in Mr. Brady's office and before him a jacket on which the affidavit was abstracted (the affidavit of Mr. Miner, which stated the number of men and horses on the route in both branches of the affidavit, present and future), and which was different from the affidavit which Brady finally used, was much smaller, only one half, I think, of the first affidavit, which stated the number of men and animals one hundred and fifty each, and I think the second affidavit reduced the number of men from one hundred and fifty to thirty-seven, and the number of animals from one hundred and fifty to seventy three—that that jacket, having been made up reciting that affidavit, was put inside of another jacket in which there was put John R. Miner's affidavit that it took one hundred and fifty men and one hundred and fifty horses, and that Mr. Brady made his order for expedition upon that larger affidavit, claiming that it was less than *pro rata*, when, in point of fact, he made it for considerably more than Mr. Miner's original affidavit would have authorized?

Have we not shown you, gentlemen, that those affidavits were absurd on their face; that the least calculation would have shown you that they were not and could not be true?

Have we not shown you, gentlemen, that on one route, if the affidavit was true, the result would have been that each horse upon that route, upon an expedited schedule, would have traveled only thirty-three minutes in a day, and would have traveled about one mile and seven-eighths, I think it was, in a day; and that the oaths were full of things of that kind? One of the oaths actually required, if there were only so many men used at the rate of speed called for, that the men stated to be necessary should travel forty hours in every twenty-four, and every horse, I think, would have to travel twenty hours in every twenty-four. Mr. Brady says he did sometimes figure a little.

Gentlemen, in considering these facts I ask you to bear in mind that the Government would be defrauded if they understated the number of men and animals actually used, or if they overstated the number of men and animals which were to be used. These affidavits, as the evidence shows, almost without exception sinned in both respects.

Have we not shown you that in the face of the regulation, though the regulation was binding as law upon him (that he must have the oath of the contractor), he accepted the oath of subcontractors, like Vaile and others. Have we not shown you that he accepted, on two routes certainly, the oath of a man who on the affidavits signs himself as subcontractor (John W. Dorsey), when he was neither contractor nor subcon-

tractor, and that very jacket upon which Mr. Brady made the order showed that he was not either contractor or subcontractor?

Have we not shown you that it was a matter of entire indifference to Mr. Brady who made the affidavits, what the form was, or what they contained, so long as they gave him a pretense of taking money out of the Treasury and putting it into the pockets of these defendants?

Have we not shown you that those affidavits were all altered, erased, forged? I will not dwell upon that after the examination you yourselves have made this morning.

Have we not shown you, gentlemen, that the affidavits were false in fact as to the number of men and animals that were called for?

Have we not shown you, gentlemen, that the petitions filed were altered, forged, gotten up originally often at the instance of these defendants, who wrote to their parties out in that region where they were to get them that they must not have them alike; that they must have changes in them so that they might appear to be the voluntary petitions of the people in that locality? And yet after that they were not content with that, they forged and altered the petitions in such a way that any man looking at them must see—taking those on the Kearney and Kent route and the Canyon City and Fort McDermitt route—that they were, to say the least, suspicious, and not a justification to base action upon?

Have we not shown you, gentlemen, that Mr. Brady, by his orders for expedition, ordered the payment of sums far greater than were necessary to obtain the service performed, and far greater than he knew was necessary to obtain the performance of the service, because not only did the subcontracts on file in his own office give him the means of knowing that fact, but in the very order that he made he provided that the Treasury was to pay out a given sum, usually twice as great as the sum which his own order showed was to go to the man who was actually performing the service?

Have we not shown you, gentlemen, that Mr. Brady, instead of declaring these contractors failing contractors, waited, on one route at least, six or seven months to enable them to get up petitions for increase of service and for expedition, and that then, having gotten up this string of fraudulent and forged petitions upon the Canyon City and Fort McDermitt route, he then went on and made an order for increase of trips and expedition before they had ever driven a horse a mile over the whole of that route? And yet he gave them six months to enable them to get ready with these petitions, and then he made an order before service had commenced for expedition and increase of trips.

Have we not shown you, gentlemen, that Mr. Brady went on and did these things in spite of the remonstrances of the postmasters along the route; in spite of the remonstrances of the people? Have we not shown you, gentlemen, that when he chose he followed the wishes of a Member of Congress or a Delegate, taking that as his excuse, and when he did not choose he did not follow the wishes of a Member of Congress or Delegate? But always, in every case where he failed to follow the wishes of the Member of Congress or Delegate, it was because that Member of Congress or that Delegate wished him to take some action which would keep money in the Treasury, and prevent it going into the pockets of these contractors. In no single case did he disregard the wishes of a Member of Congress, Senator, or Delegate, except when, if he had disregarded it, it would have been to the injury of the pockets of these defendants. Have we not shown you that when he could not comply with their requests he gave absurd and inconsistent excuses?

Have we not shown you that he said that he could not give the extension asked for on the Vermillion and Sioux Falls route because he claimed it would be in violation of the contract which extended the time, when in point of fact the route had been advertised as fifty miles and it proved to be seventy-five miles? He said he could not extend it because the extension asked for was beyond the contract. And yet when it came to the Saint Charles and Greenhorn route he extended the time. When it came to the Bismarck and Tongue River route, advertised at eighty-four hours, he extended it to one hundred and eight hours, though the contract said that the bidder should inform himself as to the length of the route and the circumstances and be bound by it. The advertisement and contract together stated that the route was such a length and the schedule required so many hours. And yet, while on the Bismarck and Fort Keogh route he could extend it for the benefit of the contractors, on the Vermillion and Sioux Falls route he could not extend it, because then it would have been in accordance with the request of the postmasters and for the benefit of the Treasury.

Have we not shown you, gentlemen, that Mr. Brady sawed these routes up and down—the Mineral Park and Pioche route down \$49,000 one week, and in less than a week afterwards he put back \$22,000 of it, and that he did that without any pretense of excuse, and that he avowed that he did that and other things solely for the benefit of the contractors, and not in any sense for the benefit of the people or the Treasury?

Have we not shown you all these things and more? And having done that, shown it upon uncontradicted testimony, shown it to you chiefly upon the record evidence, then I ask you to bear these facts in mind as you go with me for a little while to consider the evidence as to which it may be claimed that there is some pretense of contradiction. But we ask you also, in bearing all these facts in mind, to remember that all these acts of Brady were acts done for the benefit of these defendants, and which redounded to their emolument.

These defendants other than Brady would have you believe apparently that, while Mr. Brady may have done these things, may have done them extravagantly, may have done them erroneously, may have done them illegally, still it was done without any collusion with them; that they got the benefit; that they were simply lucky people standing around while some naughty boy had climbed the tree, and they were holding up their aprons and catching the fruit; and that while the boy, perhaps, ought to be punished, they, who got the benefit, were entirely innocent, and nothing should be said as to them. Let us see for a moment whether that is so.

Mr. Brady made various increases upon various routes where the inquiry is pertinent as to how he came to fix upon the precise time at which he arrived. On the route from Silverton to Parrott City the then existing schedule time was thirty-five hours; he reduced it to fifteen hours. On the route from White River to Rawlins the schedule time was one hundred and eight hours; he reduced it to forty-five hours. On the route from Toquerville to Adairville the schedule was sixty hours; he reduced it to thirty-three hours. On the Greenhorn route the schedule was sixteen hours; he reduced it to seven. On the route from Julian to Colton the schedule time was fifty-four hours, and he reduced it to twenty-six. On the route from Eugene City to Bridge Creek the schedule time was one hundred and twenty hours, and he reduced it to fifty. How did he come to get at those precise times? How did he

come when the schedule was thirty-five hours on the Silverton route, to take fifteen, and not sixteen, not seventeen, not some other time?

Gentlemen, I ask that question because of this remarkable fact: In not one of those routes was there on file before Brady a single paper—save one, to which I will directly call your attention—which indicated or suggested the number of hours at which he arrived, not one. The petitions either name other times than those which he selected, or they simply said “faster time,” “quicker time,” or something of the sort. Not one of them suggested the time which Brady fixed upon. How did he get at that time? It might, perhaps, be suggested that it was a proper arrangement made with the contractors at the moment of his action; that they suggested this time and he accepted it. But the difficulty is that both Mr. Brady on the stand and the facts repudiate that theory.

On the White River route the petitioners ask for eighty-four hours; the then schedule was one hundred and eight hours. Mr. Brady gave them forty-five hours. The distance being one hundred and eighty miles, he says he did it to make the running time four miles an hour. But the petition, containing the names of his favorite Senators, &c., asked for eighty-four hours. He liberally gave them more than they asked.

On the route to Greenhorn the petition asked merely for faster time. There were two papers there which suggested eight hours, but all the others merely asked for faster time. Mr. Brady says he preferred seven hours, a little over four miles an hour, the distance being thirty-five miles, which would in fact make it five miles an hour at seven hours (which was what he gave). But when Mr. Brady made that reply he forgot that he had made an order which had put on that route a supposititious addition of twelve miles, and that, in point of fact, by his order the department was regarding that route as forty-nine miles long—may be it was forty-seven, but I think it was forty-nine—and therefore the theory of four miles an hour did not accord with his statement, because it was five miles an hour, and when you come to carry it up to the theory which he was carrying out in payment for the service it was some six or seven miles an hour.

On the route from Toquerville to Adairville the petitioners asked for forty-eight hours; Brady made it thirty-three hours. He says that is just four miles an hour, but that disregards the ten miles struck off.

On the route from Julian to Colton the petitioners asked, some of them for thirty-six, and some for thirty-eight hours. Brady made it twenty-six hours. The distance was one hundred and twenty miles. When asked on the stand how he came to do that he said he did not remember.

On the Silverton route the petitioners asked for faster time only. The existing schedule having been advertised as thirty-five hours, he had put Animas City on the route with a supposititious addition of ten miles, paid for that, and extended the time to thirty-seven hours; and then Mr. Brady, though the petitioners asked only for faster time, got it down to fifteen hours, and he says he cannot tell why he did it, except that the route is sixty-five miles and a little over, which would make about four miles an hour. In point of fact, gentlemen, the route was advertised as sixty-nine miles. Brady had put on ten more miles, making it seventy-nine miles, which would be considerably over five miles an hour, and this five miles an hour across a range of mountains which is ten thousand feet above the level of the sea, and known as the Continental Divide.

On the route from Kearney to Kent Mr. Brady says he has no recollection about it, but he says he took his thirteen hours from nowhere except the interlineation in the petition—the interlineation that Miner forged. He has no explanation to give. But Miner has one, and let us see what it is. Miner says that he got the thirteen hours which was put into the affidavit in that case from a letter of French's in the record of the last trial. That letter was referred to. It is in the record of the last trial, dated at Loup City on the 23d of January, 1879. It does contain the thirteen hours. There, he says, is where he got it. That letter came from Loup City here. The thirteen hours was then taken out of that letter, filled into an affidavit by John R. Miner, sent out to John M. Peck in New Mexico, so that John M. Peck swore to it on the 1st of February, and all this in eight days. They wish you to believe that a letter came from Loup City, away up in Nebraska, north of the railroad, to Washington, was received and considered, an affidavit prepared, filled in, and sent out to John M. Peck in New Mexico, and that John M. Peck swore to it, and all that was accomplished in the brief period of eight days. I do not think Mr. Brady will thank Mr. Miner for undertaking to help him out of that scrape. It was not very efficient help.

Mr. Brady said on the stand that he was looking for four-miles-an-hour expedition, and that was the way that he got at these rates. I have shown you already that his four miles-an-hour theory does not work. He gave more than four miles an hour, and more than five miles an hour, as I have specified to you.

But when Mr. Brady came to expedite the Canyon City route he expedited only to two and fifty-three one-hundredths miles an hour. He was not after four miles an hour there. When he came to expedite on the Redding and Alturas route, he expedited only to two and fifty-eight one-hundredths miles an hour. There was no theory of four miles an hour which he must come up to, though the petitioners did not ask it, though the members of Congress did not ask it, though neither class of people asked it—Colonel Ingersoll's people or Mr. Brady's people.

Now, gentlemen, there is one fact which will show to you conclusively that there is no possible explanation of this action of Brady's, except an explanation which involves the idea of collusion. The rule of speed did not govern it. Then what do we find? We find that there is in every case one paper which does settle it absolutely.

On the Silverton route Brady made an order for expedition on June 12, 1879, and he made it for fifteen hours, though no petition asked any definite time. The petitions only asked for faster time, and the existing schedule was thirty-seven hours. But Brady made that order of June 12, 1879, upon an affidavit sworn to by John W. Dorsey, in Vermont, on the 21st of April previous, and that affidavit names fifteen hours. How did John W. Dorsey, in Vermont, on the 21st of April, 1879, know that Thomas J. Brady would, in June, 1879, when he was considering the question of expedition on the Silverton route, want to be informed how many men and horses would be necessary to perform the service on a schedule of fifteen hours? How did John W. Dorsey then know that a fifteen-hour schedule would be what Mr. Brady would wish to be informed about. Remember there was no petition that named fifteen hours; there was no suggestion of anything of the kind. Remember this is not an affidavit sworn to when Mr. Brady was considering the case after the papers were filed there, and when he might have turned around and said to the contractor, "What time is proper? How many men and horses will it take upon the route? Upon what time?" But this is a case where, by anticipation, John W.

Dorsey knew, on the 21st of April, up in Vermont, what Mr. Brady would want to know in the June following.

On the Toquerville and Adairville route, gentlemen, the oath of Peck is for a thirty-three-hour schedule. The order is for thirty-three hours. The petitions were for forty-eight hours. There is not a paper anywhere which mentions anything less than forty-eight hours. The order is made on the 8th of July, 1879, and yet John M. Peck, on his bed of sickness out in New Mexico, knew in the previous January, 1879, that Mr. Brady would want to be informed of how many men and horses were necessary upon a schedule of thirty-three hours. How did Mr. Peck know that in January, 1879, nearly six months previous; how could he know it except there was collusion between Mr. Brady and these contractors? I submit, gentlemen, that there is not any possibility of escape from that, and the ingenuity of counsel cannot get up any excuse consistent with the integrity of these affidavits which does not involve the fact of collusion between Mr. Brady and these contractors.

On the Greenhorn route the oath of Miner was made April 17, 1879. The order for seven hours is made on the 26th of June, 1879. The petitions all ask only for faster time, except two, which ask for eight hours. And yet Mr. Miner knew on the 17th of April that Mr. Brady's mind would, somehow or other, fix upon seven hours, and he made the oath for seven hours. I think that is on the Greenhorn route; I am not sure. It is either on the Greenhorn or the Rosita, one or the other.

On the Julian route Mr. Peck made his oath on the 30th of December, 1878. The order was not made until the 24th of June, 1879. And yet the papers all ask for thirty-six hours. The order was for twenty-six hours, and Mr. Peck's oath, made six months previous, is for twenty-six hours.

On the Kearney and Kent route Peck's oath is dated February 1, 1879. The order is dated July 10, 1879. There was no paper in the department suggesting expedition until after the 6th of February, 1879; no paper suggesting expedition whatever until the 6th of February, 1879, and then there came in the altered petition, altered by John R. Miner, as we say, by the insertion of the words "schedule thirteen hours." That is the only language in any paper that looks for expedition on that route. That paper came into the department on the 6th of February, 1879, and yet on the 1st of February preceding, John M. Peck, out in New Mexico, knew not only that expedition was to be had, but he knew that expedition was to be asked for at the rate of thirteen hours. How did he know it? The only possibility of his knowing it consistent with any theory except that of collusion is that by some lightning arrangement French's letter, written in Loup City on the 23d of January, was able to come here and be converted into that kind of an affidavit and then be sent West with the suggestion. On the route from Eugene City to Bridge Creek the oath was made by Peck in the same way on the 22d of January. The order was made on the 26th of June. In that case the schedule was one hundred and twenty hours. Senator John H. Mitchell, whose name appears on the pencil memorandum given by Dorsey to Rerdell, recommended one hundred hours and wrote a letter recommending one hundred hours. I think the papers disclose that he had a personal interview asking for one hundred hours. The petitioners asked for "faster time." None of them, I think, named any time less than one hundred hours. I think none of them named any time other than Mr. Mitchell. And yet Mr. Brady, on the 26th of June,

made an order for fifty hours, and Mr. Peck, out in New Mexico, in the January preceding, knew that Mr. Brady was going to want just that information. Substantially the same thing is true with reference to the Trinidad and Madison route, though the difference there in time between the affidavit and the order is considerably less. There the petitions did not ask for any time, but simply said "faster time." The only paper that mentions the time is the affidavit.

On the White River route, gentlemen, I may say in passing that there is one little peculiarity. Mr. Stephen W. Dorsey at one stage telegraphed out there that an order had been made to expedite the time to fifty hours. There never was an order made to expedite the time to fifty hours, but just about that time there was an order made to expedite it to forty-five hours, that expedition to forty-five hours being in spite of the petition which asked for eighty hours, and the "forty-five" appearing over an erasure in Mr. Brady's order. What led to that telegram of Mr. Dorsey's in this connection is one of the things of which we have no explanation so far.

Now, gentlemen, those affidavits, as we say, and the dates and the amounts contain beyond all question conclusive evidence of prearrangement between these contractors and Mr. Brady. But they are not the only evidences of prearrangement that exist. We find, for instance, upon the Tongue River route that they built more ranches than they needed. They doubled the number of ranches that they needed upon the existing schedule. They spent \$6,000 for building ranches, though the entire income of the route for the four years of the contract term at the contract price would have been but about \$9,600. They spent \$6,000 in building these double ranches. They did not use them and they did not want to use them when the service was only once a week. They stated that they did not want to use them then. But they were going to have expedition, and when expedition came then they were going to use every ranch, the ranches being seventeen miles apart, and then their foresight in building them would be apparent. That was precisely what happened. Mr. Dorsey undertakes to say that he did not tell Mr. Pennell to do anything of that kind, and seems to imply that Mr. Pennell did not do anything of that kind, Mr. Pennell says that Mr. Dorsey did tell him that precise thing; that he did tell him to build the ranches in that way, and that he did build them in that way. Who are you going to believe? Are you going to believe John W. Dorsey, the man who, by his own admission, undertook by a false and fraudulent petition to get a side post-office put on that route with an addition of sixty miles, and which would therefore have cost one-fifth of the sum that was paid on that route? If we make that calculation, taking the amount that was allowed after expedition, that paper post-office would have taken from the Treasury \$12,000 a year. Will you believe John W. Dorsey, a man who, by his own admission, undertook to get that post-office put upon that route, or Mr. Pennell, to whom the proposition was made and who said that he would not have anything to do with it? Mr. Dorsey said upon the stand that because of Mr. Pennell's refusal to have anything to do with it he always respected him. If Mr. Dorsey respected Mr. Pennell for that refusal, what was his opinion of himself? You are asked to believe Mr. Dorsey when he says that he did not tell Mr. Pennell these things and Mr. Pennell did not do these things. Mr. Pennell says Dorsey did tell him and that he did do them. Moreover, the men who were with Mr. Pennell confirm his testimony so far as the building of the ranches is concerned. John W. Dorsey told Mr. Pennell that

there would be an increase to three trips, and then the time would be shortened and then there would be an increase to six trips; that there would be at least an increase of \$25,000, one increase in six months and another in a year; that he had a brother in Washington who could fix it all right as they wanted it with the department. That Mr. Dorsey told these things to Mr. Pennell is indisputably true. He told them to Mr. Pennell for the purpose of inducing Mr. Pennell to go into a partnership with him. They had not the money that they needed on that route, and they wanted Mr. Pennell to put in the money and take a half interest in it. Mr. Pennell saw that that arrangement involved matters that he could not go into; matters that he in his innocence did not believe could be brought about, and he declined to go into it. The result was that precisely the things occurred which John W. Dorsey said would occur. There were two orders made. One of them was made within the time John W. Dorsey said it would be made, and the other was delayed a month longer, so that it did not come until a month after the time Dorsey fixed; but as to the compensation, instead of an allowance of \$25,000 there was obtained upon that route an allowance of \$67,500. Now, it is urged that these statements were made because the defendants knew from the position of the route, its locality, and geographical situation that it must be increased and expedited. John W. Dorsey undertakes to say that while he did not know anything about it, when he got out there and saw General Miles he learned it. Mr. Dorsey was allowed on the stand to detail a conversation with General Miles after General Miles had been on the stand and had not been asked anything about it, and after General Miles had gone away so that we could not call him back to question him as to its truth. John W. Dorsey gave this conversation with General Miles, in which General Miles showed his knowledge of the necessity of having a fast service and more trips and everything of that kind. Mr. Dorsey knew nothing about expedition or anything of that kind, but in telling this story he said to General Miles that if they went on and increased the trips with faster time the contractors would throw up the contract, as they had a right to do. Dorsey wants you to believe that he was sufficiently posted as to the practice of the Post-Office Department and the rights of contractors under that practice to know that if the Post-Office Department ordered increase of trips with expedition, as he told General Miles, in that case the contracts could be thrown up. And yet Mr. Vaile, the old mail contractor, when on the stand, told you that he did not know anything about his authority to throw up a contract, and that if he had he would have thrown up the Tongue River contract. What a pity for these poor losing contractors that the knowledge of Mr. Dorsey and the ignorance of Mr. Vaile in the mail business could not somehow have been concentrated in one man, so that the contractors would have been saved this great loss and the Government could have saved the \$70,000 a year on this route.

At this point (12 o'clock and 50 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. Before recess, gentlemen, I was considering the question of the evidences of pre-arrangement other than those which were derived from the affidavits in the case. I referred to the testimony as to

what John W. Dorsey stated in Bismarck about the probabilities or the certainties of the increase of the service, and of the expedition upon the Bismarck and Tongue River route, and I called your attention to the fact that the precise increases, both in time and in money, which he predicted came about almost exactly as he predicted. I was then about to refer to the fact that it was claimed that this anticipation of such increase arose from the circumstances of the case, and that, although John W. Dorsey had undertaken to say that he got some information from General Miles upon the subject, yet the evidence showed very clearly that that was not true as bearing upon the conversation with Pennell, because Pennell was distinct, and fixed it accurately by various occurrences as showing that the conversation took place before Mr. Dorsey went to Fort Keogh and saw General Miles. I think Mr. Stephen W. Dorsey, when he was on the stand, would not say whether he told Mr. Rerdell when he went out to Bismarck that the route would be expedited or not. Rerdell said it would, and he would not say he did not tell him so; possibly he did, though he did not remember; but it would have been expedited; the circumstances of the case, its locality, and so forth, rendered it necessary that the route should be increased and expedited. But, gentlemen, with reference to that, I desire to call your attention to some remarkable evidence as bearing upon this case, and that is this: that this route which they claim was necessary from the circumstances of the case, and was sure to be increased, upon which the service commenced in July, 1878, and upon which the first order for increase was made in the course of that fall, they were at first very anxious to have discontinued. Upon that route, which was so inevitably, as they want to claim to you, to be increased that they could go on and make their expenditures and make their promises that it must be increased from the nature of things, on the 27th day of June, 1878, John R. Miner submitted to the department his statement, which was apparently carried there by Judge Kidder, the Delegate, and backed by his personal assertion, saying that the route was entirely unnecessary. I will read a passage:

There is no office between Bismarck and Tongue River now, and there are no settlements whatever to be supplied with the United States mail.

Tongue River is supplied twice a week by the route from Fort Buford.

The whole country between Bismarck and Tongue River is occupied by hostile Indians, and no mail *can be carried* over this line *except with a large military escort*. It is simply impossible to carry the mails over this route until military posts are established along this route.

I therefore respectfully ask that this route may be discontinued.

Judge Kidder presented this. Judge Kidder is the gentleman in whom Mr. Brady had so much confidence that after he went out of office he said he had put up the route from Vermillion to Sioux Falls for Judge Kidder, and did not propose to put it down for Mr. Bennett, his successor. Judge Kidder was an important factor. He was so able to judge of the necessities of the service that Brady gave that much deference to him. And yet Brady indorsed this application:

Judge Kidder presents this with the statement that he has reason to believe that the facts set forth therein are correct, though he does not know of his personal knowledge.

That paper was accompanied, also, by the application of Mr. Boone, made on behalf of these defendants, stating that the route was entirely unnecessary, and asking that it be discontinued. Yet this route, which, on the 28th of June, 1878, they were able to say was so utterly unnecessary that it must be discontinued, they want now in another phase of the question to have you believe was so important that

when, on the 11th of July, 1878, Stephen W. Dorsey sent Mr. Rerdell west he was sure it would be expedited, and therefore it is quite likely he may have told Mr. Rerdell so. And when John W. Dorsey went West, in the middle of April, 1878, two months before they represented the utter uselessness of this route, and went to Bismarck, arriving at Bismarck some time in the month of June, prior to the time when this petition was submitted to the department, Mr. John W. Dorsey was able to tell Mr. Pennell that there would be increase and that there would be expedition, and that that increase and that expedition would be obtained by two separate orders, one of which would come within six months and the other within a year, and both of which did follow. Yet they say that the certainty of expedition in view of the location of the route was such that that accounts for this conversation. Gentlemen, it is an insult to your intelligence to dwell further upon that point.

But John W. Dorsey did not talk only to Pennell out there—he talked to Pennell and tried to induce Pennell to become a contractor and take half of the route and furnish the stock, as Pennell says—but he talked to others. Out by the camp-fire, after he had been to see General Miles, and when he was coming eastward from Fort Keogh, somewhere near the Little Missouri, it seems there was apparently some dissatisfaction among his men and a feeling that they might not get their pay. We see now that money was not a plentiful commodity with them apparently. There was what was described by the witnesses as a “kick,” and it was necessary for John W. Dorsey to quiet these parties, and, as they say, he had a conversation with them. Bear in mind, gentlemen, that Lambert, McLellan, Cable, and, I think, Swift, all testified to similar conversations out there with John W. Dorsey, but they are not all the same conversations as I gather. My impression is that Lambert’s conversation was a conversation that he had personally with John W. Dorsey apart from the others. That is the inference that I draw from the statement here. I read from page 2175. After stating that he met Dorsey in September, 1878, and he had conversation with him, the testimony goes on:

Q. Was anything said about any change on the route?—A. There was. I was talking to him about the route, and he said he expected to make a good route out of it.

Q. Did he say how?—A. He said the route would be expedited.

Q. Anything more?—A. That was all that time, I believe.

Q. Did you have any other conversation with him?—A. Yes, sir; after I got on the road.

Lambert had applied to him for employment on the road.

Q. What was it then?—A. I came in and complained to him about the road being in the condition it was, and he said to wait, that there would be plenty there to build up the road. He said, “You can’t blame me. I am not the one that is doing it.” He said, “My brother will have everything on here and make a good road out of it.”

Q. When was that?—A. That was in January—my first trip in there with the mail.

Lambert was employed as a mail carrier, and went over the route. He said the first conversation was before he was employed, and the second conversation was after he was employed and went over the route. He was cross-examined as to that, and he fixes the first conversation as having taken place at the Merchant’s Hotel in Bismarck. As to the second conversation, I read from page 2179:

I started in on him about the condition that the road was in. It was not equipped or anything of the kind. He told me it was not his fault; that his brother was running that part of the business; that he was doing the best he could.

Q. His brother ran that part of the business?—A. That was understood; that his brother was putting up the money for it.

So much for Lambert. Then, on page 2656, we have the testimony of McLellan. McLellan says that he saw John W. Dorsey on the route between Bismarck and Fort Keogh, and he conversed with him in July or August. I will read from his testimony:

He told us that he intended to have the service increased. In about three months, I think, he expected a tri-weekly service, and in about three months after that he expected a daily service.

Q. Did he say anything about the profits or cost of it?—A. Yes, sir; he said that while they were having a weekly service they expected to lose money on it, but when it was increased and the time expedited, they expected to make a very good thing of it.

Q. Were any sums named?—A. I think he mentioned \$150,000 as the sum to be realized.

Q. Did he say anything about how he expected to get it increased?—A. Yes, sir; he told us that his brother, Senator Dorsey, was chairman of the Post-Office Committee, I believe it was, and through his influence he expected to get the increase, or partly through his influence.

Q. Did he say anything as to who was interested in the route?—A. He did not say who all of the parties were.

Q. Did he name any?—A. I don't remember any, excepting Senator Dorsey and the Second Assistant Postmaster-General.

Q. He named him, did he?—A. He did not give the name; only the position.

Q. Was anything said about the way the service was to be performed?—A. I do not understand.

Q. Was anything said about performing the service on time or anything in that connection?—A. I think he said at one time he did not care whether they got through on time or not; that they expected to draw pay just the same.

On cross-examination Mr. McLellan was asked to state the precise language, and said he could not give the precise language.

I read from page 2658:

I said before that I could not give the language in full, but I can give this part of it: He said they had organized a ring in Washington. I don't know whether he said that the Second Assistant Postmaster-General was in that ring. Anyhow I understood that the ring had an understanding with him.

Q. Are you giving the language now?—A. No, sir.

Q. Go back and tell me when you stopped giving the language?—A. Just after this part of it; he said they had organized a ring in Washington.

Q. Give his words right, then?—A. That is all of his words that I can give.

Q. Did he say "they" have, or "we" have?—A. "They" have.

Q. Was "they" the word he used?—A. Yes, sir.

Q. "They have organized a ring in Washington?"—A. Yes, sir.

Q. You recollect that distinctly?—A. Yes, sir.

Q. Do you recollect that that was the exact form of the expression?—A. Yes, sir.

Q. "They have organized a ring in Washington?"—A. Yes, sir.

Q. Did he tell who was in the ring?—A. No, sir; he did not.

Q. Whom did he mean by "they," if he did not tell who was in it?—A. Well, I gathered from his conversation that he meant himself and Senator Dorsey and others. I do not know who the others were.

Q. Himself and Senator Dorsey and others?—A. Yes, sir.

Q. Did he tell you who the others were?—A. No, sir.

Then he was questioned as to the circumstances under which he first mentioned this conversation, and it appeared that he mentioned it to a post-office inspector in Bismarck or Omaha, or somewhere there, some two years ago, and that he mentioned it to Mr. Ker before he went on the stand. He says that this conversation occurred at Beaver Creek, and he mentioned among the people who were present Charles McLaughlin and Mr. Cable, who was examined. Now, on page 2666, Mr. Cable was examined. I will read from his testimony:

A. We met Mr. Dorsey that evening on his return from Miles City; we met him that day in the afternoon some time, and that night we rode very late, and the men of the

crew working for him was very angry at having to work so long, and rather thought it was Mr. Dorsey's fault, I guess, and they made some kick, and wanted to go back, and others thought they had no other way of getting their pay, and for this reason Mr. Dorsey gave this conversation when they made this—

Q. [Interposing.] Kick?—A. Yes, sir.

Q. What was the conversation?—A. I don't think I can give the conversation.

Mr. WILSON. I make the same objection as before.

Q. You can give the substance of it?—A. I think I can.

Q. Well, what was it?—A. Well, he said that in the first place they did not expect to make any money out of the contract under the first bid or at the figures they had it at that time, but they took these contracts low in the first place to keep out small bids, or to be sure of getting the contracts, knowing that they would have an increase of service.

Q. What else?—A. He said they would get the increase with the influence of his brother, Senator Dorsey.

Q. Did he state how the influence was exercised?

Then came an interruption and the witness says he will give the whole conversation as well as he can, and goes on:

I believe he said with the influence his brother had over the Second Assistant Postmaster-General; he did not mention any name. He also said there was a ring formed here in Washington, but I don't remember as he said at that time what that ring was formed for.

Q. Anything else that you remember?—A. Not at present; no, sir.

Q. Was anything said about the amount of increase, or anything of that sort?—A. Well, he spoke of what their pay would be at the end of the year if it was increased as he expected. He said the pay would be \$150,000.

He gave that amount a little high. Then the examination goes into another matter, which I will not take up now. Gentlemen, one conversation was sworn to by Lambert as having been a personal conversation with himself before he was employed and again after he had been over the route and complained to him about the condition of the route, Mr. Lambert had an entirely different conversation. We have Mr. Cable and Mr. McLellan swearing to their conversation in substantially the same language and giving substantially the same facts and yet with sufficient variations to show that they did not come on the stand here to relate a concerted story. Against that I am bound to say in frankness is the statement of Mr. Dorsey. Mr. Dorsey tells you that that is not true. Mr. Dorsey says, in denying the statement of Mr. McLellan, that it is a lie out of whole cloth and it is absurd to suppose he would tell anybody such a thing. He says he did not do it, but he admits the occurrence, admits meeting those parties there at that time, admits the long service, and undertakes to say that there could not have been any question with reference to pay, because they had plenty of money. Yet when he was met with a letter which he had himself written to Washington, complaining of the want of money, he undertook to make out that that related to a somewhat subsequent time. I think I may say, without going into the details, that he entirely failed to establish that point. This same conversation is referred to again on page 4147. There Mr. Dorsey goes into the details of the whole occurrence, describing how they met and how they were out very late that night, but undertaking to say that the conversation was not true. It therefore stands in this way, gentlemen: That Mr. John W. Dorsey is stated by Mr. Pennell to have had a conversation with him in which he declared that the route would be increased and the service expedited, and the details were given. He is stated by Mr. Lambert to have had a conversation with him in which he said substantially that the route would be increased, and that his brother would see that it was arranged; and he is stated by Cable and McLellan to have had a conversation with them in which he repeated all the things I have said to

you. He is put upon the stand, and in a quasi way he denies the conversation with Pennell, but he admits that he talked with Pennell about a partnership, and admits substantially he talked with Pennell about the expedition and increase, but undertakes to locate it as occurring after the time he saw General Miles, and undertakes to lead you to believe that he got his knowledge about the expedition from General Miles's opinion. From the beginning to the end there is one thing he does not deny or pretend to deny while on the stand, and that is the conversation with Lambert. He pretends to deny the conversation with Pennell, yet he practically admits it. He does not deny the conversation with Lambert. As to the conversation with McLellan and the conversation with Cable, both of them were present at the same time. They were both before you, honest, intelligent witnesses, having no earthly reason for committing perjury on the stand, and no earthly interest in this trial. We brought them here from their work, as we brought all these Western witnesses from their work, under a subpoena and at a very great loss and inconvenience to them. They were brought here and kept here until after their opportunities to arrange for their spring and summer work were gone. They were pestering us with applications to be allowed to go back. They were simply here as witnesses under subpoena, with no reason for telling a lie, and no reason for committing perjury upon the stand. They stated that certain things occurred, and John W. Dorsey, the man who admittedly swore to two contradictory affidavits on the same day, the man who admittedly went under some instigation, or his own instigation, to Pennell and Lounsberry with regard to the paper post-office, by which, reckoning the amount upon the ultimate expedition, \$12,000 a year would have been fraudulently taken from the Treasury; the man who is on trial for his liberty and his character, if he has any character, with all his interests at stake—that man expects you to believe him as against the witnesses I have first named. I shall satisfy you, gentlemen, before I get through, that beyond all dispute John W. Dorsey lied upon the stand as to some matters, and yet he asks you to believe that his statement is correct, and that Cable, McLellan, Lambert, and Pennell are liars. I do not think, gentlemen, you are going to believe anything of that kind.

Now, as to this side post-office. I only want to refer to it for the purpose of showing that Mr. John W. Dorsey, by his own confession, did undertake to get that side post-office put on, and that he went to Mr. Lounsberry, the postmaster at Bismarck, about it. Mr. Lounsberry was not a witness who placed himself very efficiently at the service of the Government, and therefore did not volunteer to give us any information, and when he was first on the stand we had no knowledge that Mr. Dorsey had any conversation or anything to do with Mr. Lounsberry upon this subject; but after Mr. Lounsberry went off the stand John W. Dorsey came to him and told him he was glad that he had not been examined about that side post-office business, because it would have made rather a bad show. That coming to our knowledge, Mr. Lounsberry was put back on the stand and swore that John W. Dorsey did come to him with a petition seeking to have a post-office established at a fictitious place sixty miles off the road, by a spur, somewhere near the Little Missouri River, and then it appeared that Mr. Dorsey, when the witness had left the stand the first time, admitted to him that he had had that conversation, and said it was the one crooked thing that he had been engaged in. It is the old story of the young lady, gentlemen, "Such a little one." Mr. Dorsey asks you to believe that. Mr. Dorsey was engaged in the business of establish-

ing a fraudulent side post-office at a cost to the Government of \$12,000 a year, if you take the rate of the ultimate expedition upon that route. John W. Dorsey said he was utterly green in post-office matters and did not know anything about expedition even until that expert in post-office matters, General Nelson A. Miles, told him about expedition out there, and then he learned something about expedition, but did not know anything else about the post-office business. Rerdell put him up to it. Rerdell is the man upon whom all these people want to put all their rascality from the time he came upon the witness-stand. Rerdell is the gigantic rascal who conceived all the iniquity that there is in this case. Rerdell is the man whom they have followed, and whose bidding they have done, and yet Rerdell was working on a salary of \$3,000 a year, and all the advantages and the emoluments that were to come out of all these crooked things were to do Mr. Rerdell no possible good, but were to redound to the benefit of these defendants. Mr. John W. Dorsey asks you to believe that he did this thing at the instigation of Rerdell. He admits that he did it at the instigation of Rerdell, and wants you also to believe the Cable, McLellan, and company are lying about the other crooked thing that they declared he told them about. Suppose we take it as true that he did what he did about the paper post-office at the instigation of Rerdell. Where, then, do they land? Rerdell is a gentleman who came into this business, according to their theory, on the 11th day of July. They say Mr. Rerdell had nothing to do with it before that, except that he did on one night assist in making out the bids, but that was all that Rerdell had to do with the business up to that time. Mr. John W. Dorsey was a bidder, and Mr. John W. Dorsey was interested. In the middle of April, 1878, he started out on his western trip to put on the service, and he picked up a little knowledge of postal business, because, although he did not know anything about expedition, he knew enough to tell General Miles that if they undertook to give too much service the contractors would throw their contracts down. Vaile says he did not know that. But this innocent Mr. Dorsey did these things because Rerdell told him to. I think it quite likely that Mr. Rerdell did advise just that thing. If I mistake not Mr. Rerdell said that he did advise just that thing. But Mr. Rerdell says another thing. Mr. Rerdell says that before he left here on the 11th of July Mr. Stephen W. Dorsey handed him the blanks for the establishment of a post-office. They were not petitions. The department has a regular blank form gotten up which requires certain details of information and certain certificates. Mr. Rerdell says that before he left here Stephen W. Dorsey gave him those blanks and instructed him to see that this post-office was gotten up. He says that he went there with those papers, and in pursuance of those instructions did communicate with John W. Dorsey and did give the papers to John W. Dorsey, which John W. Dorsey admittedly took to Lounsberry, if not to Pennell, and that was the origin of the side post-office. Gentlemen, is not that explanation consistent with common sense? Rerdell knew nothing about post-office business. He went out on the 11th of July at Dorsey's request to spend his vacation in the West on this business; staid there less than ten days, I believe, and then came back. He knew nothing about it. He had no interest in the matter. Is it not consistent, gentlemen, with common sense to believe that Stephen W. Dorsey, who was the originator of this grand conspiracy, this grand scheme to defraud the United States, then being in the Senate of the United States, was the man who originated this idea, as he originated, in our opinion, the whole scheme of fraud, and that he gave Rerdell these blanks? The idea of getting up a side

post-office was suggested to Dorsey by the fact that the route was advertised at two hundred and fifty miles and under the contract was stated at two hundred and fifty miles, when it turned out, on information, which the records show Stephen W. Dorsey obtained from General Rosser, the engineer of the Northern Pacific Railroad, that the distance was three hundred and three miles to the one intermediate point, and three hundred and ten miles to the terminal point. Dorsey got that information for the department and filed it in the department, and the result was that it was clear that they had to perform three hundred and ten miles of service upon that route for only two hundred and fifty miles of allowance. As Miner says in his letter asking the discontinuance of the route, they never knew of such a case as that before where there was such a discrepancy. That was one of the reasons why he asked that the route should be discontinued. But Stephen W. Dorsey knew something better than that. He knew of a better plan than getting a route discontinued. They were carrying the mail sixty miles further than they supposed the distance to be when they bid, and therefore Stephen W. Dorsey gets the papers to locate an alleged post-office and determines to have it sixty miles off the route. He was going to make up his sixty miles in that fashion. He gave those papers to Rerdell, with his instructions on the subject, and Rerdell gave them to John W. Dorsey. John W. Dorsey undertook to put the plan in operation until he was met by the opposition of the honest Pennell and the honest postmaster at Bismarck. Is not that the common-sense explanation of this thing? It is admitted that John W. Dorsey had the papers, and that John W. Dorsey took the papers to Lounsberry, if not to Pennell, and undertook to get the side post-office. How came John W. Dorsey to do it? John W. Dorsey says he did it at the instigation of Rerdell. What was Rerdell's interest in doing that thing. At that time he was not even on a salary, but was simply spending his vacation to aid Dorsey. Rerdell tells you he did it because Dorsey told him to do it, and gave him the papers with which it was to be done. I submit, gentlemen, that you cannot have any doubt upon that subject. John W. Dorsey by his own admission was engaged in this conspiracy, and admitted that he was engaged in it at the instigation of Rerdell. It seems to me that you will plainly see it was in reality at the instigation of Stephen W. Dorsey and for the benefit of both.

Again, with reference to other evidence of prearrangement I will refer to declarations made by these parties of what would be done, and which came about promptly as being done. Upon the route from Rawlins to White River Mr. Rankin was examined as a witness. Mr. Rankin says that Mr. John W. Dorsey was out there, and that he had an interview with him, after Rerdell had been there some time, in the latter part of June or July, 1879. I will read to you from his testimony, on page 2057:

Q. What was that conversation?—A. He talked to me in Rawlins something about me taking the contract to carry the mail. I told him that I did not want to have anything to do with it; that I had not time. Him and me traveled the next day, or two days afterwards, anyhow me and him traveled from Rawlins to Omaha together on the train, and we talked it all over. I told him there was no money for me in carrying the mail, and he said he expected to have extra service; that it would be made tri-weekly, and there would be some money in it.

Q. Did he say anything how he was going to get that service?—A. The conversation came up just like it did, as near as I can recollect, when Mr. Rerdell was there, that we were a great way west there and it took a long time to get anything done out there.

Q. Who said that?—A. I said that.

Q. What did he say?—A. He said that he had a brother that was a Senator, and through his influence he could get it done pretty soon, or something to that effect.

Q. Did he say anything further in that connection? Did he mention anybody else?—A. I do not think Mr. Dorsey did mention anybody. If he did, I don't recollect it.

Mr. Rankin referred to a previous conversation with Rerdell in which Rerdell had made some similar statement, in which he said that through Senator Dorsey and Brady the service would be put on at once. That conversation was had in Rankin's presence, and then afterward Dorsey came out there and he had the conversation I have read. Rankin says it came up just as it did, as near as he could recollect, when Rerdell was there, and goes on and narrates the conversation which I have read. With reference to that route from Rawlins to White River I will call your attention to one very singular fact, and that is the letter which Mr. Rerdell wrote in February, 1881. I would like to call your attention to the language of that letter. It is found on page 2077. Mr. Rerdell writes from Washington:

If you will get up petitions asking that the route be made six or seven times a week, I can get the increase. Get the officers at White to both sign petition and write letters to the Postmaster-General, asking for an increase.

P. S.—This must be done at once, so that I can get it by the 1st of March.

There is a letter that arrived at Rawlins. The very day it arrived there they set to work getting up a petition and it was circulated around the bar-rooms at Rawlins. They got the petition. The letter was sent on up the route to Adams, who undertook to get a petition signed by the officers at White River. He got a couple of names, and he got such a blowing up from the commandant for undertaking to be engaged in such a fraud that he went no further and never forwarded that petition here. The Rawlins petition was duly sent here. It did not get here by the 1st of March. It did not get here by the time General Garfield's administration came into office on the 4th of March, which, as we claim, was the whole object in having it here by the 1st of March. It got here upon the 7th or 8th of March. Upon that day, promptly, Thomas J. Brady did precisely what Mr. Rerdell, writing out to Rawlins, said he would do. He made the order for the increase of trips and added four trips to that route, upon which the mail at that time was very small, because most of the soldiers had gone. He made the order adding four trips, and, in violation of the spirit if not the letter of the law of the 7th of April, 1880, he allowed for those four trips \$18,275, though the original pay on the route per trip was only \$1,750. He allowed that large sum by an order made on the 8th of March. When that order met the eye of Mr. James he directed him to revoke it. Mr. Brady did not revoke it. He went out of office leaving it unrevoked, and the money was paid out of the Treasury until we entered upon this investigation in the fall of 1881. Then we found this order unrevoked, and it was revoked pretty quickly. Mr. Brady's only excuse for not revoking the order is that he told Mr. James he wanted a written order. He undertakes to tell you that he thinks Mr. James's conversation with him was about some routes in Texas, and he refers to a letter which he produced. That letter related on its face to orders which had not been issued, and said, "Don't issue the orders until I see you again." He says Mr. James's conversation with him was about that; but Mr. James says it was about this order, and it was caused by his seeing the order upon the journal of the day. The order had been made and he directed that it be revoked. He gave the direction not to Brady but to one of the other officers, and Brady then came to him and wanted to

know whether that direction showed that economy was to be the policy of his administration, and he was told that it did. Then he undertakes to say that he had the impudence to tell his superior officer that he would not revoke the order unless he was given written directions to that effect; and never having received a written order the order never was revoked. Gentlemen, I do not think you will believe anything of that kind.

On this question of prearrangement let me pass along to some other matters which go to show that there can be no possibility in connection with this matter except the theory that will account for the affidavits to which I have called your attention, to wit, collusion and prearrangement between these defendants. Mr. Miner, in the name of Miner, Peck & Co., on the 9th of July, 1878, writes to J. Chauncey Hayes, who was a witness on the stand from California, with whom he had been negotiating:

With regard to increase of 46132, our contract specifies rate of pay. In case of increase we do not care to go on making new bargains for four years, and are surprised that you as a business man should ask it.

The letter indicates that the question of increase had already come up as early as the 9th of July, 1878, only nine days after the service commenced. On the 3d of August there is another letter:

DEAR SIR: Yours 23d received. Increases can only be obtained by our joint efforts. They are based upon petitions from the citizens along the route—

Brady says they are based upon petitions from citizens up in the Capitol—

but it requires active work here to consummate them; therefore, according to the terms of the contract, the benefits are to be shared.

We are willing to increase your compensation \$12 per year, which is just what it would have cost us had your error been made known to us in time. This is really more than could be claimed, as the change made in your copy of the contract was without our knowledge or consent.

That apparently refers to some other matter. Then, on the 19th of September, there is another letter:

DEAR SIR: Yours 1st and 4th received. Increased speed is very seldom ordered—

Increase of speed is very seldom ordered. Was that true, gentlemen, under Mr. Brady? It may have been true under Mr. Brady's predecessors, but was it true under Mr. Brady—

and never without special labor here and considerable expense.

What expense was to be incurred here in procuring an order for increase of speed? Can you imagine, has anybody undertaken to tell you, did Miner on the stand undertake to suggest what expense, could be incurred for increase of speed?

Your ideas as to how things are managed are very erroneous.

Very clearly they were. Mr. Hayes imagined things were managed honestly.

You seem to fancy that everything is done on the route and nothing here, which is quite a mistake.

Now, what can you infer from that except that Mr. Miner told Mr. Hayes over his own name that they had to incur expenses here in getting increase of speed? Can there be any inference whatever, except that the expense incurred was an illegitimate expense? Could there be any honest expense incurred here in getting an increase of speed? There was some subsequent correspondence with Hayes, which it does

not occur to me has any bearing on the subject that I am now considering. Let us see what Mr. Miner says when given a full opportunity to explain these letters. On page 4274, Mr. Miner's attention was called to this matter and he was asked :

What do you mean by "active work here?"—A. I mean what I say.

Q. You mean active work, and that is all you have to explain?—A. That is all.

Then he was asked what he meant by the phrase :

Increased speed is very seldom ordered, and never without special labor here and considerable expense.

And he answered that he meant precisely what he said.

Q. "Never ordered without considerable expense here?"—A. I meant precisely what the letter said.

Q. Precisely what it said?—A. Yes, sir; if you want to know the circumstances under which that letter was written, I can tell you.

Q. You can make any explanation you want. I want to know what you meant by saying "considerable expense?"—A. I can explain the whole matter. Mr. Hayes had a postmaster out there by the name of Scipio Craig, who was a schoolmate of "Tom Brady," as he called him, and he thought that anything he asked, whether reasonable or not, could be done.

That seems to indicate that Mr. Brady's school-boy days were very much like his manhood :

Q. And you wanted to satisfy him that it could not?—A. I wanted to satisfy him that it required the indorsements of his members of Congress from California, and there is another letter in the case that so states.

Q. Is that your only explanation?—A. That is all.

Q. What did you mean by considerable expense?—A. I was at the expense of living here.

Q. You meant that?—A. I did.

He was asked what he meant by the expression "special labor here and considerable expense," and he said, "I was at the expense of living here."

Q. Then if you were at the expense of living here, and you meant that only, why did you refer to the expense in connection with increased speed, and say that increased speed required special labor here and considerable expense?—A. Because his letter that that was a reply to related only to increased speed.

Q. That is your explanation, is it?—A. That is my explanation, sir.

Q. That is your explanation of why you told him that increased speed required considerable expense here?—A. Yes, sir; and furthermore, Mr. Hayes was of the opinion that if any expedition was ordered on that route he ought to have it all, and I was trying to make a good trade with him.

Q. You wanted to make him believe you were at heavy expense in order to appreciate your services and to depreciate his?—A. I did, sir.

Q. That is, you wanted to deceive him, did you?—A. It would so appear.

Q. Is it a fact?—A. I think it is.

Q. Then when you said that it required expense here you told him a lie, did you?—

A. Well, sir, I was not under oath when I wrote that letter.

Now, is it necessary, gentlemen, to dwell any more upon the character or the evidence of a man who comes on the stand and deliberately tells you such a story as that? He says that the language "special labor and considerable expense" is explained by saying that he was at the expense of living here, and then, when he is pressed with the statement that he confined the expense to expedition, he said, "Well, I lied to him, and I was not under oath." It does not seem to me, gentlemen, that there is any necessity of wasting much more time or paying much more attention to Mr. Miner in this connection, or to anything else that he says in this case. But I may say in passing that he undertakes to fix that up by referring in his explanation to something about a postmaster out there having an idea that, being a schoolmate of "Tom Brady's," it could

be done in that way. Unfortunately that letter was written on the 19th of September, 1878. There is another letter from Miner on the 9th of October, 1878, and it is not until the 2d of November, in reply to a letter of the 26th of October, that any mention is introduced into the correspondence about Tom Brady's schoolmate, the postmaster, or anything of that kind. This letter referring to special labor and considerable expense was written on the 19th of September, 1878, and mention of the schoolmate of Tom Brady does not appear until the 11th of November following, or about six weeks after that letter of Miner had been written in which he talked about the expense.

Again, as to the evidences of prearrangement, take Mr. Moore's statement of the instructions to him. I shall have something to say directly as to Mr. Moore, but for the moment I pass that and simply call your attention to what Mr. Moore stated. On page 1370 Mr. Moore states:

Mr. Stephen W. Dorsey told me I could insure the subcontractors that the service would be increased and expedited, and I used my own terms to convince them that it would be.

Under that authority Mr. Moore told Mr. McBean, out in Oregon, that this would be done. I only refer to it now as showing you that the statement of Mr. Moore that Mr. Dorsey gave him that authority is not a manufactured statement at this time, and under the circumstances of the case. There can be no question, at any rate, that Mr. Moore did make this statement. Mr. Moore was sent West with the verbal directions of Mr. Stephen W. Dorsey, and with the written power of attorney of John R. Miner, which written power of attorney he surrendered to John R. Miner.

We called upon Mr. Miner to produce that paper, but he did not dare to produce it. This power of attorney authorized Moore to do certain things out there. Acting under the power of attorney, and with the verbal directions of Stephen W. Dorsey, Moore went West, and in Oregon he found Mr. McBean. He was trying to induce Mr. McBean to take the contract on the Canyon City and Fort McDermitt route. I read from page 1606, from the testimony of McBean:

A. In the first place I met him in Canyon City with Mr. Williamson. They wanted me to take the contract to carry half of that route. They asked me what I would do it for. I told him I would do it for \$150—

He was to take the contract to run half of the route for \$150, and Thomas J. Brady shortly afterwards was paying from the Treasury for the whole of that route over \$50,000—

as I was running the military mail. Then Williamson came around and told me they could not pay that. Then him and Moore went off together and talked awhile—

Mr. INGERSOLL. [Interposing.] Has he any right to tell what Williamson told him?

Mr. MERRICK. I do not want what Williamson told him.

Q. My question was limited to your conversation with Moore?—A. Mr. Moore says to me in Canyon City, "I will give you \$50. You take that \$50 a month, and when I get to Camp Harney I will make you know that this route will be increased and expedited." I says, "All right, I will be none the loser by it. I will take the \$50 a month," and consequently I took it.

Q. Did you go with him to Camp Harney?—A. Yes, sir.

Q. How did he make known to you that it would be expedited and increased?—A. By papers and documents he had with him.

Q. What did he say?—A. He told me that they had enough influence—

Mr. HENKLE. [Interposing.] I object to that, your honor, and reserve an exception.

Mr. WILSON. That is after he made the contract.

Q. Had you made the contract at the time of the conversation you are now speaking of?—A. Yes, sir; I made the contract with him in Canyon City with the understanding that he was to prove—

Mr. WILSON. [Interposing.] Hold on.

Mr. MERRICK. Go on and state the understanding.

A. [Continuing.] Says he, "When I go with you in the morning to Camp Harney," which he did, "you need not be afraid," or something of that kind. Says he, "It is only for a month or so, and then we will get this expedited." I says, "How do I know that?" He says, "I will show you everything when I get to Harney in the morning."

Q. Did he tell you by what process or through whom that expedition was to be made?—A. Yes, sir.

Q. Now, what did he say?

Mr. INGERSOLL. I object.

The COURT. That is within the scope of the ruling already made; what was done in pursuance of that power of attorney to make the contract.

Mr. INGERSOLL. I except.

Mr. HENKLE. I except, also.

Q. Go on and state through whom and how; who did he speak for?—A. He told me that they had influence in the Senate and also in the Post-Office Department to get anything they asked for.

Mr. WILSON. Does your honor say that is competent?

The COURT. No; that is not competent.

Then there was considerable discussion among counsel, and finally the court held that the witness could state nothing more than what he had there stated, I think, and could not go further into the statements made to him. Then on cross-examination there was some further testimony, and they undertook to raise the question as to whether this conversation did not occur with Williamson. Mr. Williamson was sitting here all the time by the side of Mr. Miner. Mr. McBean stated that a considerable portion of the conversation was not in the presence of Mr. Williamson. If Mr. Williamson could have contradicted anything that Mr. McBean stated Mr. Moore told him—and Mr. Moore said the same thing—would not Mr. Williamson have been put on the stand? Mr. Williamson is the partner of Mr. Vaile, and was his representative out there. Moore undoubtedly made that representation out there. Then there is this further passage of testimony from McBean that is very significant. After the court had ruled that he could not go any further than he had done, came this question:

Did the expedition and the increase follow as promised?—A. No, sir.

There our friends on the other side pricked up their ears with great relief—

He promised it should be increased and then afterwards expedited. It was increased and expedited at the same time.

That is the way that the promise that Stephen W. Dorsey authorized Mr. Moore to make, and which Mr. Moore did make to Mr. McBean, and which Mr. McBean testified about, was carried out. They lived up to that statement because it was a promise which it was for their benefit to keep. McBean said it was increased and expedited at the same time. We find that that conversation having occurred not far from September or October, 1878, on the 23d of December, 1878, Mr. Brady made an order expediting the route and increasing the service and allowing therefor \$18,612. But Mr. Moore had another conversation. He had a conversation with Mr. Major. Mr. Major was a contractor of the firm of Major & Culverhouse on the route from Redding to Alturas. I read from page 1441:

When Mr. Moore came to Redding he was referred to me, as I was in the business of carrying the mails. He wanted to make a contract with me to carry that mail from Redding to Alturas, and I asked him on what terms. He said he wanted me to carry it for four years. I said, "In its present condition I do not want it at all. It would not pay horse-feed."

It was then two trips, and the time was one hundred and eight hours the pay being \$5,988, or about \$2,900 a trip.

He says, "If I make a contract with you I will assure you that the trips will be increased." I asked him by what assurance, and he then showed me.

Mr. INGERSOLL. Showed you what?

The WITNESS. A power of attorney.

Then there was some objection to Mr. Ingersoll's interfering at that stage, and the witness went on:

He showed me the power of attorney and read it over, and I was looking over his shoulder, and it was signed by Miner, Peck, and Dorsey. He says, "I will state, furthermore, that you will have an increased trip before the service commences." I says, "That is pretty good." I believe that was about what was said in regard to it, with the exception of what was said about Senator Dorsey. He said that—

The COURT. You need not say what he said about Senator Dorsey.

The WITNESS. Well, that was the conversation between us.

Q. Did he say anything about expedition?—A. Yes; he said that in the course of time we would get the trips increased to six times a week and expedition, and he said, "You can get that by circulating petitions," which we did do.

Then there was some more discussion. He says that he made a contract.

Q. What happened in reference to the realization of the representations he had made subsequently?—A. It came just as he had said.

Q. What came first?—A. The one trip.

Q. What time; before you started?—A. Before we commenced the service.

Q. What came next?—A. Three trips and expedition.

Q. What came next?—A. Then there was another trip.

Mr. INGERSOLL. Oh, well, the records will show.

Q. It came just as he said?—A. About as he said. He said in the course of several months after we started in we could get it six times a week.

Q. I think you have testified what Moore said in reference to the circulation of petitions?

Mr. INGERSOLL. I do not think he did.

The COURT. He said something about that.

A. Yes; he told me to circulate petitions for the increase and forward them to the Second Assistant Postmaster-General.

Mr. WILSON. I do not want to interrupt you, but possibly you have made a slip of the tongue. Did I understand you to say that Mr. McBean said he carried the military mail for \$275 a year?

Mr. BLISS. He said \$275 for a month, as I recollect it. I am not sure as to that.

Mr. WILSON. It was \$270 a month.

Mr. BLISS. Very well.

Mr. WILSON. I think you said year.

Mr. BLISS. I was not sure about the time. I presume you are right. However that may be it is unimportant in the connection in which I spoke of it. Two hundred and seventy dollars a month for carrying the mail to Camp Harney was a pretty small sum in comparison with the amount which Mr. Brady paid from the Treasury.

Now, we have Mr. Moore telling Mr. McBean that certain things would be done, and they were done. We have Mr. Moore telling Mr. Major that certain things would be done; that, first, there would be one trip added before the service began. There was one trip added. Everything was done precisely as he said. He said that he made that statement on the verbal authority of Stephen W. Dorsey and by virtue of a written power of attorney of Mr. Miner, which they do not dare to produce. That the testimony is true that Moore made the statements to McBean and Major cannot be disputed. Now, how could Moore make them? What did Moore know about it? How could Moore predict anything about it when it was a matter at that time in which he was not interested except upon a salary? I think the interview of McBean was on his second trip after he had become interested, but his inter-

view with Major was on his first trip, when he had no interest in the service.

Mr. HENKLE. Do you mean to say that the instructions were contained in the power of attorney?

Mr. BLISS. I mean to say that you did not dare to produce the power of attorney, and the inference is against you on that account. We did not know what was in it. But, acting under that power of attorney, he made certain statements which turned out to be true. Moore was not in a position to be able to know beforehand that those statements would be true, or to bring those things about. But Miner and Dorsey were in a position to know that they would become true and to bring them about. If you would produce the power of attorney you might be permitted to claim that there was nothing of the kind in it.

In the same connection, and before I go any farther, inasmuch as we have had under consideration this question of expense, let us notice one other statement that Mr. Moore makes. After he had first been West on a salary, and had come back here in the summer, and they wanted to engage him, he had a conversation with Miner, whom he had met at Denver, and Miner told him he could not make any arrangement with him to give him an interest in the business without authority from Dorsey. He then came on here and saw Dorsey, and unquestionably received from Dorsey a payment of a certain sum of money. He had a conversation, as he says, with Dorsey:

A. He asked if I had had any talk with Mr. Miner in regard to it. I told him I had. He wanted to know whether Mr. Miner was willing to agree to it. He said he could not make any contract, but as soon as Mr. Miner came he would have him draw up a contract to that effect, and give me one-quarter of the profits for four years in that service, ~~me~~ to give my time—

That is limited to the geographical region up there. I am reading from page 1373—

but my expenses in traveling, and so forth, to be taken out of the general fund before there was a division of profits.

On the next page, 1374:

Q. Did you have any conversation with him about your profits, &c.?—A. Yes, sir; I made the same proposition to him that I had to Mr. Miner, or that Mr. Miner had made to me. I told him I was willing to give him my time, but my expenses must be taken out of the general fund before there was a division of the profits.

Mr. Miner says that it required active labor, and there is a good deal of expense about expedition. Dorsey says that it required money to hold the influence that they had with the department, and he makes a stipulation when he is arranging with Moore for taking an interest in the business that the expenses necessary in keeping up their influence with the department must first be taken out of the fund before there is any division of the profits. Well, gentlemen, if you were going into a partnership to run a stage line, certainly before you divided your profits you should pay the expense of the grease to put upon your axles.

Following along a little further this question of representations made before the occurrences, and showing that these gentlemen were getting profits—gentlemen, they spelled it prophets and profits, both—we find that there was some similar conversation with Mr. Fisk, also up in Oregon. Fisk was sent out on the route with Mr. Moore, and he says, at page 1678:

Well, Mr. Moore came and wanted me to go out and run the route from Canyon City to Baker City. He said that he had purchased Mr. Schutz's stock, and Mr. Schutz would go out with me and put the stock on the road. He said afterwards that probably Mr. Schutz would not be there, and in case he was not there at any time—

Then comes an objection. There always comes an objection when it comes to a critical point in the evidence.

Q. Well, you were to go out?—A. In the absence of Mr. Schutz or himself I was to take charge of the road.

Mr. DAVIDGE. We do not want any more of that, I suppose.

A. [Continuing.] I told him that a semi-weekly was the hardest route to stock that there was.

Mr. HENKLE. I object to that.

Mr. BLISS. This is all introductory, sir.

Mr. DAVIDGE. We object.

The COURT. The objection is overruled.

Mr. HENKLE. I note an exception.

Q. What did he say to that?—A. He said it was only temporary; that as soon as I could get the papers to Washington and back it would be increased.

Q. Did he say to what extent it would be increased?—A. I don't think he did exactly say to what extent.

Then he has a conversation also about the same time with Mr. Schutz, and Mr. Schutz testifies to it on page 1709:

Q. Did Mr. Moore say anything to you at that time with reference to petitions?—

A. Mr. Moore stated he represented a powerful contracting company—

Mr. HENKLE. [Interposing.] I object to that.

The COURT. The objection is overruled.

Mr. HENKLE. I except.

A. [Continuing.]—and that they would hereafter control all the contracts in the far Northwest, and while he had to look after other routes, he appointed me agent to run that route from The Dalles to Baker, to all intents and purposes, by reason of my having run it before, I believe. He wanted me to get up petitions, and said that any petition they could get up they would get granted, because, as he represented, they owned the department.

Mr. HENKLE. I object to that.

Mr. WILSON. Is that competent?

The COURT. I have excluded evidence of that kind uniformly.

Mr. WILSON. I want that stricken out then.

The COURT. It is stricken out.

Mr. BLISS. What portion of it is stricken out?

The COURT. That this party owned the department.

So that is the way the answer stands.

would get granted.

He wanted me to get up petitions, and said that any petition they could get up they

Remember, gentlemen, this is out in Oregon, in the immediate region of the Canyon City and Fort McDermitt operations, where Miner revealed in the alterations of petitions.

Q. Was anything said about the number of petitions?—A. Not any more than that I should circulate petitions very extensively, and all that I had to do was to get one or two original petitions, and they would doctor them up and get as many as they wanted.

Mr. HENKLE. I object to that.

Mr. MERRICK. That was in reference to getting up the petitions.

Mr. INGERSOLL. Is that proper, if the court please—what they were going to do?

Then comes in some discussion, after which the court says:

Yes; within that power you can interrogate the witness.

The court allowed it to stand. So there we have Mr. Moore's statements showing not only a prearrangement, not only that they were going to get the service increased, but showing also how they were going to get it increased, and that was by procuring one or two genuine petitions and then making alterations. That conversation, gentlemen,

occurred in September or October, 1878, and on the 29th day of September, 1878, Mr. Brady ordered expedition and paid therefor \$18,468.

Besides all this evidence of prearrangement between the parties we find this condition of things: That Mr. Dorsey goes to work, and when Mr. Boone has drawn a subcontract he alters it; it does not suit him, and he strikes out a clause and puts in a clause. On page 3871 this is quoted from the testimony which Mr. Boone gave, and it is quoted in connection with Mr. Dorsey's examination. After referring to the form of the subcontract, Mr. Boone says it was changed:

Q. Who ordered the change?—A. Mr. Dorsey ordered the change.

Q. S. W. Dorsey?—A. Yes, sir.

Q. State to the jury what it was originally, and what was the change made?—A. [Reading:]

"The party of the second part further covenants and agrees that in case said service is expedited from ——— hours to ——— hours running time, that the pay shall be calculated and paid at the following rates: ——— round trips per week, ——— dollars."

That was the clause prepared by myself, and my clause was stricken out by three black lines, and a new clause inserted.

And the copies of the original subcontract were produced here showing just how they were struck out. It had been printed with that clause in, and it was put back upon the press and those three lines are struck out by black lines across them, and then there is substituted this provision:

"It is further mutually agreed by the parties hereto, that in case said service is expedited, that the party of the first part shall pay to the party of the second part sixty-five per centum of the amount received by said first party from the Post-Office Department on account of said expedition, in addition to the sums hereinbefore agreed to be paid."

Q. Who directed the insertion of the second clause?—A. Mr. Dorsey wrote that, I believe. [Page 3872.]

That is in Boone's testimony. Mr. Dorsey is asked about it, and he says he does not remember whether he wrote it or not. He thinks it an excellent clause. And yet you will bear in mind that it gives 65 per cent. to the man who was doing the work and leaves 35 per cent. for the contractors.

And you will bear in mind, gentlemen, that Mr. Boone, a post-office contractor, was selected because he had great experience in the business, and he swore to you that he had at that time, when he was selected, one-tenth of all the contracts upon star routes in the United States—on eleven hundred routes; I think the total was between nine thousand and ten thousand, and he had one-tenth of them. He said that no such clause about expedition had ever come to his knowledge or notice; that he knew nothing about it. But Stephen W. Dorsey, away back there, knew sufficient about expedition to appreciate the importance of keeping for the contractors 35 per cent. and giving to the men who were performing the service only 65 per cent. So, after a large mass of subcontracts had been struck from the press, which gave to the subcontractors all the increase, he directed them to be put back on the press, and this provision giving the subcontractor his money struck out and this other clause put in. Why did Stephen W. Dorsey do that if it was not because his fertile imagination had already conceived the plan of defrauding the United States, and he was making arrangements by which that fraud could be consummated?

With reference to Moore, he testifies a little further in the same connection at page 1356:

Q. What occurred between you and Senator Dorsey at that interview?

That was after Mr. Moore had been West once, I think. It is the second interview.

Q. What occurred between you and Senator Dorsey at that interview?—A. He asked me my opinion of the service.

Q. [Resuming.] What did you reply?—A. I told him I thought the service had been taken too low, but with careful management loss might be avoided.

The COURT. Who said that?

The WITNESS. I said that.

Q. Was anything else said?—A. In speaking of the service I told him I did not understand why those long routes once and twice a week should be taken so low, and he said that was a service that they wished to get; that on that service there was a chance for increase and expedition, and on the date of service there was no chance for any increase.

“Date of service” is a misprint; it should be “daily service,” and was subsequently corrected by the witness. Again, on page 1360, Mr. Moore testifies, and he testifies that at this conversation Mr. Rerdell was present:

Q. What else was said, or what else occurred between you and Dorsey at that time?—A. He showed me a bundle of blank subcontracts, and pointed out, as I had never seen them before, where they had made arrangements for once and twice and three times a week service and daily in blank, and also for a certain per cent. for expedition—a blank per cent. for expedition. This was in the printed blank form.

Q. You say you had never seen a form like that before?—A. No, sir; that was the first I had ever seen of that kind.

Q. Well, what were you to do in the service of these persons?

Mr. INGERSOLL. I object to that.

The COURT. Mr. Merrick, I do not—

Mr. MERRICK. [Interposing.] He says that he was employed by Miner to go West at a fixed salary; that Miner, on the following day, came and told him to go to Dorsey and get instructions.

The COURT. You are right, if that is the view.

Q. [Resuming.] What did Dorsey tell you you were to do under the contract you had made with Miner?

Under this contract that they will not produce.

A. He instructed me, in making all subcontracts, to make allowance for daily service all the way through, and also for expedition.

They were to arrange with the subcontractors as to the amount they wished on daily service and on expedition, then they would know precisely how much they had got to pay out, and then they would know just how deep they must go into the Treasury here to make the requisite profit to them and to pay the expenses which had to be incurred in Washington. On page 1361:

Q. What do you mean by allowance?—A. To make my contract with the subcontractor if it was once a week's service, for twice so much, for three times so much, and so on up to daily, and a certain per cent. for expedition.

Q. What particular instructions did he further give you, if any, in reference to the rate that you were to pay for increase of service and for expedition?—A. To be sure and make my contract for the increase on the descending scale.

Q. Will you explain the descending scale?

Then counsel in chorus interposed about it being explained. Mr. Ingersoll objected. Mr. Davidge wanted to know if he “might say a word.” Mr. Henkle reserved an exception. And generally we took considerable time. Then the court ruled that he might state it.

Q. Was there anything else said by Mr. Dorsey in relation to what you understood him to mean by descending scale; was anything else said by Mr. Dorsey as to the manner in which you were to graduate payments as the running was once a week and your contract for payments in the event of three, four, five, and six times?—A. I was to make the best contract I could, both for increase and expedition.

Q. What did you understand by a descending scale?—A. I understood that if a route was once a week I was to give \$500 a year for it; at twice a week I was to allow the subcontractor \$700 or \$800; three times a week, \$1,200, and so on up to daily.

Q. Not to double up every time?—A. No, sir; not to give pro rata, as the Government allows.

Q. But to descend as you advanced?—A. Yes, sir.

Mr. HENKLE. Does he say that that is what Dorsey said to him?

The WITNESS. I understood that, sir.

Mr. MERRICK. You will have the cross-examination of him.

Q. [Resuming.] What was said about expedition and the price you were to pay for expedition?—A. I asked in reference to that particularly. That was something I did not know anything about, and I asked what would be a fair allowance for expedition. Still, I had to make the best terms I could. I insisted on knowing what would be about right for expedition. I asked him if I averaged 40 per cent. if it would be somewhere near right. He said he considered if I averaged 40 per cent. I would be making a good contract.

Mr. HENKLE. For expedition.

The WITNESS. Forty per cent. for expedition.

Mr. HENKLE. [To Mr. Merrick.] May I ask him whether he meant 40 per cent. for the subcontractor or the contractor?

The WITNESS. Forty per cent. for the subcontractor for all expedition of service.

The COURT. That is, if the service was doubled the pay of the subcontractor would not be doubled, but 40 per cent. would be added to his pay.

Mr. MERRICK. No. I have got through with that, your honor. He says this: That as to the increase of the service where two, three, four, five trips were added, for each additional trip there was to be a descending scale, not a pro rata, but where expedition was ordered then they would receive 40 per cent. for the expedition.

Mr. INGERSOLL. He said if he made contracts that would average 40 per cent.—

Mr. MERRICK. [Interposing.] He would be making a good contract.

The COURT. That is exactly what I understood.

Mr. MERRICK. I thought your honor confused the increase with the expedition.

Q. [Resuming.] That is to say, where the time was shortened the subcontractor was to get 40 per cent. and the original contractor 60 per cent. of the increased pay?—A. Yes, sir; 40 per cent. of 100. That was the way I understood it, and the way the contracts were made.

Q. Now, what else occurred between you and Dorsey at that time?—A. He gave me letters of introduction to prominent men in California, and also employed—

Then Mr. Ingersoll objected to the letters coming in. But he was asked how many letters he had, and he says ten or a dozen:

Q. What else did he give you?—A. He gave me a trip pass to go and return over the Central Pacific and Union Pacific road—

One was the pass that he usually wrote for to Jay Gould and Sidney Dillon, after having made a return therefor on the Mineral Park route—

and also from here to Chicago, and also an annual pass of his brother's over the Central Pacific and Union Pacific, but not from here to Chicago.

This is the honest Senator of the United States; above any fraud, above any petty steal. His brother having an annual pass over the Central Pacific and Union Pacific Railroad, he took that annual pass of his brother's and transferred it over to A. W. Moore to use, by personating John W. Dorsey, and sent him West with it. Well, now, gentlemen, I think that was a very great injustice to Mr. Moore, to ask him to represent such a man as John W. Dorsey. He ought to have been saved from any such degradation as that.

I have gone over all these evidences of prearrangement somewhat rapidly, and yet you may probably think I have taken a great deal of time with them. So I pass over various other items which I have upon my notes in that connection to call your attention to what it seems to me is pertinent as showing what kind of men these defendants were, whether they were likely to be engaged in a scheme to defraud the Government of the United States.

We find them seeking, in the first place, to prevent troublesome remonstrances from going upon the files of the department where their competitors might see them and they might be a little troublesome. For

instance, at page 1314, we have this letter written to John Carey. Carey was a Frenchman, you remember, who was on the stand here as a witness, and he had made a subcontract on the Canyon City and Fort McDermitt route :

WASHINGTON, D. C., *April 15, 1881.*

JOHN CAREY, Esq.,
Fort McDermitt, Nev. :

DEAR SIR: One S. H. Abbott, who was postmaster at Alvord, I find, by accident, is writing to the department that you do not pay your bills, and that there is no need of anything more than a weekly mail.

I wish you would see this man at once and satisfy him ; pay him whatever is reasonable and report to R. C. Williamson, at The Dalles. I suppose that is what he is after. He knows nothing of the through mail, and probably a weekly is all he needs—

The evidence indicates that nobody knew anything of the through mail. After January, 1879, there was a through mail-bag, but there was no through mail. I say “through mail-bag” in the sense of the mail-bag going over the whole route—

but more likely he wants some money. He complained once before to the department that he had to make a special trip to Camp McDermitt to make his returns, and I sent him \$30 and it was all right. Now, I suppose, he wants a little more money.

Yours, &c.,

JOHN R. MINER.

When Mr. Miner came on the stand he was asked to explain this, and he started off with an explanation. And yet the only explanation that he gave is in reference to the latter portion of the letter. Let us see what the explanation is, on page 4206 :

The Canyon City and Camp McDermitt route was not started entirely through until about the 1st of January, 1879. The north end was started. This man Abbott, who was then postmaster at Alvord, sent a bill to the department for \$30.

* * * * *

A. [Continuing.] He sent a bill to the department for \$30 for the expense in going to Camp McDermitt to mail his quarterly report for the quarter ending the 30th of September, 1878. Mr. Turner handed that bill to me and I sent him the money, \$30.

As it appears upon this page it was wrongly punctuated, and further on it was changed. But that is all there is about it.

Q. Why should you have paid his expenses in going to Camp McDermitt?—A. If the mail had started according to the contract, on the 1st of July, he would not have been obliged to go to Fort McDermitt to mail his returns. We considered that we were in neglect, possibly.

Rather. Having entered into a contract to commence service on the 1st of July, they did not begin it until after the 1st of July, and they “considered” that they “were in neglect,” and therefore this postmaster having to go to Fort McDermitt to mail his quarterly report, which, under the regulations, he was required to make, they paid him \$30, and he was entitled to it as a legitimate expense. But how does that account in any manner for this:

One S. H. Abbott, who was postmaster at Alvord, I find by accident—

That was April 15, 1881, not away back in 1879—

is writing to the department that you do not pay your bills, and that there is no need of anything more than a weekly mail.

I wish you would see this man at once and satisfy him ; pay him whatever is reasonable, and report to R. C. Williamson, at The Dalles. I suppose that is what he is after. He knows nothing of the through mail, and probably a weekly is all he needs ; but more likely he wants some money.

And so he wrote to Mr. Carey to go and buy off this Mr. Abbott. Whether Mr. Carey did that or not we do not know. It may be that

Mr. Carey thought he was somewhat above a certain class of people whom I, as a stranger, see designated in the Washington papers as being about here, people who are engaged in operations to prevent the proper administration of the departments and the courts, who are described as department thieves, as jury-fixers, and everything of that sort. Perhaps Mr. Carey was above them. Mr. Miner, however, was not above undertaking to employ a man in some business of that kind, and he undertook to employ Mr. Carey to buy off Mr. Abbott from making remonstrances.

There is, in that connection, gentlemen, one rather remarkable thing that indicates rather suggestively Mr. Miner's opportunities and Mr. Miner's operations. You will see he says that he finds that S. H. Abbott is writing to the department that there is no necessity of a daily mail. Mr. Miner had access to that letter and knew its contents, if he did not have it in his possession. We cannot find that letter. There is no evidence on the records of the Post-Office Department that that letter was ever there. Is it not rather suggestive of the idea that when that letter came Mr. Brady said: "Why, here, John, this is rather a troublesome document; this may make trouble; I have run that route up for you to \$52,000, and Mr. Vaile says he is getting at least \$20,000 of profit; you are paying for running the route only \$10,000; there is an odd \$20,000 there; we won't discuss who gets that \$20,000; but, however, it will all be stopped unless you can stop Mr. Abbott. Now take this letter and go and stop Mr. Abbott's mouth." And Mr. Miner went to work to try to stop Mr. Abbott's mouth, and he was so liberal that he directed Mr. Carey to pay him whatever was reasonable, and to report to Mr. R. C. Williamson, the gentleman who sat here. And if there had not been any transaction of that kind we probably should have had Mr. Williamson on the stand to inform you. They did start in for more business of that sort, but they did not carry out their little plan.

That was the transaction, and it was part and parcel of the same sort of business that led Mr. Dorsey to write to Mr. Joseph. (Page 1104.) He wrote to Mr. Joseph, who was complaining: "Now stop writing to the department; you are only making trouble for all of us there; you have no business to write to the department; talk to us; we are contractors, and you are a mere sub; you write to me, and we will settle it."

Mr. Miner wrote to Mr. French on the 22d of October, 1878, using the name of Mr. Peck, and in that letter he says, at page 668:

You can supply an office once a week by a side supply, provided the postmaster at that office is satisfied and don't kick. The department will not authorize it, but they will not find any fault unless reported.

And later than that Mr. Miner wrote, on the 10th of January, 1880:

The postmaster at Cedarville has sent a register which shows only two mails a week.

He is giving you away. Take care, he is giving us all away.

No register is required from Cedarville, as that is not a schedule point. Either furnish that office three mails per week, or see that the postmaster sends no more registers.

Honest Mr. Miner! He did not care whether the service was performed; he wanted pay for three trips a week. This postmaster at Cedarville was interfering, by sending the registers, with that little arrangement, and he says: "Don't have any registers come." As to the side supply, Mr. John W. Dorsey, it is in evidence, told Mr. French up there, before

he made his contract, that he could do that thing. Mr. French considered that he was perfectly authorized to do it. They actually put a witness on the stand from the department to produce the papers to show that Mr. John R. Miner had been lying; that the department never had consented to a side supply or anything of the kind, and if they had known it they would have stopped it at once and would have fined the man for doing it. And yet Mr. Miner, in the name of Peck, admittedly wrote that letter to the contractor out there, confirming what Mr. John Dorsey had told him, that he might get up the side supply—cheat all around, as the department regards it—provided always he did not let it be known. The evidence of what Mr. Dorsey told Mr. French is found at page 697 :

I told him of my having to supply Cedarville before always by side supply, and we wanted he should do all he could to get this office from this next route. He said he would, but he would not promise to do it, but if I could make arrangements with the postmaster at Cedarville, they would never object to my supplying it by side supply.

Q. Did you arrange with the postmaster?—A. I did, and I always carried it that way, too.

As showing what kind of men these gentlemen were I only need to recur to that side post-office on the Bismarck and Fort Keogh route. They were willing to go into that kind of a fraud. S. W. Dorsey, John W. Dorsey, Rerdell, all of them, were willing to go into that arrangement.

Now, as to these parties in another aspect. Take the Clendenning and Haycock letters. Let us see what they suggest as to such men, men who now undertake to set themselves up before you as better men than Rerdell, whom they educated. You will bear in mind, gentlemen, that what gave rise to the Clendenning letter was this: The bids for mail service are required to have sureties. Mr. Ingersoll, in the course of the trial, undertook to say that the complaint about these bids and bonds which were sent in blank to Clendenning, Haycock, and Hadley was that the amount of the bid was not in, and he said that the bidders for mail contracts always kept the amount out of the bid until the last moment, because they did not want that disclosed, by some accident, to rival bidders. And he said that all that was done about these bonds which were sent West in blank was to leave out the amount of the bid. But in point of fact that is not the case. Colonel Ingersoll was a little economical of the truth there—of course, inadvertently. The forms were sent in blank with directions to fill up only the blanks, which were filled up with fictitious names; and the blanks which were filled up were the certificates of the postmasters that certain persons had sworn before him as sureties as required by an act of Congress, and the statement of the sureties that they were worth a certain sum, and a description of their property; and then that was to be certified by the postmaster. That left entirely blank the name of the person for whom they were to become surety. Men were to be asked to sign bonds as sureties that so-and-so, an unnamed person, or a blank person, would carry it according to the contract; that he would perform the service. Those bonds require not only that the bidder will enter into the contract, but that he shall perform the service, if awarded to him, during the entire four years. The obligation of the sureties was that the bidder would perform his contract, and was not merely for liability for the sum that might be named in the bid. Those bonds were directed to be sent West with those blanks, and they were accompanied by a memorandum, which memorandum is printed at page 1504, as follows :

UNITED STATES SENATE CHAMBER,
Washington, ———, 187—.

DR. COL.: Two men, who will certify to \$15,000, can make all these bonds. Have notary certify to them with seal, and you approve them and return them to me. You can fill out the bonds like the one sent. *Only these blanks* we have filled, and get some one to sign the whole lot at once.

I will pay any expense you may be to in this matter.

D.

Note the instructions carefully.

That is in Mr. Dorsey's handwriting. It was fastened to one of the blank forms sent. Mr. Dorsey admits the letter. That memorandum has the date left blank. There was a subsequent letter printed on the same page:

UNITED STATES SENATE CHAMBER,
Washington, December 9, 1879.

DEAR COL.: Long before you get this you will be confirmed, and I hope all right.

He sent this to a gentleman whose name, as is indicated, was before the Senate as nominee for postmaster, and his fate, he knew perfectly well, rested entirely with Mr. Dorsey, who was then a Senator from Arkansas, as to whether he should be confirmed or not.

Mr. HENKLE. That date, 1879, is wrong.

Mr. BLISS. It is 1879 here, but it is undoubtedly wrongly printed. Clearly it was not written in 1879. In the first place, he was not in the Senate in 1879, though he used Senate paper afterwards.

The COURT. The bids were put in before that.

Mr. BLISS. Yes; it is obviously December, 1877.

Mr. MERRICK. It is about this Clendenning matter.

Mr. BLISS. I can see how it has been misprinted, on account of the resemblance, probably, of the 9 to the 7, as is shown here in the original paper, 17 X.

Mr. MERRICK. All that correspondence was in 1877.

Mr. BLISS. [Reading from the original paper, 17 X:]

UNITED STATES SENATE CHAMBER,
Washington, December 9, 1877.

DEAR COL.: Long before you get this you will be confirmed, and I hope all right.

I send you to-day a bundle of bonds to be made, which I hope you will have filled up and duly certified according to law.

The law does not allow him to certify in the way Mr. Dorsey wanted.

This is for an intimate friend of mine, and I ask you to do it as a special favor to me. *Under no circumstances allow anybody* to know that I have written on this subject; but I shall rely upon you to have it done. Return the bonds to me as soon as made, and certain by the 28th of this month.

Yours, truly,

S. W. DORSEY.

Hon. GEO. HAYCOCK,
Pine Bluff.

That is a letter written to Mr. Haycock, to whom another bundle of bonds was sent. Having sent those two letters off, we find that Mr. Clendenning has written to Mr. Dorsey, and Mr. Dorsey, on the 9th of December, the same day he wrote to Haycock, replies, at page 1504:

UNITED STATES SENATE CHAMBER,
Washington, December 9, 1877.

DEAR COLONEL: There is not a thing in the idea that I doubted your kindly regard for myself. I know as well, probably, as anybody who my friends are and who to trust. Whatever I have said about the officeholders at Fort Smith related solely

to other parties, whose identity is as clear to you as to myself. I shall do what I can for those who treat me as I think I deserve to be treated—you can rely upon my aid which has saved you on more than one occasion. Keep your office straight, so it will bear inspection, and there will be no trouble.

I send you some bonds which I desire made for a friend—have it done, but *under no possible circumstances* allow any one to know from whom they came.

Make the bonds at once and return them to me here.

Then there is inserted and interlined :

Keep clear of Roots or Kerens or friends.

Faithfully,

S. W. DORSEY.

Col. J. H. CLENDENNING,
Fort Smith.

Those letters were undoubtedly written by Mr. Dorsey, admittedly written by him, though some experts whom they put upon the stand—and I do not know but both of them, those astonishing experts, Kellogg and the other gentleman!—were a little inclined to think they were not Mr. Dorsey's handwriting.

Mr. MERRICK. He admitted it.

Mr. BLISS. But when Mr. Dorsey came upon the stand he admitted that those letters were his, and then there came an explanation, or something that is called an explanation. Before that, however, Mr. Ingersoll had made an explanation, which is found on page 417 of the record, and that is the explanation to which I called your attention, when he sought to indicate to you, as it seems to me, that the only trouble about the bond was that the blank as to the bidder was not filled. He says distinctly that it is the blank for the amount of the bid that is not filled. That is not it at all; it is the blank for the name of the bidder that is not filled. Mr. Dorsey, having given his explanation, commencing, if I remember rightly, at page 3752, is asked by his counsel on direct examination—this letter, by the way, is printed at page 3747, and there has the date printed correctly—about the letter, and there is some discussion as to the right to go into an explanation of it. That goes on for some little length, and then he says that the reason why he wrote so to Mr. Clendenning was that—

In this town where Mr. Clendenning lived lived a Mr. Kerens, who was a very prominent mail contractor, and if he had known that these bonds had been sent there he would have known that he was to have additional competitors for the bidding at that letting at which he was one of the largest bidders. In the other town, if you want me to go to that—or do you want me to confine myself to this letter?

He then says :

So that he would not allow Mr. Roots, who was another great contractor there, in connection with Kerens and others, to know that they would have competition.

That is his explanation on page 3752. But further along, on page 3799, having called his attention to the first letter of Colonel Clendenning, he is asked :

You may state whether you remember writing any such note, or do you remember the circumstance?

I call your attention to this, because it will become important in another connection :

A. Yes, sir; I wrote that note. Mr. Boone brought down that bond, filled up as a sample bond, showing how the others should be filled up; that is, filling the blanks that Clendenning would have to fill, and asked me to attach that note to it. That is my recollection about it.

Q. And you did so?—A. I did so.

Then, after he had fallen into Mr. Merrick's hands, on cross-examina-

tion, we have considerable testimony upon that subject, commencing at page 3855 and extending to page 3863. He states that Mr. Clendenning declined to execute the bonds, because he thought it was unlawful for him to do so, as it clearly was. Then this, on page 3856 :

Q. Now, will you tell me why it was that in this note you instructed him that only those blanks were to be filled which were filled in the form sent to him?—A. Those bonds were prepared by Mr. Boone, who filled up, I suppose, the blanks just as he wanted them; I had never seen them. He brought them down to my office filled up in that way, and said that was the way he wanted them, and asked me to attach a note to them; I did so, and sent that out to Clendenning. I have no recollection what parts he filled up and what parts were left blank.

Q. You knew nothing on the subject?—A. Not a thing in the world.

Q. This was all done under Boone, and not under your directions?—A. Not under my directions; I did not know anything about it. Boone was an expert in all this post-office business; I had no knowledge of it.

Q. Why did you underline the words, "*only these blanks we have filled*?"—A. I presume that was all that should be filled.

Q. [Reading:]

"You can fill out the bonds like the one sent. *Only these blanks we have filled*, and get some one to sign the whole lot at once."

Was that all under Boone's direction?—A. Yes, sir.

Q. Were not this proposal and bond and oath all filled up by Boone at your house, and did you not direct him to do it?—A. I think not, sir.

Q. Have you any recollection about it?—A. No, I have not.

Q. You do not know whether they were or not?—A. I do not.

Q. And you do not know whether you instructed him or not?—A. I am quite certain I could not instruct him about a thing of which I had no knowledge. I had never seen a post-office bond at that time.

Q. You were familiar with the rules of law upon the subject of these blanks, were you not?—A. No, sir.

He says he sent the bonds to Mr. Hadley; he does not know whether they were in the same form. Mr. Hadley was postmaster at Little Rock. Mr. Dorsey claims that he did not know that he was doing an illegal thing. Clendenning having refused to sign the bonds, Dorsey told him he might send them back to him or send them to Adams, and he supposed he sent them to Adams. It turned out that Adams was a large mail contractor and had been for thirty years. And yet Dorsey did not want anybody else to know that any bidding was going on, and he had Mr. Clendenning send the bonds to Mr. John D. Adams after he had refused to sign them. On page 3860 he was questioned about that.

Mr. WILSON. You are mistaken about the Adams; it is another Adams. Turn to the letter and see.

Mr. BLISS. On page 3858 he says that he told Clendenning to send them to John D. Adams.

Mr. WILSON. I just wanted to call your attention to it, because you are mistaken.

Mr. BLISS. He says John D. Adams, who was a mail contractor for steamboat service, and had been for about thirty years. That is the John D. Adams I refer to.

Mr. WILSON. Turn to the letter he wrote subsequently, and you will see your mistake.

Mr. BLISS. There is possibly some question about the initials, as has been suggested to me. I see it is stated in the letter :

Send them to Sam B. Adams.

But on the stand he says :

I told him to send them to John B. Adams, I think.

Q. Where was he?—A. At Little Rock.

Mr. WILSON. It only shows how easily a man may be mistaken as to what he wrote.

Mr. BLISS. I presume that is so.

Mr. MERRICK. Especially a man who had no recollection of anything.

Mr. BLISS. He is questioned about these things, beginning at the bottom of page 3861 :

Q. Why, then, did you say, "Let no one know from whom they come" if your reason was that other possible contractors should not be informed that they were competing bidders, you yourself not being a bidder?—A. I think my answer yesterday is complete to all that.

Q. The one I read to you?—A. Yes, sir.

Q. You think that is complete?—A. I do.

Q. Would you so have expressed yourself if that had been your reason at the time, do you think?—A. I think so. I do not see anything incongruous in what I say there.

Q. [Reading:]

"Have it done, but under no possible circumstances allow any one to know from whom they come."

That is, do not allow anybody to know that I, S. W. Dorsey, sent these to you. What did you mean by that?—A. I meant what I said yesterday.

Q. Would not this expression allow him to let other people know that he had the bonds provided he did not let them know who sent them?—A. No, sir; I do not construe it that way at all.

Q. You do not?—A. No, sir; I do not.

Q. Let me read it again:

"Have it done, but under no possible circumstances allow any one to know from whom they come."

You do not construe it that way?—A. I do not.

Then he is asked about the letter to Haycock :

Under no circumstances allow anybody to know that I have written upon this subject.

And he is asked if he would not infer from that that his object was to not let it be known that he was concerned in the business, and did not refer to the question of endeavoring to show that there were no parties engaged in getting up bids; but he did not think so. Now, gentlemen, I ask you to apply your minds to that, and just see what Mr. Dorsey meant when he wrote it. He says in the one letter: "Under no possible circumstances allow anybody to know that I have written on this subject;" and in the other he says: "Under no possible circumstances allow any one to know from whom they come." Stephen W. Dorsey was in the Senate of the United States. He could not legally be a bidder upon post-office contracts. He was sending these contracts out there, and he gave directions to both of these parties: "Do not let anybody know you have got bonds or anything of that kind, because, as he says the meaning is if you let them know that they are bonds for you to certify, that will show that there are other bidders going in for these contracts." Did he not mean, "Do not let anybody know that I, Stephen W. Dorsey, wrote on the subject?" Why did he put it in that way, gentlemen, and why did he seek to have them conceal the fact that he not only was engaged in an illegality himself, or in the steps preliminary to an illegality, but that he was asking his dependents, as he supposed Mr. Clendenning and Colonel Haycock to be, to commit an illegality in certifying to the bond? Do you believe, gentlemen, that what was on his mind when he wrote those letters was the desire to conceal the fact that there were any bids being certified? Was it not, on the contrary, a desire to conceal the fact that Stephen W. Dorsey was engaged in getting bids certified? I submit to you, gentlemen, that that is the natural if not the necessary conclusion from that correspondence.

The statute says :

Any postmaster who shall affix his signature to the approval of any bond of a bidder, or to the certificate of sufficiency of sureties in any contract, before the said bond

or contract is signed by the bidder or contractor and his sureties, * * * shall be deemed guilty of a misdemeanor, and on conviction thereof be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or both.

Stephen W. Dorsey sent those bonds to Mr. Clendenning, asking him to certify to them before the name of the bidder was signed to them. These blank bonds produced here show that fact. He asked Mr. Clendenning to certify to the bids without the name of the bidder being signed, and Mr. Clendenning refused so to do. Mr. Clendenning wrote him back a letter, of which there is evidence here; and do you wonder, gentlemen, that Mr. Dorsey, though he four several times in the progress of this trial by himself or his counsel promised to search for the letter of Mr. Clendenning in reply to Mr. Dorsey's request to commit this illegality, has failed and never has produced it? And they never have accounted for it in any manner.

Mr. WILSON. Mr. Ingersoll has said here several times that he has been unable to find it.

Mr. BLISS. He has never said he was unable to find it. He said he never looked for it. In point of fact, in my humble opinion, Colonel Ingersoll remembered to forget to look for it. If you undertake to say that he said he had looked for it and could not find it, I say you are mistaken, and you cannot find that statement in the record.

But the great question here is, why did Dorsey want Clendenning to commit an offense which, if found out, would put him into the penitentiary?

There is a letter of Mr. Dorsey's, which it is so late now that I have not time to look up and read, in which he undertook to write back to Mr. Clendenning and tell him that a gentleman now in his grave—and they have undertaken to prove it here—a gentleman whom I never had the pleasure of knowing, but who, I am told, was an honorable gentleman (Mr. Edmunds, late postmaster at Washington), had informed Mr. Dorsey that he was in the constant habit of doing that precise thing. Do you believe that, gentlemen? Do you believe anything of the kind? Mr. Edmunds had, no doubt, certified to the sureties on hundreds and thousands of bonds, but I do not believe anybody in this community is going to believe Mr. Dorsey's statement that Mr. Edmunds told him that he had committed this precise illegality thousands of times. It is not possible. I only refer to it simply as showing to what straits Mr. Dorsey is driven when he entered upon this course of illegality himself.

Shall I stop now, your honor?

The COURT. Adjourn the court.

Thereupon (at 4 o'clock and 2 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

THURSDAY, MAY 3, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. BLISS. [Resuming.] Gentlemen, the extraordinary attention and patience with which you listened to me yesterday makes me almost ashamed of myself in occupying your time any further. If the matter were one personal to me I certainly should not do so. Owing to engagements long made, I am here to-day at a personal sacrifice which I think

should not be required of anybody except where matters of great importance are concerned. Being here, I must do my duty, and I must occupy your time somewhat further. I do not think it is owing to the fact that a lawyer when he gets on his feet always feels that he must continue so long as he has attentive listeners. It is owing in a great measure, as I flatter myself, to the fact that there is in this case a record consisting of over four thousand five hundred printed pages of testimony, probably the largest record of testimony that has ever been made in a jury case in this country, and that the analysis and examination of that testimony seems to impose a duty upon counsel and seems to require that there should be considerable attention paid to details. At any rate, that is the conclusion to which counsel for the Government have arrived, and they have been influenced in that conclusion somewhat by the fact that it may be in the course of this case that after I shall have closed the defendants will submit themselves to your verdict.

Before commencing the course of my argument let me call your attention to one or two things which I notice I omitted yesterday. When I spoke among other things of the intervention of these defendants in the matter of the petitions I failed to call your attention to the fact that Mr. S. W. Dorsey transmitted to Joseph two different forms of petitions to be circulated by him, he having prescribed the forms and taken care that they should differ one from the other so that the facts would not be known. As to the petition on the White River route, of which considerable was said, inasmuch as it had the military indorsement of the General of the Army or the Secretary of War, I only desire to call your attention to the fact that Mr. Rerdell states that when that petition came from White River by mail and arrived here, he went, in connection with Colonel Steele, the employé of Mr. Dorsey, up to the War Department, and there they procured that indorsement. With regard to the letter produced on the Tongue River route from the president of the Northern Pacific Railroad, Mr. Rerdell states that he got that through the letter of introduction given to him by Senator Dorsey, the writing of which letter of introduction Dorsey admits.

As having some bearing on the question of prearrangement or understanding I will also call your attention to the letter from Mr. S. W. Dorsey to Mr. Joseph, dated on the 30th of April, 1879, in which he says that he is confident that that route will be increased on the 1st of July, a confidence which was well sustained. The route was increased before the 1st of July.

I also ought to have called your attention to some evidence which there is in the case with regard to the number of men and horses employed. I intended to have done it in connection with the figures I gave you as to the men and horses used. I desire in this matter to be perfectly fair. Upon certain of the routes where I stated the number actually used the evidence shows that the time which Mr. Brady ordered, and for which the Government paid, was not made. Therefore, if they had complied with the contract that they entered into and performed the service for which they promptly drew the pay, it is quite possible that more men and horses would have been needed. For instance, take The Dalles and Baker City route. The time was originally one hundred and twenty hours, and it was reduced to seventy-two hours. The uncontradicted evidence of Baker, Pierce, and Cowne, the three carriers upon that route, is that for nearly a year after the expedition was ordered they did not make any such time; that they traveled only days and laid over nights, and that they took five days, which was the original

schedule. There was no increased number of men and horses or diminution of time until the 14th of July, 1879, although the order took effect **and** the payments were made from the 15th of November, 1878. Therefore, to that extent the comparison that I made of the number of men **and** horses actually used with those that were called for by the affidavit may have been considered to have been defective, but it is a correction which hardly redounds to the advantage of these defendants. They drew pay for nearly a year's service which they did not perform.

One **other** matter of omission, and then I will have done. I had lying **here** yesterday, but I failed to call it to your attention, a very significant little paper as bearing upon the question of prearrangement **and** understanding by these defendants that they were to have expedition. I hold in my hand a paper, marked 22 I, being a letter signed John M. Peck, contractor, but admittedly in the hand-writing of Mr. Miner, dated Washington, D. C., October 23, 1879:

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General:

SIR: I have the honor to request that P. J. Wycoff, subcontractor on route 44140, be paid at the rate of \$7,400 per annum on the increased service of July 14, 1879, without making any deduction for curtailing the service, so as to end at Mitchell; as it was understood that pro rata deduction should only be made while the service remained at one trip per week.

That is the letter. Then there comes the following passage, to which I desire to call your attention.

Mr. HENKLE. That is not admitted to be in the handwriting of Mr. Miner.

Mr. BLISS. I thought it was. At any rate the paper is in evidence. The passage to which I refer is this:

And when increased to three or more trips, his pay was to be as specified in the contract, **and** regardless of said curtailment.

Respectfully,

JOHN M. PECK,
Contractor.

The last two lines indicate a foreknowledge and prearrangement with reference to an increase of trips and diminution of time, and you will see that they have been stricken out. A pen has been drawn through them as being apparently unnecessary in the present communication. But they remain on the record, and I call attention to them. Mr. Merrick says I am wrong, and that the evidence is that this letter is in Rerdell's handwriting. That is a matter of unimportance. The paper was filed by these defendants on one of the routes belonging to this combination, and I submit to you it is entitled to the weight which I have suggested.

Mr. HENKLE. That is better.

Mr. MERRICK. It was written by one of the conspirators.

Mr. BLISS. The evidence shows that it was written by Rerdell. It makes no difference to us, gentlemen, in this case, which one of these conspirators did any particular act at that time. They will not ask you to believe that Mr. Rerdell, at that time a man on a salary of \$3,000 a year, with no interest in the profits of this business whatever, was going into a little private operation of his own for swindling the Government for their benefit, and that he had a private understanding with Brady or that he had a private understanding with others for the benefit of these defendants. They will not ask you to believe that he was doing

all this in connection with a salary of \$3,000 a year while they knew nothing about it.

Now, gentlemen, returning to the matter which I was considering when we stopped yesterday, as to the operations of these defendants, and as showing what kind of men they were, I desire to call your attention to one or two little things. Slight as they are, yet they have some bearing upon the case. For instance, we find Stephen W. Dorsey writing to Mr. Brady on the 23d of May, 1879, the letter which I read from page 1323 of the record :

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General :

SIR: I have the honor to transmit herewith letters addressed to me in relation to an increase of mail service on the route from Eugene City to Bridge Creek, Oreg., which please place on file in your department, and to request your early consideration of the same.

Very respectfully,

S. W. DORSEY.

He transmits then two or three letters addressed to him as a United States Senator, on the route from Eugene City to Bridge Creek, which was a route in which he was directly interested, and which were letters written to him by a Mr. Walker, a Mr. Finn, and Mr. Walton. You will notice the tone of these letters. For instance :

DEAR SIR: Having learned of your willingness to assist in procuring mail facilities, I take the liberty of addressing you and asking you to assist us in procuring an increased mail service on the route from Eugene to Bridge Creek.

Again :

You will confer a great favor on the citizens of this State by aiding to increase the mail service—

And so forth. Those letters were transmitted by Mr. Dorsey to the Second Assistant Postmaster-General as having been addressed to him as a United States Senator, with no intimation upon the record that Mr. Dorsey had any interest in that route, or that he had anything to do with these letters, except, being a prominent public man, that he had received them and transmitted them to Mr. Brady. Yet that route was one of the routes that Mr. Dorsey had all through the time of his admitted connection with this business, and, as we think, from the commencement. There is a similar transaction on the Ojo Caliente route. There he sent letters with an entire concealment as to his interest. One of these letters, I ought to say, on the Oregon route, is noteworthy, from the fact that the writer does not seem to know his name, and addresses him as W. S. Dorsey.

Bearing upon the question before us, I desire also to call your attention to a few facts with reference to Mr. Brady and to his antecedents. They are briefly these: Mr. Brady tells you, on page 3401, that he studied law, and that then he was a school-teacher, and in 1865 he came out of the Army, published a newspaper, went as consul to St. Thomas, in the West Indies, from 1870 to 1875, became supervisor of internal revenue in 1875, and passed directly from that office to the office of Second Assistant Postmaster-General. His salary as consul at St. Thomas was \$4,000 a year, and his salary as supervisor of internal revenue was \$3,000 a year. Those are the positions that Mr. Brady held, and indicate his financial condition when he came into the service of the Government as Second Assistant Postmaster-General. But now what do we find later on? We find, on pages 3563 and 3564, Mr. Brady writing to Walsh the famous "ginger" letter, and telling him that he is a little embarrassed temporarily :

The trouble with me is that my means are in Am. U. Tel., & the bonds & stock are not yet issued. When issued will give me 120 or \$130,000, but this may not be for 60 or 90 days, & hence not available. My telephone bonds are already up as collateral. And with buying newspapers, a mine (rather part of a one, the P. & D.), running the lumber business, &c., I am a little cramped.

Mr. Brady had managed somehow or other and had been sufficiently lucky in the period between going into the office of Second Assistant Postmaster-General and passing out of that office, with a salary of \$3,000 a year, to get into the position of having all that amount of property. When he was questioned about it further on he goes on to say that it is true he bought the Republican, he bought the Capital, he bought the Critic, and he bought mining stock in the Pelican and Dives, and that he had, I think he states, some \$300,000 in stock of the Chattanooga Railroad Company. Mr. Brady had been so lucky that he had acquired this property within two or three years after he went into the office of Second Assistant Postmaster-General.

So, gentlemen, I have shown you what kind of people these defendants are and the acts in which they have been engaged, both prior to the conspiracy and during the early stages of it; not acts in every case which directly resulted in fraud upon the Government, but acts in connection with the conspiracy.

Now, we come to another class of testimony, and that is as to the witnesses whose evidence is denied and whose statements are disputed. As you know heretofore I have confined myself almost entirely to undisputed testimony. In considering the question of the truthfulness of these different witnesses who were before you, you will bear in mind in the first place that the defendants are all of them men who were greatly benefited by these orders which Mr. Brady made and that they put into their pockets that money which Mr. Brady took from the Treasury, less such sums as may have been used for those necessary expenses to which Mr. Dorsey referred as required to maintain their influence in the Post-Office Department and to which Mr. Miner referred as necessary to procure orders for expedition. They put all that money in their pockets. They prepared and presented to the Second Assistant Postmaster-General all these false, fraudulent, forged, and altered petitions which you have had laid before you. They presented also all these more innocent looking papers. You will find no evidence anywhere in this case of any paper having come from the locality of a route as the free-will request of the people along that route sent by them to the Second Assistant Postmaster-General. I think no instance of that kind can be found. We find remonstrances. We find a remonstrance from Mr. Beene out in Nevada, stating that the Mineral Park and Pioche route amounts to nothing, and that if it costs the Government anything he thinks the service out to be stopped. That is the route that cost the Government \$52,000 a year, and on nineteen days not a letter went over it. We find remonstrances from citizens and no attention paid to them. We do not find, as I recollect, any free-will, so to speak, or unsolicited request from people along the routes. These papers came through the defendants, I think, almost without exception. There may be one or two exceptions that have escaped me in the mass of papers. They altered these petitions. They forged signatures; for instance, those on the petition where Hall's name appears. They prepared these affidavits covered all over with alterations, insertions, and erasures. They filed in the department the affidavit of Perkins and the other affidavits full of erasures and which were undoubtedly and indisputably altered after they were sworn to. There is no question about

the evidence on that point. They employed and they recommended to others as trustworthy the very witnesses whom they now undertake to impugn and attack. They kept them in confidential positions. They gave them almost absolute power. They trusted them with their money. They trusted them with their railroad passes. They trusted them with authority to sign their names and to do everything. Mr. Dorsey introduced Mr. Rerdell to "Dear Mart" Paddock as a gentleman of the highest character and a man of first-rate ability; as a friend of his—not a mere employé, but a friend. He introduced him to Governor Routt as "an upright man in whom you can confide." Mr. Dorsey kept that upright man and that friend in his employment down to within a year. He claims that in the latter period of service he was influenced somewhat by fear of what Mr. Rerdell might do or tell. If Mr. Dorsey had been an innocent man and not engaged in any operation which would not bear the light of day, would Mr. Dorsey have kept in his employ a man as to whom he says he had the views which he has more recently announced? Would he not have said, "No; go and do your worst. I have done nothing that is dishonorable. I have done nothing that is dishonest. I will not submit to having you about me. I will not pay your expenses. I will not continue to pay your salary. I will not submit"—if he did, though there is no evidence of it except a general statement by him—"to your blackmailing." Mr. Dorsey claims that he was in that position, and that he kept that man in his employ in that way down to about the time when this trial commenced. It appears then that Mr. John W. Dorsey thought that the better way was to threaten, and thereupon he went to work and told Mr. Rerdell that if he testified against them he would have him prosecuted for forgery, and that if he would agree not to testify he would, so far as was within his power, compound a felony and conceal the knowledge that he had of the alleged crime. Now, gentlemen, those are the facts as to these people, in a measure. Boone's testimony they handle very gingerly. They think he is mistaken. Mr. Miner does not think certain conversations occurred. Yet when Mr. Boone testified to the same thing that Mr. Moore testified to, they say Moore is a liar and his stories are lies made out of whole cloth. Their difference in the treatment of those two men is something which I do not at present expect to make you understand. Rerdell and Moore are perjured scoundrels. Boone is mistaken when he swears to the same thing. Pennell, Cable, Lambert, and McLellan are all perjurers, deliberate perjurers, although they have no interest whatever in this case. They have come here and apparently for the pleasure of it have committed perjury. They want you to believe that those men came here and committed perjury just for the very motive under the influence of which Mr. Brady told Mr. Walsh he did not make expeditions—for the fun of the thing. Mr. Brady asked Mr. Walsh if he supposed he was making these orders for expedition and increase for the fun of the thing. This is not a case where there can be any misunderstanding or any misconception. It is not a case where Pennell could misunderstand what was said to him or fail to recollect it aright. It is not a case where any of these people could fail to recollect aright. It is a case where they have either told the truth or they have committed willful and deliberate perjury upon the stand. Their evidence stands here against the evidence of John W. Dorsey, who swore to two contradictory affidavits on the same day, and who admittedly was engaged in the swindle with regard to the fictitious side post-office at the very time he was talking to these people in the way they say he was.

Then, as to Walsh. Walsh comes here and makes a statement under oath. He makes it from the stand under subpoena. They do not dare to cross-examine him. His character is not impugned. No witness has said that Mr. Walsh is not a man of good character and not a man to be believed. Without cross-examining him they let him go from the stand, and in reply to him they put Mr. Thomas J. Brady on the stand to say that Walsh told a lie. I shall have occasion directly to analyze and compare the statements of those two gentlemen upon the subject. It is true that Walsh has a suit against Mr. Brady. I do not know as that is any reason why Mr. Walsh should not state the truth. The suit shows that Mr. Walsh has a claim against him wholly independent of this transaction and this indictment, and shows also the way in which he became known to the Government and became available to the Government as a witness. He has a suit against Mr. Brady, in which he claims that Mr. Brady owes him some twenty-five or thirty thousand dollars for borrowed money, being the money he is seeking to recover, and which led to the conversation between him and Brady. Because he alleges that Mr. Brady owes him \$25,000 you are, apparently, to be urged that he is not to be believed.

Now, as to Mr. Moore. Moore, of course, is not a very high style of a man. They did not select as their agents and as their partners and their associates men of very high style. Bear in mind that Moore was employed by them and commissioned with authority to make all their arrangements in the western country; that Moore was provided by Miner with large sums of money; that he was given an interest in certain routes; and that Moore therefore was not only their employé and their servant, but he was their partner. He was willing to aid them. It was for that purpose that they employed him. If Mr. Moore had not been willing to undertake to have bogus petitions and forged petitions gotten up—petitions which could be altered, petitions so drawn that Mr. Miner could get in his cunning handiwork—if Mr. Moore had not been willing to do that Mr. Moore would not have been an available tool for them and they would not have used him. It does not lie in their mouths to say that, having picked him out for the work for which they wanted him, and he having done it efficiently, when he comes to be brought here from the bedside of a sick and dying family under subpoena, and he testifies under oath to certain facts, that he has admitted that he was engaged in a business in which he ought not to have been engaged. He was engaged in a business in which he ought not to have been engaged; but, gentlemen, that does not necessarily render him an untruthful man when he is brought onto the stand. You must remember, gentlemen, that Mr. Miner, even Mr. Miner, says there is a great deal of difference. He says that when he wrote the letter to Hayes he was not under oath, and it did not apparently make much difference whether he told the truth or not; but when he was under oath he wanted you to believe it made a very great difference. Apply that rule to Mr. Moore.

There was a great parade, as I have already mentioned, of an intention to contradict Mr. Moore. You recollect how it fizzled out. They brought Betts, and they asked him questions which were clearly inadmissible, because they related to collateral matters. The court promptly ruled them out. They did not bring Pelham, as to whom they had laid the foundation for contradicting Moore by asking questions of him with regard to matters not collateral. If Mr. Moore had not told the truth, Mr. Pelham could have come here and convinced you that Mr. Moore was a venal and a lying witness. They did not dare to bring Pelham

here. They knew Moore had spoken the truth, although at his examination they asked him as they went along "Did you not tell so and so, such and such a thing, on such a day? Now answer me, sir, did you not?" He said he did not, and that was all we heard of it in this case. Yet they want to make the impression on your mind that this witness somewhere or other at some other time told stories inconsistent with what he told here. Mr. Moore may have been in error in some minor details. I do not know whether he was or not. He may have been in error as to whether certain checks came to him direct or whether they came to him from Miner. But I submit, in view of his bearing on the stand and the circumstances surrounding the case and the corroboration that he got from Boone with regard to this business, that Mr. Moore was a truthful witness, desiring to tell the truth and the whole truth.

Bear in mind from whom the denials of the testimony of these parties come. They come from these defendants. Who has the most at stake here? If there has been any perjury here, who has the greatest inducement to commit perjury? These defendants have at stake not only liberty, but social and, some of them, political standing. They have everything at stake. On the other hand, what have Rerdell and Moore at stake? Rerdell has confessed his guilt, with no arrangement by which he is to be protected from punishment. He is ready to take his punishment, and I do not see how there can be any escape from his receiving it. I trust that that punishment will be less severe than the punishment of these other gentlemen who have stood out and have added other crimes to those they are charged with having committed. Moore passes out into the community, and so does Rerdell after he has suffered his punishment, and they disappear, unnoticed and unknown. These defendants, if convicted, are in an entirely different position. They never can become unknown. They never can be unnoticed. They therefore have every temptation to color the truth. If they were in a conspiracy to defraud the Government, if they were engaged in such a business, of course they are not coming on the stand to openly admit it. Of course they are going to seek to escape the result. The moral turpitude and degradation which would permit them to get up so gigantic a conspiracy to defraud the Government would carry them through any trial that they might be subjected to on the witness-stand or off of it. At the last trial they tried the policy of not coming on the stand.

Mr. HENKLE. Stop! You have no business to allude to that.

Mr. BLISS. Why not?

Mr. HENKLE. I insist that he has no right to allude to what transpired at the previous trial.

Mr. CARPENTER. I do not object to it.

Mr. HENKLE. I do.

Mr. BLISS. At that time when the Government had much less evidence than it has now——

Mr. HENKLE. [Interposing.] I object to that, your honor.

The COURT. Now, Mr. Bliss——

Mr. BLISS. [Interposing.] That has passed.

The COURT. That has passed, it is true; but Mr. Henkle puts in his protest, and I do not see how you can introduce a topic of that kind.

Mr. BLISS. If your honor considers that I have no right to speak of it I will not do so.

Mr. CARPENTER. It has been done all the time. We have had a great deal about the last trial. I do not object to it. I want to say something about it.

Mr. BLISS. I have not alluded to it once. You cannot find in the record one allusion of mine to that trial.

Mr. CARPENTER. Yes, I can.

Mr. BLISS. No, you cannot.

Mr. CARPENTER. You said we had enough of cross-examining Walsh at the last trial.

Mr. BLISS. That was not about the defendants going on the stand.

Mr. CARPENTER. The point Mr. Henkle makes is that you alluded to the last trial.

Mr. BLISS. I insist that I have that right inasmuch as the defense have offered evidence on that subject.

The COURT. The court excluded that.

Mr. CARPENTER. I do not object. I will answer it.

Mr. BLISS. The court excluded part of the record offered, but we have in evidence what the verdict was.

The COURT. They have not given evidence of the other fact.

Mr. BLISS. No, sir.

The COURT. Make no further comment upon it.

Mr. BLISS. I will not, sir; I should have gotten way beyond it long ago if they had not interfered.

Mr. WILSON. Having violated the proprieties of this case he makes no further allusion to the matter. All I want is to have a like license.

Mr. BLISS. If I were to bandy words with anybody I certainly would not with Mr. Wilson. He is the one counsel on the other side who has up to the present time conducted himself as a gentleman.

The COURT. That is out of the record.

Mr. CARPENTER. That is very professional.

Mr. BLISS. I say that without the evidence of Rerdell the defendants failed of any acquittal at the last trial, and they have now, with the evidence of Rerdell, come before you and placed themselves upon the witness-stand, and they must be judged there in comparison with the other witnesses, precisely in the same way as other witnesses whose interests are involved and whose liberty is involved. Then let us consider where they stand.

As to Rerdell, we admit in the strongest terms that he is a guilty man, confessedly a guilty man. We admit that while the law gives you the right to believe him where even he is uncorroborated, yet we shall not ask you to do anything of that kind. We say that unless you believe, from all the circumstances of the case, that Mr. Rerdell intended here before you to tell the truth—though he may have made an error in a date here, or something there—we do not ask you to believe him, unless you find him corroborated by the evidence of others, by the record evidence in the case, and by the facts surrounding it. He has trained too long in the company of these defendants for us to ask you to believe him unless he is corroborated. We ask you to apply to these other defendants, however, precisely the same rule that you apply to him. They have trained together, he, however, working on an insignificant salary, insignificant in proportion to the profits and emoluments of these defendants, while they were working for the large profits which appear here in this case—\$20,000 a year on the Canyon City and Fort McDermitt route; \$80,000 profits during the four years' term. He had been doing their dirty work, admittedly, but because he has been doing their dirty work he is entitled to none the less confidence than they; he is entitled to no more than they.

The defendants have bestowed upon him the greatest possible compliment, for, almost from the moment he came upon the stand, they

have devoted themselves to attacking his testimony, leaving almost untouched and uncontradicted the whole mass of the other testimony—testimony available to the Government before Mr. Rerdell was accepted as a witness on this trial. They have apparently sought to convince you, or to make an impression on your minds, that if Rerdell's testimony were out of the case there would not be any case against them. But is that so? I took occasion yesterday, in the course of my remarks, to call your attention to the condition of things on the uncontradicted, undisputed evidence down to that time, derived from the records and from the witnesses whom nobody questioned. Does not that make a case against these defendants such as, at least, requires a pretty clear and conclusive answer? And that is without Rerdell; and that is without Moore; and that is without Walsh and others, to whose testimony I am going to refer you.

Let me say here that if Rerdell had been manufacturing a story there were, all through his narrative, places where he would have manufactured an entirely different one. Take, for instance, this: Moore's interview with Dorsey admittedly took place in the presence of Rerdell. Rerdell let him into the room in Dorsey's house. Moore states the interview. Rerdell is asked about it, and he says, "I was present, but I was busy with my work; though sitting in the same room, I simply noticed that they were talking about the mail service, and I went on with my work." Now, gentlemen, if Rerdell had been manufacturing a story, how obviously natural it would have been for him to say at once, "Yes; I heard that conversation between Moore and Dorsey, and I heard every word of it, and it is just so," and have repeated it precisely as Moore gave it.

Mr. CARPENTER. Mr. Bliss, you say "admittedly." Dorsey never admitted any such thing. You cannot find it in the record.

Mr. BLISS. The defendants have admitted it, for the reason that there is an admission of an interview between Dorsey and Moore at that house at that time, and there is no denial of Rerdell's presence at that time.

Mr. CARPENTER. The record shows no much admission.

Mr. BLISS. There is not any denial of Rerdell's presence. Mr. Dorsey was on the stand and could have denied it, and how easy it would have been for him to say, "Mr. Rerdell was not there; this conversation took place between us alone." But he did not say anything of the kind.

Mr. CARPENTER. Mr. Dorsey said he had no recollection of any such interview.

Mr. BLISS. As I understood it, Mr. Dorsey admitted the interview.

Mr. CARPENTER. He did not.

Mr. MERRICK. He admitted that he saw Moore there.

Mr. BLISS. He subsequently stated that he might have had two interviews with him, and stated that he might have talked with him about the mail service and various things of that kind. If they can point me to any place in the record where I have said anything upon that subject or any subject that is incorrect, I will be obliged to them for doing it. I do not propose to accept their memory against mine, or their statements against mine. I make my statements with entire confidence that they are correct. If the record is against me I will accept that.

Mr. CARPENTER. It is.

Mr. BLISS. Mr. Carpenter is not yet the record in this case.

The COURT. This has gone entirely too far. It will not do for counsel, merely on his declaration of the character of the evidence, to repeat

these interruptions; the jury must decide that matter. Let the contradiction be made and referred to the jury for their memory. I do not want any more interruptions.

Mr. CARPENTER. I do not want to interrupt the counsel, but when he makes a statement that is not in the record I have the right to call the attention of the court and himself to it. And if the court please, I cannot show by the record what is not in it.

The COURT. We will stop now. While I have my own recollection about it, I do not propose to state it.

Mr. MERRICK. Let us find it.

Mr. BLISS. I do not think Mr. Dorsey did admit it, except by his silence.

The COURT. Now, we are going to have this point settled, because if the court allows these interruptions to go on without having them settled the matter will come to such a pass as to be uncontrollable.

Mr. WILSON. I think Mr. Bliss and Mr. Carpenter now agree.

The COURT. Of course, the jury will have to determine it; but we have the record and can get to it.

Mr. CARPENTER. Dorsey admitted that he saw Moore upon his return from the West; but he did not admit the interview. He said he had no recollection of it.

Mr. DAVIDGE. There were two interviews, your honor will recollect.

The COURT. I am not depending upon recollection; that is not the record in the case.

Mr. MERRICK. I have found part of it, and I will read it. This is on direct examination, but it was brought out more fully on cross-examination. I read from page 3759:

Q. You may state whether you had at that time any conversation with Mr. Andrew W. Moore?

Mr. CARPENTER. What witness is that?

Mr. MERRICK. Dorsey.

A. Not a word.

Q. Do you remember to have seen him before that time?—A. I do not. It is possible, of course, that he may have called at my office, and I have forgotten it.

Q. You only remember the once?—A. I only remember the one time.

Then he goes on, at the bottom of the page:

Q. You may state whether you had at that time any conversation with Mr. Andrew W. Moore?—A. Not a word.

Mr. CARPENTER. That is the conversation of July.

Mr. MERRICK. No, it is not.

Q. He also says that at that time you showed him a bundle of blank subcontracts.

* * * If you ever had any conversation with Mr. Moore in regard to making these subcontracts and making allowance for daily service, will you tell the jury what that conversation was?—A. I never had a conversation with Mr. Moore of three words in the world. That is a lie made out of whole cloth.

That is what he says there. Further on down, towards the bottom of the page, he says:

Q. You remember, as I understand, no conversation with this witness about making contracts or subcontracts?—A. None whatever.

Q. Or anything in regard to the per cent. that should be allowed for expedition or increase?—A. No, sir.

Q. Nothing of the kind?—A. No, sir; the only conversation I ever had with Mr. Moore was when he came to me some time in July with a letter from Mr. Miner requesting me to pay Moore \$250, and I gave it to him.

Mr. INGERSOLL. I will come to that in a little while.

Q. Do you remember advancing any money to Mr. Miner about that time?

The WITNESS. About what time?

Mr. INGERSOLL. Say about the 8th of April, 1878.

A. I think I did.

Q. Did you at that time give any checks to this Mr. Moore?—A. No, sir.

The COURT. That is Miner.

Mr. MERRICK. [Continuing to read:]

Q. To whom did you give the checks that were used by him?—A. I do not know what checks he used; I gave Miner checks if he asked me for them.

On page 3769 I think it is——

Mr. CARPENTER. [Interposing.] That relates to the July interview

Mr. MERRICK. It relates to the April interview.

Mr. BLISS. If you want the April interview, take page 3910:

Q. Do you know A. W. Moore?—A. I saw him once, possibly twice.

Q. When did you see him?—A. June or July, 1878, I think; possibly I saw him in the April previous.

Though he swore that he never had three words with him.

Q. You say you saw him possibly twice?—A. Possibly.

Q. Have you any recollection of seeing him more than once?—A. I have no recollection at all.

Q. When did you first become acquainted with him?—A. I just stated that I may have seen him in April, 1878, but I think I did not; still it is possible.

Then he goes on with questions as to the employment of Moore by Miner at that time. He says he knew nothing of him before 1878, and then he said, on page 3911, that he paid him in July—I think it is July—\$250, without any inquiry whatever.

Mr. MERRICK. He says, further on in that cross-examination, that he may have had—I think his expression was “probably did have”—a conversation with him.

Mr. BLISS. Further along there is something about a conversation in July, but I do not find any other reference to the April interview, except that he says that he may have met him, but he does not remember it. If that is all there is, then I have stated it too strongly in saying that there was a direct admission.

Mr. DAVIDGE. That is all that we want.

Mr. BLISS. But I wish to call your attention, gentlemen, to the fact that he is a witness swearing in his own interest in reference to a matter about which he says that he has no recollection, and about a thing that I think he could hardly fail to remember, and I would apply to him the language that Mr. Wilson applied in this case: “It has come to be a well-known fact in the history of the profession that witnesses in order to avoid impeachment make the convenient answer, “I don’t remember.”

Mr. MERRICK. At page 3918 I find this:

Q. You have testified, I believe, that although you took such an active interest in this business at that time in 1878, you did not ask Mr. Moore anything about it when he returned?—A. I did not say that. I said I might have asked him something about it.

Mr. DAVIDGE. That has no relation to the first interview at all.

Mr. BLISS. I do not think we need to take any more time about that. I simply say precisely what it is—that he says he does not remember the interview. After starting off by saying he never had three words of conversation with him in the world, he is compelled to admit that he met him in July, did pay him money then, and he is also compelled to admit that he may have met him in April and he may have had such a conversation.

Now, gentlemen, my friend on the other side was exceedingly anxious to get in his denial of what I said, but he was not so anxious to get in that denial when he had the legal right to get it in. They consumed considerable time cross-examining Mr. Rerdell, and they consumed considerable time in arguing the question whether they had not the right to ask Mr. Rerdell if he had not said certain things to Mr. Carpenter during the last trial; and finally the court admitted it, so that they laid the basis for contradiction there. And yet, gentlemen, this case closed and Mr. Carpenter did not exercise his right to go upon the stand and say that Mr. Rerdell had not told the truth. They had considerable of an argument with the court as to the right to go into that, and they were allowed to go into it to a qualified extent. And then what happened? Mr. Carpenter did not interrupt.

While I am on that subject, let me call your attention to an extraordinary series of things in connection with Mr. Rerdell. They asked him in the first place if he did not have a conversation with somebody named Charles Thompson—"Thompson with a p," I think—in which he told Thompson certain things. Mr. Rerdell denied it. He was also asked whether he did not have a conversation with Mr. McSweeney, in which he told him certain things; Rerdell, as I recollect, denied it. He was also asked whether he did not have a conversation with John L. French, the former chief clerk of the Second Assistant Postmaster-General, and they asked him that in various forms, going over several pages of testimony. Mr. Rerdell denied, or explained, as the case may be. He was also asked whether he did not have a conversation with James W. Bosler on very important matters; Mr. Rerdell denied it. Whether he did not have a conversation with Mr. Gilbert; Mr. Rerdell, as I recollect, denied that. Whether he did not have a conversation with Mr. Wall; Rerdell denied it. They took up not less, I think, than thirty or forty pages of the record in putting, at different times, questions to Mr. Rerdell as to whether he had not said certain things inconsistent with his testimony upon the stand; and being met by Mr. Rerdell's oath to the contrary, though they had named men and time, and conformed to the rule which would have enabled them to call every one of those men to contradict him, not one of them dared to come into this room and place himself on that stand and subject himself to the test of cross-examination. Not that some of them are not gentlemen who would have told the truth, and I do not know but all of them would; several of them I do not know—every one I know, I believe, would have told the truth. But they did not dare to undertake to put any one of them on the stand, and therefore, so far as all that is concerned, Rerdell stands unimpeached. Mr. Carpenter, if he could have impeached Rerdell, had abundant opportunity to go on the stand without any interruption of the regular course of proceedings.

Now, gentlemen, as to these defendants; and first as to Brady. It is necessary for me to say very little more as to Brady. His avowals on the stand of his utter disregard of the law; his avowals of the course he took in reference to expedition; his avowals of the rules which governed him; his acts, always leaning in favor of these contractors, always redounding to their benefit, never doing anything on behalf of the Government, sufficiently characterize Mr. Brady when we consider him in connection with the evidence to which I have called your attention this morning. The man who disobeyed his superior officer, Mr. James, in not revoking his order on the White River route; the man who exhausted the appropriations, made by his own estimate, within six

months; the man who, pending that time, acquired sudden wealth—that man really needs from me very little further attention.

But I call your attention to one thing, gentlemen, as bearing upon his theories here in the most extraordinary way. He told you on the stand that his theory was that they should pay \$30 a mile for service. And yet Mr. Miner tells you that before the 1st of July, 1878, the department was anxious to have service put on the Bismarck and Tongue River route, so anxious that they were asked to make a proposition for temporary service. And Boone tells you that in pursuance of that he did make a proposition for temporary service, which proposition was at the rate of \$30 a mile, though the evidence is conclusive that temporary service is greatly more expensive than permanent service. And Miner tells you that Mr. Brady would not accept temporary service for \$30 a mile upon a route which he was anxious to have commence, because \$30 a mile was too large. And yet on the same route he subsequently paid at the rate of something like \$37 or \$38 a mile; and he wants you to believe that \$30 a mile was his rule of action, though he never said anything about that during his entire examination before the Congressional committee in 1880, and nobody ever heard of it until he came on the stand here. How completely Mr. Miner by this little piece of testimony punctures that theory.

Now, as to Mr. Walsh——

The COURT. [Interposing.] Before you go into that, here is the answer of Mr. Dorsey, on cross-examination, which occurred, to my recollection, on page 3916:

Q. Did you inquire anything of him about his visit to the West?—A. I don't think I did. I don't remember.

Q. You have said you never had three words of conversation with him in your life?—A. Well, three words may be cutting it a little short, but I had no conversation to speak of with him.

Mr. CARPENTER. That refers to the interview of the 11th of July.

The COURT. Yes; in July. That was my recollection of his language, but I did not know just where to find it.

Mr. CARPENTER. Mr. Bliss referred to the interview in April.

The COURT. I understood that.

Mr. BLISS. My argument upon that subject will have just the same force in either case. I was directing your attention, gentlemen, to this: That if Mr. Rerdell had been making up a story he would have said that he heard that conversation, and he would have detailed it precisely as Moore did. He said honestly and squarely that he was there; that he let Moore in just as Moore said; that he heard the conversation about mail contracts, but that he was busy with his writing, sitting at his desk half a dozen feet away, looking up occasionally, but that he paid no attention to the conversation. So much for that.

Now, as to Walsh. Let us see about Walsh and Brady. The condition of things is this: Brady, while supervisor of internal revenue at New Orleans, first met and knew Walsh. After Brady became Second Assistant Postmaster-General he privately awarded to Walsh a contract for \$18,000, which, by private orders for expedition, he ran up to \$135,000 or \$136,000. He admits that he had frequent conversations with Mr. Walsh; he admits that he met him at Sheridan's house constantly; that it was one of the loafing places of both of them. He says that Walsh was always professing a willingness to loan him money. They were on such terms as that. Now, gentlemen, how many friends has any one of you that are intimate enough to be always professing willingness to loan you money?

Mr. DAVIDGE. I have none such.

Mr. BLISS. I do not believe these gentlemen have, any of them, in their past lives, had any such intimate friends as that. But Mr. Brady was in such relation to Mr. Walsh that Walsh was always professing a willingness to loan him money. On Brady's advice Mr. Walsh put \$24,000 of his money in cash, which Brady says he paid on the spot, into the purchase of some wild-cat railroad stock down in Chattanooga, and which Brady was engaged in an attempt to boom up, but which, like a good many other booms, Presidential and otherwise, did not boom worth a cent, and down it went. But Mr. Walsh and Mr. Brady were on such terms that, simply upon the advice of Brady, Walsh invested \$24,000 in a certain stock.

Then we come to the "ginger" letter. In the "ginger" letter Brady addresses him as "My dear Walsh," and then he seeks to borrow from him the stock which, on his advice, Walsh had invested his \$24,000 in. Walsh did not let him have it, fortunately for Walsh. But however that may be, those were the relations existing between those two men—relations of intimacy, closer intimacy apparently than is likely to exist between any two ordinary men whom we see in the world—Mr. Brady, the Second Assistant Postmaster-General seeking to borrow \$24,000 worth of property of a contractor under him, to whom he had privately given a contract originally for \$18,000, and which amount he had privately run up to \$135,000 or \$136,000. Those are the conditions of things as they stood at that time.

Mr. Walsh alleges that he wrote to Mr. Brady a letter, in which he asks him to appoint an interview at Sheridan's house, this congenial loafing place of the two. That letter is in the record at page 2206. It is dated December 28, and the year is left blank.

GENERAL: A fire will be made in Sheridan's office at 1 this p. m. Wish you would meet me there at that hour, or at any other time you find convenient.

Yours,

WALSH.

Send word by bearer.

That was written in ink. On the back this was written in pencil:

Will be there at 12.30.

Walsh says that he sent that letter to Mr. Brady, and he says that the answer came back, and that in pursuance of that he had the interview as to which he testifies. Mr. Brady was put upon the stand, gentlemen, but they did not ask him to deny the writing of that letter in any manner. Walsh having said that it was his, Mr. Brady comes on the stand, and by his silence—as I submit the court will instruct you—he admits that that statement is true.

That being the case, what then occurs, according to Walsh? And as it is not very long I can probably read it quite as shortly as I could state it. At page 2207 he says:

Q. Will you be so good as to detail all that passed at that interview, as nearly as you can recollect it, the language of General Brady, and, if you cannot recall his language, state it in substance, giving the exact meaning of the language he used?—

A. Agreeably to the terms expressed in that note General Brady met me at the house of General Sheridan, and after some desultory conversation, which just now I cannot recall, we touched on the subject of the difficulties that Jerome J. Hinds at that time was causing the Post-Office Department and the Second Assistant Postmaster-General. I expressed it as my opinion that Mr. Hinds would make a very great deal of trouble for Mr. Brady; that he had expressed a determination to do so, and I thought had every disposition. General Brady remarked that he did not care particularly about Mr. Hinds; that Mr. Hinds was powerless to affect him. We may have and probably did discuss some other subjects before coming to the point, which was the payment of

the notes of General Brady that I held, amounting to about \$25,000. General Brady asked me if I had the memoranda or data with me. I responded that I had. I had the notes in my pocket. I had also memoranda as to other amounts than expressed in the notes. Mr. Brady sat there listening to me. I told him that everything was pretty well determined except as to the matter of interest; that there was no interest expressed on the face of the notes; that that matter had been held in abeyance and that now would be a proper time to adjust it; that the time had come when I desired the payment of the notes, for the reason, among others, that I needed money. Mr. Brady sat there very calmly at the table turning the papers over in his hands and putting them down; he looked at me inquiringly and asked me if I was in earnest. I told him yes, I thought I was. He asked me if I did not think that that matter had been pretty well and fairly liquidated. I asked him to explain. He entered into an explanation without any sort of hesitation. He reminded me of the fact that I was in the enjoyment of a very remunerative contract.

Q. What contract was that?—A. From Albuquerque, New Mexico, to Prescott, Arizona.

Q. You held that contract?—A. Yes, sir; at that time. He informed me that he had expedited that very largely, had increased the service; the pay had been largely increased as the result, and that he did not really think that he owed me anything; that he did not see how I thought he could possibly owe me. I reminded him of the fact, as I had repeatedly told him, that the contract, even viewed from that standpoint, was unremunerative; that it had been a source of no profit to me; on the contrary, a loss; that he himself was largely instrumental in my ever having entered into it, and that I felt that such increase and expedition as had been accorded me was made under the law. He smiled at that, and asked me if I had not seen cases where petitions, &c., very numerous and largely signed, had not effected any result whatever. He then referred to the fact that after he had cut my trips down from 1876, that all the petitions that had come from that country had not succeeded. He said, in brief, that the matter of petitions was simply to enable him to act within the law, and that any man might have understood that, not seeing half as much as I had. I asked him what he meant by saying what I had seen. He referred me to the Price and Peterson drafts, and said that I ought to have been able to have divined from them what was the custom. I asked him what was the custom; that I still could not understand from those drafts; all I knew was the existence of the drafts, but how they came to be made, and what they were made for, was none of my affair and none of my business; that he had turned them over to me to his credit, and that it was not my province as a banker to inquire into the cause of their being made. He told me that my affectation of not knowing what the terms were was rather ridiculous; that I should know. I told him that I did not. He said that the amount that he exacted as a rule was 20 per cent. of the amount of the pay that was increased [the total increase of pay over the original contract]—20 per centum of that multiplied by the term of the contract.

Q. Twenty per centum per annum, do you mean?—A. Twenty per centum of the total pay minus the original pay [the increased pay] multiplied by the terms of the contract. For instance, in this case——

* * * * *

Mr. MERRICK. I ask you for the whole conversation. Did he proceed to figure on that expedition?—A. The contract that I held when I first had the increase accorded me was from Santa Fé, New Mexico, to Prescott, Arizona, Santa Fé being the eastern terminus. The eastern terminus was changed from Santa Fé to Albuquerque when I took the subcontract. This is not General Brady's language, however. I shall have to state it, and then if it is difficult of understanding I will have to explain my explanation. The difference between \$74,000 in round numbers——

By Mr. WILSON:

Q. [Interposing.] Are you giving now what General Brady said?—A. Yes, sir. The difference between \$74,000, in round numbers, the figure from which the pay had been last increased to \$135,000, in round numbers, amounted to about \$30,000.

It is printed \$30,000, but I suppose it means \$50,000.

By Mr. MERRICK:

Q. \$74,000, originally?—A. \$74,000. I take even numbers. The difference would be about \$50,000 or \$60,000.

Mr. MERRICK. \$61,000, according to the figures.

The WITNESS. Amounting in round numbers to \$60,000, and we were taking round numbers. 20 per cent. of that multiplied by 3——

By Mr. WILSON:

Q. [Interposing.] This is Brady's language you are using, is it?—A. Yes, sir.

Mr. WILSON. All right.

The WITNESS. Multiplied by 3 made, in his opinion, about \$36,000.

By the COURT:

Q. Why multiply by 3?—A. The contract term.

Q. That is, three years?—A. Yes, sir; the contract had three years to run.

The COURT. So I understand; but I wish it made plain.

By Mr. MERRICK:

Q. Had three years to run from the time of the increase?—A. Yes, sir. He told me that he did not feel that I was indebted to him for the increase from eleven thousand and odd dollars under the McDonough régime to \$74,000.

Q. Why?—A. For the reason that he admitted that I had substantially been the instrument from whence the money had come to pay that to S. P. Brown, George McDonough, the contractor, having borrowed the money of me.

Q. Did George McDonough ever pay it back?—A. No, sir.

* * * * *

Q. Go on with the conversation.—A. He further informed me that I owed him \$8,000, as my pro rata for the Congressional corruption fund. I do not know that he stated it that way.

You will bear in mind that that fund is alleged to have been used in procuring the passage of the bill which covered up Mr. Brady's extravagance, by giving him a sufficient amount of money to keep the service running, in the spring of 1880, for the remainder of the fiscal year. Mr. Wilson then calls upon him to state it precisely:

The WITNESS. That \$8,000 was the amount of my part of the pro rata to contribute towards the passage of the appropriation bills, and the star route in Congress. I told him that I had not authorized any disbursement of money; that I had been a witness before the Congressional committee that was investigating the subject of star-route matters; that I felt that I had probably been as largely investigated as most any contractor, and that it had not cost me a cent; nobody had asked me for any money, and in a general way I expressed some doubts as to the money having been spent, and reminded him, further, that I had refused to contribute to Chase Andrews, who had approached me.

Chase Andrews was a witness on the stand, called by them. He was not questioned, however, on the subject as to whether he approached him or not.

He told me that that would not do; that I must not expect that those things could be done without some sort of effort, and that they always cost money. He then reminded me, further, that there had been a remission of fines and penalties in my case, and that the percentage that he was accustomed to receive on such occasions was 50, and that if I proceeded carefully to debit and credit his account, he thought that I would find that he did not owe me anything. I had remarked by that time the absence of the papers from the table.

By Mr. MERRICK:

Q. What papers?—A. My notes and memoranda that I had given him. When the conversation had assumed this shape, I thought perhaps the matter was getting pretty serious, and I asked General Brady what he meant by taking the notes. He said he meant to make a settlement of that in that way; that that was a settlement of it; that that account was audited, and was dismissed. I asked him if he thought that I was going to submit to that. He asked me what I could do. Well, I suggested mildly that I might go to the court. He remarked that I might go there, and perhaps it was all the good it would do me; that probably I ought to have learned enough by this time to find out that appeals to any of these tribunals were not productive of any great results.

By Mr. WILSON:

Q. You are stating what he said?—A. Substantially. Perhaps he used the word "Congress" in connection with the word "courts." The idea was that appeal to anything in the District was something—

Q. [Interposing.] I want you to give his language as nearly as possible?—A. That I am doing; but it is very difficult to do that.

The COURT. You are not obliged to repeat his exact language, if you are able to swear to the substance of it.

Mr. MERRICK. That is all.

The WITNESS. I would like to do that. I do not wish to do him any injustice.

By Mr. MERRICK:

Q. What else transpired?—A. That was substantially an end to the interview. I talked to him further about my willingness to sell out in relation to my remark that the service had been unproductive of results to me; that I had lost money; that I had originally gone into the matter because he told me that the contractors were reputable people, and that I might loan them the money with safety; that my being a contractor was a matter of chance; that there was no solicitation on my part; it was really the result of necessity; and that, waiving the moralities of the matter altogether, it was not fair to treat me as he would his other contractors; that I did not come under that classification. He remarked that if I did not make money out of the contract it was because I did not know the business. I told him that that was possible. That I had accepted the contract and had attempted in good faith and to the best of my ability to perform the service; that I had performed the service; that I had stocked the route with the best mules and the best stock that had ever gone to the Territory, and that I felt convinced that there was absolutely no money in it; and I generally took occasion to doubt that contractors had agreed to pay any such money. He assured me that I was mistaken; that I was in error about it; that it was painfully obvious that I did not understand the business, and the best thing that I could do was to sell out.

Q. What else, if anything, passed at that interview, and how did you part?—A. We parted very much as philosophers. He seemed very philosophical and he seemed satisfied. I was very anxious to sell out then; more anxious than I was before.

Perhaps I ought to have read just before that. Walsh says that he found he was potent, certainly, with his contractors, and that he was willing to sell out at a sacrifice. Brady told him it was the best thing he could do, and then he said:

I do not suppose you want that part of it wherein I was approached by the contractors to sell out, do you?

I was very anxious to sell out then; more anxious than I was before.

Q. What did he say about other contracts than those and his relation to other contractors?

Mr. HENKLE. I object to that.

Mr. MERRICK. [To the witness.] I think you have stated that.

A. Yes, sir; he cited me the Price and Peterson drafts in substantiation of that, and also referred to the Price draft as particularly illustrative of the fact that everybody contributed.

Mr. WILSON. Never mind that. He is giving a running commentary.

The WITNESS. He referred to the Price draft in this way.

You will do the justice to remember, gentlemen, that if anything remains unexplained in reference to the Price and Peterson drafts it is not because we have not endeavored to get them before you.

Q. You have already stated that, and in a connection where it is appreciable, I think. Did he say anything about what you may have supposed to have been his reason for making these expeditions?—A. Oh, well, he said that he didn't think for a moment that I thought it afforded him any amusement to make expedition. I told him that I didn't know that I did, but I supposed the law directed him. He said that petitions simply enabled him to act within the law; that the petitions were matter of form. The petitions worked all right if it was all right; and when it was not, they didn't.

Q. He said that?—A. No, sir.

Q. Do not state anything but what he said.—A. I will refer to what he did say. He cited me petitions that produced no effect.

Q. Does anything else suggest itself to your recollection of what passed in that interview?—A. No, sir; not now.

Q. What further did you say to him about the notes, if anything, at that time?—A. You can readily imagine—

Mr. WILSON. [Interrupting.] No imagination.

The WITNESS. Well, I will say, then, briefly, that, of course, I remonstrated against that, and I said, as I stated before, that I would apply to the courts for such redress,

and I was very confident that I could get that redress that I was entitled to. Then he made the response that I was at liberty to get all the redress I could, and that having gone as far as I had, I might have observed that investigations didn't generally result in much to him.

That is the evidence of Mr. Walsh. It stopped, and we took a recess. After recess the defendants came in and announced that they did not desire to ask Mr. Walsh any questions. That is the way it stands upon the record and the way it stands before you. Mr. Brady was on the intimate terms with Mr. Walsh such as are disclosed. Mr. Walsh came onto the stand with no interest in this prosecution. Mr. Walsh came here under a subpoena to testify to these facts. He was not a willing witness. Mr. Brady did not deny the interview. He did not deny the receipt of the letter. He did not deny indorsing it with the appointment for the interview. Mr. Brady does none of these things, but he comes here and says that the interview is not true. He admits the financial relations in the sense of the offers to lend him money; he admits his application to borrow of him; he admits all those intimate relations. His counsel does not dare to cross-examine Mr. Walsh, and yet Mr. Brady asks you to believe that Mr. Walsh was not speaking the truth, although he had no interest in the matter in any way except that he was trying to recover his debt. That recovery of his debt certainly is not to be promoted by shutting Mr. Brady up in the penitentiary. It is to his interest to have Mr. Brady at large that he may be able to apply some portion of this large fortune that he has acquired in the payment of this debt. Walsh comes and gives that testimony, which is unimpeached, nobody swearing against him other than Thomas J. Brady, and they not daring to ask him a single question on cross-examination, yet asking you to believe Mr. Brady in preference to him—Mr. Brady when he is swearing himself out of the penitentiary; Mr. Brady when his testimony shows that the statements made as to the petitions and the statements made upon other subjects in that conversation, according to Walsh, are consistent with the declarations of Mr. Brady upon the stand when he testified as to how he regarded the petitions and are consistent with Mr. Brady's action in reference to granting expedition and increase of trips. They are consistent with all the evidence in this case, and they are inconsistent with nothing that is before you.

As to Mr. Brady, let us go along a little further. Mr. Brady is alleged by Mr. Rerdell to have had a conversation with him at or about the time when this Congressional corruption fund was being brought into play. Mr. Rerdell testified on the subject—his testimony being quoted on page 3587, though that is not the place where he testified—that he had an interview with Mr. Brady. I have not the reference to the interview, but it is referred to in the letter which I have here. Mr. Rerdell testifies that there was a letter written by himself to Mr. James W. Bosler, the partner, the associate, and friend of some of these defendants, on the 22d of January, 1880, and that that letter correctly stated a transaction which occurred. We produced here a press-copy of that letter obviously taken from a letter-book, and having been on pages 358, 359, and 360 of the letter-book. Mr. Rerdell said that that letter was in one of Mr. Dorsey's letter-books, and was torn by him from the letter-book. We called upon Mr. Dorsey to produce his letter-books, and one of them was shown to have been in court during this trial. The evidence of various witnesses on the stand showed that they had seen those letter-books along through the trial. There was no pretense of denial that the letter-book which contained this letter was still in the possession of Mr. Dorsey. They refused absolutely to produce it, and I think Mr. Dorsey does ex-

pressly admit that at the pages in the letter-book where this letter would be there are missing sheets. We asked them if they would not show us the letter-book or let us see the index. Gibbs, the clerk at the Ebbitt House, swore that he indexed the three letter-books. We asked them to let us see simply the letter B in the index to see whether that letter which was copied there was not a letter to James W. Bosler. They refused to do it and refused to produce it. If there is any question that the letter that was on those pages of that letter-book was a letter covering three pages, addressed to James W. Bosler, and bearing date on the 22d of May, 1880, I think the court will tell you you are bound, from the mere fact of their failure to produce that letter-book, to draw from that fact the inference most strongly against them.

Mr. GILL (a juror). May I ask you a question?

Mr. BLISS. Yes; certainly.

Mr. GILL. What is the length of the route from Santa Fé to Prescott?

Mr. BLISS. I do not know. I think it appears in the record, but I cannot tell you. I should say roughly in the neighborhood of between two and three hundred miles.

Mr. MERRICK. At least three hundred miles.

Mr. WILSON. That route is not in this case.

Mr. BLISS. No; not in this case; but there are some of the papers in the case. I think the route is from two to three hundred miles long.

Gentlemen, I will now read you this letter:

MAY 22, 1880.

J. W. BOSLER, Esq.:

DEAR SIR: Yours of yesterday to hand, with inclosure of \$500 for Steele to start West, and he will go to-night.

Steele, you remember, Mr. Dorsey testified, was one of his traveling agents who was engaged in attending to the service out West. That letter therefore acknowledges from Bosler the receipt of \$500 for Steele to go West. If they had put Mr. Bosler on the stand; if they had dared to put their associate and partner on the stand, the gentleman who was in this city, and who was hanging around this court-room for a week or ten days, and if they had dared to produce that book by which Dorsey and Bosler settled in November last, they would have given us the opportunity to learn from Bosler and from the book that Dorsey had himself recognized whether that statement was true that at or about the 22d of May, 1880, Mr. Bosler had sent Mr. Rerdell \$500 for Steele to use in going West. Then the letter continues:

On last night I was subpoenaed to go before the Appropriation Committee to-day at 10.30 a. m., and "to bring all books and papers relating to star mail route contracts belonging to S. W. Dorsey." I immediately telegraphed you to that effect, asking "what I should do." I am now just in receipt of your reply, saying no harm could come of the books being made public. In this we *all here* think very different, and for the following reasons:

1st. The books would show very large profits, and would be used by the committee as an additional argument that all expedited routes should be readvertised and relet.

2d. There are several entries giving D. credit for large cash payments made to John Smith and Saml. Jones.

3d. I understand the committee will try to show that he had an interest in mail routes before last April.

"He" there must mean Stephen W. Dorsey.

I appeared before the committee this morning and got excused until Monday morning; but before doing so I drew up an answer, after getting advice of counsel, that I could not produce the books and papers asked for until I had consulted with Mr.

Dorsey. This answer I shall hand to the committee on Monday, and endeavor by every means to delay any examination until I hear from Dorsey.

Gentlemen, if they had produced Mr. Bosler's books; if they had produced the book by which Mr. Dorsey settled; if they had produced the accounts rendered by Rerdell, testified to by Mr. Dorsey and by Mr. Rerdell as accounts which he rendered to Mr. Bosler showing his expenses every month, don't you believe there would have appeared in those accounts the fee paid to counsel for the advice that Rerdell got? And it would have been extraordinary, gentlemen, considering the large number of counsel who first and last have been in the employment of these defendants, if it did not happen to disclose some one of them.

There is much more in this than you think, and I would like to hear from you about it.

The indications are that they did not let Mr. Bosler into all the details of their rascality, and yet with what little Mr. Bosler knew they did not dare to put him on the stand.

Gen. B—

Meaning of course General Brady—

is very much alarmed, and he and I had a long conversation to-day, during which he made several valuable suggestions, which I shall follow.

I will not produce the books until advised by you or Dorsey to do so, as I shall claim that I am his attorney, and as such am not required to divulge confidential matters.

I would be glad to hear from you by Monday morning.

Very truly,

M. C. RERDELL.

The date of that letter is May 22, 1880. At that time Mr. Dorsey was not in this vicinity, and Mr. Rerdell, faithful to his employer, refused to obey the subpoena of what these gentlemen call the highest court of the country, the court before which they allege Mr. Brady alone can be tried, the Congress of the United States.

Rerdell refused to obey that subpoena and consulted counsel, and as a means of getting a delay he stated that he would not produce the books in his possession until he was advised so to do by either Bosler or by Dorsey. Now, gentlemen, what do those facts involve? Do you suppose, will it be claimed before you, and if claimed will it gain a moment's credence from any one of you, that away back on the 22d of May, 1880, Rerdell was engaged in a scheme to get up evidence to pretend that these defendants were in a conspiracy to defraud the Government, and to write a letter detailing a fictitious interview with Thomas J. Brady with an idea that by and by, at some time or other after the investigation in Congress was over, this letter might be of use to him. Either this letter was written at that time or—but I will not put that contingency. The letter *was* written at that time. beyond all question, because it came, beyond all question, from the letter-book in use in Dorsey's mail business at that time. If it had not been there in the letter-book under date of May 22, 1880, how quickly that letter-book would have come in here. If there had been another letter there occupying those pages, how quickly that letter-book would have come in here. If there had been blank pages there, or if the index had shown, although the pages were gone, that there was a letter on those pages not to Bosler but to somebody else, how quickly that index would have been brought in here, and how quickly that letter-book would have been brought in here, and how Mr. Rerdell would have been crushed upon the stand. And yet, gentlemen, they have that letter-

book and did not dare to produce it before you. Mr. Carpenter thinks that silence is not an admission. Could there be a more convincing admission that that letter was in that letter-book at that time, and upon those pages, and written on that day? You of course all know that letters go in consecutively by date. Rerdell swears that it was so, and swears that he wrote the letter on that day; swears that he had this interview with Mr. Brady at which these things occurred. Mr. Bosler, whom we put upon the stand for the purpose of getting the right to put that copy in instead of the original letter, states that he does not remember that he ever received that letter, and I think he goes further and finally on re-examination says he is very confident that he did not receive it. However that may be, Mr. Rerdell says he wrote that letter on that day, and he mailed it to James W. Bosler. Yet you are asked to believe that Mr. Rerdell tells a lie, when they do not dare to produce the book that was in their possession, and which would be convincing either one way or the other as to whether such a letter was written. Now, gentlemen, you will bear in mind that I have read this letter merely in connection with Mr. Brady. I shall have occasion to refer to the letter again with regard to what he says about Samuel Jones and Smith, as showing how completely that letter in its statements upon those subjects is borne out by other statements made by entirely unimpeachable witnesses. But as to Mr. Brady, the letter says that Rerdell had a conversation with Mr. Brady that morning.

The COURT. With General B.

Mr. BLISS. With General B.

General B. is very much alarmed, and he and I had a long conversation to-day, during which he made several valuable suggestions, which I shall follow.

I thought I had a reference to Mr. Rerdell's testimony upon that subject. I think I can state it, however, with sufficient accuracy. He says that he told Mr. Brady he had been subpoenaed, and told him that the books contained troublesome entries, and that Mr. Brady told him that "Dorsey was a damned fool for keeping books," and that he had no business to keep any books; and then there was arranged between them a scheme by which that set of books should be suppressed and a new set of books should be made, and Mr. Rerdell was in some way, by feigning sickness or shamming, to get sufficient time to have that new set of books made, and then they were to be put in before Congress. From that new set of books were to be omitted the troublesome entries which Mr. Rerdell had referred to in this letter. He then says that he went on and did procure that set of books to be made. I shall recur to that statement again. I simply now mention it in connection with Mr. Brady as showing that this statement of Mr. Rerdell of the interview with Mr. Brady which Mr. Brady denies, is not a thing hatched up after this prosecution has come, after Mr. Rerdell has become a defendant, and after Mr. Rerdell has confessed his guilt. It is not anything of that kind. It is a statement which Mr. Rerdell made referring to that conversation away back on the 22d of May, 1880, and therefore either that conversation must be true, or you have got to believe that Mr. Rerdell three years ago went to work to manufacture a fictitious interview with Mr. Brady, and wrote a letter in regard to it. Gentlemen, that that interview occurred is just as certain as that these defendants, or some of them, undertook to get up a fictitious post-office. That interview was genuine. There was nothing fictitious about it. It was Mr. Brady's outburst to Mr. Rerdell when he found that Dorsey had kept books and had done the business not in a way

described by somebody in this case. I am not sure whether it was on this trial or the last; but Mr. Boone, I think, on one occasion when he was asked as to books and speaking of some concern that did not keep any books, said they did business on "graveyard principles."

Mr. DAVIDGE. What is the page of the record?

Mr. BLISS. On one trial or the other it was said by somebody, and they want you to believe——

Mr. DAVIDGE. [Interposing.] Does not Mr. Bliss know perfectly well that there is not a word to that effect in this evidence?

Mr. BLISS. I am not saying it is in evidence.

The COURT. Mr. Vaile stated on this trial that they kept no books.

Mr. BLISS. Mr. Vaile said they kept no books.

Mr. MERRICK. Mr. Bliss is using the expression "on graveyard principles" as an expression used by some one at some time to illustrate their habit of not keeping books.

The COURT. That is what Boone said on another occasion. Boone did not repeat those words here.

Mr. BLISS. I was careful to say that it was said by somebody, and I thought by Mr. Boone, either on this trial or the last. I do not care whether he said it in this court-room or out of doors. It was very expressive language. He said they did business, keeping no books, "on graveyard principles." If there is any objection to my quoting the language, I will adopt it, and I will say that they want you to believe that they did business on graveyard principles.

The COURT. You adopt it as your own language.

Mr. BLISS. Yes. There has already been enough of stealing in this case. I do not want to steal anybody's language.

Mr. HENKLE. You stole that from the former trial.

The COURT. A man has a right to make a quotation.

Mr. BLISS. I distinctly said it was not on this trial.

Mr. DAVIDGE. I do not object to any testimony coming from Mr. Bliss. I shall comment on it.

The COURT. Undoubtedly on this trial Mr. Vaile did state that he kept no books.

Mr. BLISS. Dorsey undertook to state it also.

The COURT. Vaile said so.

Mr. BLISS. Both of them. They undertook to tell you that they carried on this business in that way. As to these nineteen routes the business amounted to about half a million dollars a year, and they had one hundred and thirty-four routes altogether. You can see by making a calculation that if the other routes amounted to as much on an average as the routes in this indictment that their business involved something like \$3,000,000 a year of receipts and expenditures, making \$6,000,000 a year if you count both ways, and yet they carried on that large business and kept no books; that all the books they had were the books that the Government kept and the bank account. They ask you to believe that. I do not wonder that the gentlemen do not want it referred to and do not want it described in the expressive language of being on "graveyard principles." They did their business in that way and it remains for you, gentlemen, to say whether those principles shall not be carried out and they shall not find that they have done business on principles which will carry their characters down to the grave.

At this point (1 o'clock and 3 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. [Resuming.] Gentlemen of the jury, with these remarks, calling your attention to Mr. Brady's avowals upon the stand; to Mr. Brady's action as shown by the papers; to the testimony of Mr. Rer-dell; to the letter produced, which very clearly, as we say, is genuine beyond all question and states correctly what occurred with reference to Mr. Brady, I for the time leave him and pass on to some of the other defendants in this case. Let us, in the first place, take Mr. Vaile, that innocent, confiding gentleman, who, having been educated as a lawyer, made a fortune as a mail contractor and then came on the stand to avow that he was carrying on business upon philanthropic principles, and that he was keeping books upon graveyard principles. This man who has grown rich in the sharp competition that exists among post-office contractors wanted you to believe, and so stated on the stand, that he had no previous acquaintance with Miner and never had seen him, unless, possibly, he might have been introduced to him at some time, or had him pointed out to him, until the spring of 1878 (Mr. Miner fixing the time of their first acquaintance as probably about the 23d or 24th of July, 1878); but he tells you that he found Miner here at that time in great trouble in connection with his inability to carry out the contracts which he had on hand. Mr. Miner says that he returned here from Denver, having met Stephen W. Dorsey in Saint Louis on his way back, and that he arrived here about the 21st, 22d, or 23d of July, and that at that time, or shortly after that, he casually met Mr. Vaile and confided his troubles to him, and that Mr. Vaile sympathized with him tangibly. Mr. Vaile says, upon page 4006 of his testimony:

As I have remarked, Mr. Miner was in great trouble. He came to me so frequently for advice that I at last became very much interested in him, and it was merely through sympathy to do him a kindly act. He seemed to be standing quite alone, with no one to go to, and perhaps I might be permitted to say that other contractors were standing about, as it were, anxious for him to fail, and to gobble up these contracts at a higher figure.

Now, gentlemen, consider right there how the question of time comes in to show that that statement cannot be correct. Mr. Miner says on page 4162, with regard to the time that he first came into connection with Mr. Vaile:

I probably met Mr. Vaile in the spring of 1878, though the acquaintance was merely casual, and made no great impression on my mind. I next met him about the 20th of July, when I returned from Denver; the 23d or 24th probably, according to some checks that are in evidence.

The 23d or 24th of July "probably" was the time when Miner says he first met Mr. Vaile. Mr. Vaile says that after he met him Miner came to him so frequently for advice that he at last became interested in him, and through sympathy he undertook to do him a kindly act! But Mr. Vaile also says that he left here about the 5th to the 8th of August to go home, and he says that twice after he met Miner and became interested in Miner he went to Brady and got from Brady a fortnight's extension of the time for them to commence their service. He did not meet Miner until the 23d or 24th of July. He left here before the 10th of August. The first extension of time was got about the 1st of August and was until the 16th, beyond all dispute. Yet Mr. Vaile tells you that Miner came to him so frequently for advice that he at last became very much interested in him, and it was merely through sympathy to do him a kindly act. Mr. Boone says that he got the extension from Mr. Brady; that he went to him and stated the case to him, and that he got

the extension until the 16th of August, and he states the reason and all about it, which I think can leave no doubt in the minds of any one that the extension was obtained by Mr. Boone. There is a very significant fact in connection with the matter so far as Mr. Vaile is concerned. Mr. Vaile on direct examination only talked about obtaining one extension. I cannot be mistaken as to that. But when it came to cross-examination he found himself getting into some difficulties, and then, for the first time came up a claim, so far as Mr. Vaile was concerned, that he went once to Mr. Brady and got an extension and then went to Mr. Brady fifteen days afterwards and got another extension. That that cannot be true is shown by the mere question of the dates, for Mr. Miner says he did not meet him until the 23d or 24th of July, before the 16th of August, the time when the first extension ended, and Mr. Vaile had left to go home before the latter time. Mr. Vaile's story is that between the 23d or 24th of July and the time that he went home this casual acquaintance came to him so frequently for advice that at last his sympathy was excited and he went to work to see what he could do for him. Mr. Vaile says, in his direct examination, on page 4002, that he met him here in the last of July, and not very long after that he claimed that he went to Brady for an extension. Subsequent to that, on page 4051, he claims that he went and got a second extension. And not only that, but we find this condition of things: Mr. Vaile, by his own statement, knew Mr. Brady only casually. He had no intimacy with him. He had nothing to do with him that enabled him, as he says, to exercise any greater influence over Mr. Brady to secure an extension than any other person or any other contractor, and he only used arguments which it would have been just as easy for Mr. Miner to use as for Mr. Vaile. These arguments in point of fact Mr. Boone says neither of them used, and that he used them himself, and he himself obtained that extension from Mr. Brady. These are little details, gentlemen, and yet after all they are important as bearing upon the question of who is to be believed in connection with this case. I will read from page 1571:

Q. As a matter of fact, did you know that Mr. Brady had said that he would declare you people failing contractors unless the service was on by the 15th of August?

* * * * *

A. The first time that General Brady ever sent for me in his life was on that occasion. Mr. Miner was absent. John W. Dorsey was absent. Peck was absent.

Miner was out in Denver.

He showed me the telegram from the postmistress at The Dalles. He says, "All that Dalles service is down, and it is very important that that service should be put on. It cannot be put on at your contract price, and my advice would be for you to telegraph there and have that service put on at any price." I told him I would. And he further said to me that unless that service was on, and unless all of our service was on by the 15th of August, he would declare the contractor a failing contractor on every route that the service was down. I think the thing ran along then until the latter part of July, when I wrote a letter, which is on the files of the department, asking for the outside limit of indulgence of the department owing to our time being engaged in that investigation by Congress. Fully a month and a half of our time was taken up by that investigation, and we did not know what to do with the service. We did not dare to move. We expected that the contracts would be taken from us. Ninety-nine times out of one hundred the contracts would have been taken from us.

Mr. MERRICK. That was the condition of things at that time?

The WITNESS. Yes, sir.

By Mr. INGERSOLL:

Q. Your time had been taken up by the investigation?—A. Yes, sir.

Q. What was the outside limit given to you?—A. The 15th day of August.

There is his statement of what the outside limit given to him was and that he got the service extended until that time. He says that Mr. Brady

showed him a telegram that the service was down, and insisted upon it that the service should be put on. I thought I could refer to the telegram upon that subject in the record as to the service being down, but I cannot lay my hand upon it and I am not sure that it is in evidence, though I am under that impression. However, that is unimportant. Mr. Boone got the extension to the 16th of August beyond all question. All this story of Vaile's about having gone to get that first extension is beyond doubt a mistake. That Vaile went and got the second extension I think is true. Mr. Vaile thus influenced by pity for Miner, whom he found here at the mercy of the other contractors, interested himself in behalf of Miner, and he thought he would protect this poor, unsophisticated, innocent dove, who was here surrounded by all these hawks. He said he must have a champion, and he would be that champion; and yet when we get along a little further in the case we find Mr. Vaile admitting that he knew at that time that Mr. Stephen W. Dorsey was interested in behalf of Mr. Miner and in behalf of that service, and that Mr. Stephen W. Dorsey had by loans or in some other way become pecuniarily interested in it, and so there certainly was not any necessity, taking the then existing condition of things, for Vaile's assistance. Dorsey was a Senator of the United States, a leading member of important committees, a leading member of the dominant party in power to which the Second Assistant Postmaster-General belonged. Was there any necessity that these parties to whom he had advanced his money, and whose success he was interested in, and for whom he had obtained bondsmen, should go to others for help? Was there any reason why this gentleman from Western Missouri, never having seen Mr. Dorsey himself, never having known John W. Dorsey, never in his life having seen John M. Peck, and never having met Mr. Miner until he casually met him on the 23d or 24th of July, 1878, should go on and interest himself on behalf of this man because he was here unprotected and unsupported, when Stephen W. Dorsey was interested with him, although Stephen W. Dorsey might not have been here for the moment on the spot? Is it to be believed that there would be any trouble in securing the aid and the support and the assistance of Mr. Dorsey on behalf of these gentlemen, and that it would be much more powerful, in the nature of things, than any assistance which this casual acquaintance from Western Missouri could give? Is not this true, gentlemen, unless there existed between Mr. Vaile and Mr. Brady relations which enabled him to exercise a more powerful influence than the circumstances on the surface would seem to suggest? Now, Mr. Vaile, having been thus interested in behalf of his casual acquaintance and having gone twice, as he says, to the Post-Office Department, and using the arguments which must have occurred at once to Mr. Brady as far as he stated them, arguments the substance of which Mr. Brady must have known better than he did, although he was an experienced contractor, having done this, Mr. Vaile wants you to believe that he carried his sympathies still further, and that just prior to going home, early in August, he left written offers in Mr. Miner's hands to be used in case Mr. Brady undertook to declare them failing contractors. They were offers that he would perform the service at the very rate at which it was being performed. He says that he had no security that those offers would be accepted; no security whatever that Mr. Brady would accept them. There were offers upon each route separately, and Mr. Brady might accept his offers as to the routes which were a loss to the contractors, and might refuse as to the routes which paid a profit to the contractors. He had no security whatever that the offers would be accepted at all,

but he says that he left these offers with Mr. Miner. Miner says that it was something of a trick, and that these offers were left with the idea that if they should be accepted then they would get in that way, I think he said, fifty or sixty days additional time, because if the contractor failed and a new person came in and offered to take up the service, the argument in favor of giving him additional time in which to put the service on would be very strong. Vaile says he left those offers here to take up the service, and there were offers upon all the routes except those that were being successfully run. He did not make any offer upon those routes, neither did he take any security, if his object was to prevent these defendants from becoming failing contractors, to protect them in another respect. There were subcontracts which had been made and which were being executed, but contracts might at any time have been thrown upon routes which he had not offered to take. He had no security that while he was taking the routes which were then down some subcontractor might not the day he left here throw up the service on another route belonging to these parties, and then these parties would be declared failing contractors, and, as failing contractors on one route, it would extend along over all the contracts, in the sense that the pay upon all the routes would be stopped until the loss to the Government upon the route which had failed was made up. You will remember, gentlemen, that, so far as these nineteen routes are concerned, Mr. Vaile says, not only upon these routes but upon the others, that it was the long and expensive routes, on which, even though they were taken low, the aggregate was considerable, that the service was down. The Canyon City and Fort McDermitt route and The Dalles and Baker City route were among that number. He left offers to take those up, but he had no certainty that even if those offers were accepted the very next day there might not be a subcontract thrown up on a route also in the name of Miner, and then his pay would be stopped on all the routes. Then what would have been the result? Mr. Vaile would have taken up, if Mr. Brady had chosen to give it to him, all of the service of Miner, or he would have taken up such portion of the service of Miner as Mr. Brady, if he had been an honest officer, would have seen it was for the interest of the Government to give him. He had no certainty, according to his account, that he would get any. Somebody else might have come in with a lower offer, and then Mr. Vaile's offers would have been of no avail. Somebody might have come in with a lower offer on the routes on which there was a profit, and then they would not have gone to Mr. Vaile, and he would simply have been given the routes upon which there was no profit. Mr. Vaile having made this arrangement, as he says, went to his home in Western Missouri. About the 22d of August Brady telegraphed him to know what service of Miner, Dorsey, Peck, and Watts he would take up. After two or three days Mr. Vaile says that he telegraphed back that he would take it all up excepting Watts. He was asked why he excepted Watts, and he said he thought he was taking a sufficient load to take the rest. He says distinctly he knew nothing about the routes, he knew nothing about the trips, and he knew nothing about the pay. He did know that as an aggregate the prices were too low. He did know that the contracts as a whole were losing contracts. Now, stop here and consider it. This man Vaile, the experienced mail contractor who had made a fortune in the sharp competition of the business, makes a casual acquaintance on the 23d or 24th of July, and is here for ten days or a fortnight, possibly. I think he states he got home about the middle of August.

On the 23d of August he telegraphed back that he would become responsible for all the service of Peck, Miner, and John W. Dorsey, though he knew it was a losing service as a whole, and though he did not know the routes, the trips, the pay, or anything in detail. He says that he did that, and that he did it solely out of compassion for Mr. Miner, who was the only one of the lot he ever saw. He says, too, that he did not want that the United States should suffer. He did not expect to get much credit for that. You remember I suggested to him that if he wanted to benefit the United States the wise way, instead of taking up losing contracts and making a donation in that manner, would have been to have let somebody else carry out the contracts, or to have let these parties be held upon their bonds and the United States be made good in that way, while he, the philanthropist from Western Missouri, could have made a contribution directly to the payment of the national debt. He admitted on the stand that that would perhaps have been a little more practical way of applying his money, according to the view he was trying to urge.

The moment he telegraphed back that he would assume these contracts, that moment he says he commenced spending money. He had no agreement with Miner, with Peck, or with Dorsey as to anything about it, but he commenced spending money, and before he entered into any contract or agreement with any of them, he had spent or incurred liabilities to an amount greatly in excess of \$50,000, and he had incurred those liabilities on the basis of a dispatch from Brady to him to know what service he would take up, and upon his reply that he would take up the service of the three men named, leaving out Watts, he gave no reason why he left him out, except that he thought he was taking too big a burden. Then he went on and spent all this money. He had no contract whatever with these parties by which he was to share in the profits, and they had not been declared failing contractors. The contracts were theirs then, and the service was being put on. The excuse for declaring them failing contractors was being taken away from Mr. Brady by the expenditure of Mr. Vaile's money, and Mr. Vaile had not a particle of security from anybody that after they had got the service on, and ceased to be in danger of being declared failing contractors, he would benefit in any way by the fifty or sixty thousand dollars which he had expended. It does not even appear that anybody, except possibly Miner, can be considered as having given an implied recognition to him to spend that money for their benefit. But, however that may be, Mr. Vaile went on. That is not all, gentlemen. He had no security from Mr. Brady in any manner, as he says he did not know that Mr. Brady might not on any morning wake up and, having one of his moods, declare them failing contractors. The service had not all been put on. The Canyon City and Fort McDermitt route was not commenced until the January following, and on a large number of the routes it was not commenced for about a month, several of the routes in the indictment being included. Mr. Brady had not only abundant excuse, but abundant considerations of duty, if he was an honest officer, to declare them failing contractors. Mr. Vaile had not a particle of security that he might not wake up some morning and find that these men for whose benefit he had been playing the philanthropist had been declared failing contractors by Mr. Brady, and his money gone. He had not on the one side any assurance that they would not be declared failing contractors, and he had no security that they would allow him the benefit from the expenditure of his money on their behalf, and on the other hand he had no security on Mr. Brady's side! If Mr. Brady had declared them fail-

ing contractors his money would have been gone. He tells you, too, that he knew they were irresponsible men. Gentlemen, if ever there was a thin story invented on the stand or off the stand, in the witness-box or in the theater, that is one of those stories. It is an insult to your intelligence, gentlemen, to ask you to believe that any business man of sufficient acuteness to keep out of the poor-house, to say nothing about making a fortune in the business of mail contracting, would do business in that way.

Then, again, Mr. Vaile tells you that he never made any agreement or got any security until he came here, he thinks, on the 30th of September, and then, the first quarter's pay being about to mature, he made an arrangement. Though that agreement bears date the 16th day of August as made between these parties, yet by their own evidence it was not executed until way down in October. All this was done out of sympathy for Mr. Miner, and he did not desire that Mr. Miner's associates, Mr. Peck and Mr. Dorsey, whom he had never seen, should suffer. Yet getting here on the 30th of September, before he had any arrangements made with anybody, the first thing he did was to go to work and file subcontracts in the Post-Office Department to cut out the drafts that these men had been giving to Stephen W. Dorsey, who was their backer and helper. Vaile was operating out of sympathy for these men. Mr. John W. Dorsey tells you on the stand that he was exceedingly anxious to do anything to protect his brother, whom he had drawn into the business. And yet the very first thing that Mr. Vaile did, who was brought in by sympathy for Miner and these other gentlemen, was to file subcontracts to prevent Stephen W. Dorsey from getting his money. Now, gentlemen, he never had seen Peck and Dorsey. The bowels of his sympathy had never been excited by any personal interest in Peck and John W. Dorsey. Mr. Miner, with that magnetic air which you saw upon the stand here, had won his sympathy and had won a way not only to his heart but to his pocket, and he was desirous of benefiting Mr. Miner. Why did he not take up Mr. Miner's contracts alone? He staggered along under a load so heavy that he had to throw off the bag that contained the contracts of Watts; went on with the bags containing the Dorsey and the Peck contracts, and he did it out of sympathy for Miner. If he had taken Miner's contracts up Miner never could have been declared a failing contractor, and to have declared the others failing contractors would not have had any influence or effect whatever upon Mr. Miner's contracts. All this he did out of sympathy for Mr. Miner. Now, gentlemen, what need was Mr. Miner in for sympathy? Vaile says that Mr. Miner was here in danger of being gobbled up by the other contractors, but Mr. Miner tells you, I think, a very different story. He tells it under circumstances which I want to call to your attention. Mr. Vaile says that Mr. Miner was here depressed, his service not on, and he had an endless sympathy for him. Mr. Miner says that he arrived here on the 23d or 24th of July from Denver, and he says that it was immediately afterwards that this condition of things occurred. Now, what does Mr. Miner say was the knowledge that he brought with him from Denver? Mr. Miner's attention was called by Mr. Ingersoll to the fact that the witness Moore, referring to the conversation with Miner at Denver, had made the following statement:

In our conversations we concluded that if the Eastern Oregon service was carried according to the subcontracts—

Then this question was asked:

Q. What was said by you, and what was said by him?—A. I told him if the East-

ern Oregon service that was sublet to Hutchinson was carried out the contracts were in good shape; but I had my doubts in regard to that service.

Then his counsel goes on:

That is a conversation which purports to have occurred between you and Moore at Denver?—A. I understand that.

Q. What do you say as to that?—A. He said the exact opposite. I feared that in consequence of his having let so many routes to one man there was danger of their not being started, but he assured me that Hutchinson certainly would start that service, and would carry it. And he assured me that he had the best bonds that could be made in the State of Oregon. There was no question at all, so far as he stated, of that service starting.

That was the information which Mr. Miner got from Mr. Moore, according to his statement, in Denver, and he came right from Denver here, arriving here on the 23d or 24th of July, and at once was plunged into a state of deep depression on account of the failure of the service on these identical Oregon routes, which led the sympathetic heart of Mr. Vaile to act upon his pocket and led him to incur liabilities to the extent of over \$50,000 without one dollar of security or one particle of certainty that he would ever see his money back. Mr. Vaile says, as I have already called to your attention, that though he had this sympathy for Miner, and incidentally and vicariously for Miner's associates, he filed subcontracts and cut out Dorsey's drafts, and he not only did that, but he antedated his subcontracts and deliberately perpetrated a fraud. He says he did it. The subcontract law had been recently passed permitting subcontractors, with the consent and permission of the Second Assistant Postmaster-General, to file subcontracts. He says he did not know but there might be some other subcontracts on file and he did not know but what there might be other drafts on file. But he was going to make a clean thing of it anyhow. He was going to be the first in. He was going to get in on the ground-layer, and was going to be on the bed-rock, he was so careful of his money; he, this man who had spent \$50,000 without a particle of security that it would not be entirely lost. He turned around, on the 30th of September, and proceeded to file subcontracts to cut out the drafts drawn in favor of the man he was sympathizing with, and antedated those subcontracts back to the 1st day of April, 1878, the contracts having been awarded some time in March, 1878, so that he might get subcontracts away back, and they should be ahead of any other subcontracts and ahead of any other drafts, and that they should be so fixed that no question could be raised, by pretending that they were made before the new law was passed. He admits that he did all that. Now, gentlemen, that is Mr. Vaile's story. That is the story which he insults your intelligence by asking you to believe. There are in connection with that story one or two other things that it is just as well to call to your attention. We find, for instance, that Mr. Miner is alleged to have stated, on page 2233, that Mr. Vaile was very close to Mr. Brady. There is another very significant fact: Mr. Boone tells you that he was frozen out for the purpose of letting somebody come in who had money. He says he was told by some of these defendants that Brady would not do anything for them so long as he, Boone, was interested in the business, and that it was a matter of life or death to them that they should get somebody in who could furnish money, and somebody who stood well with Brady, and therefore he, Boone, must go out, because otherwise they would be declared failing contractors, and if they were declared failing contractors it would react upon all the bondsmen, Boone having given some of the same bondsmen on these contracts that were upon his other eleven hundred contracts, and his service would be de-

stroyed. Therefore he must go out. Mr. Stephen W. Dorsey says that he knew nothing of Vaile's coming in and Boone's being frozen out, but it appears incidentally, I think by Mr. Boone's testimony, that before Mr. Dorsey left here to go West Mr. Dorsey asked Boone about Vaile and his responsibility, his experience as a contractor, and so forth. Now here comes the great question of dates, the question of dates which led Stephen W. Dorsey upon the stand to remember as little as possible. The dates were pitfalls for them on the one side and the other. Harvey M. Vaile tells you that he took no interest in this business until after the 22d of August, when in some way that he cannot account for Mr. Brady got it into his head that Mr. Vaile was going to take up some of that service, and he so telegraphed him. But, gentlemen, it appears by the undisputed evidence of a written paper in the case that Boone was frozen out of this business on the 8th day of August. On the 8th day of August Mr. Boone was driven out of the business to enable Vaile to be brought in with his money, although in the story they told you here Mr. Vaile entered into no obligation whatever with anybody to go into it until two or three days after the 22d day of August, and then he only entered into the obligation by a telegram to Mr. Brady which these other parties had no possibility and no right to enforce against him. The story, gentlemen, you see, is surrounded with difficulties. It is surrounded with improbabilities. It is surrounded with impossibilities. It cannot be true.

Then, again, as to Mr. Vaile, let us take him as he appears in connection with another transaction and see how this simplicity that seems to have pervaded his acts accompanied him there. He says that he as subcontractor made the oath upon the Vermillion and Sioux Falls route. That is a transaction to which I shall have occasion directly to call your attention as to the fact of its being the oath of the subcontractor, and the regulations calling for the contractor's oath. The question now is as to how he came to make the oath upon that route, he being only the subcontractor. I read from page 4059:

Q. Why did you not get an affidavit from John W. Dorsey?—A. I wanted no communication with him or with the party. I don't think I would have had it expedited if it had been necessary to get their affidavit.

Q. How long did that condition of mind continue?—A. Up to the last trial. It was a little that way at the last trial, but we have gotten over it somewhat now.

Q. Was your feeling against John W. Dorsey particularly?—A. Not all.

Q. It was a feeling against the whole combination, was it?—A. That was it.

For that reason Mr. Vaile made the oath as subcontractor upon that route. He made the oath before Stephen W. Dorsey's book-keeper. He was the notary public whom he selected to make it before. He would not have anything to do with any of that combination, and yet he made the oath before W. F. Kellogg, Mr. Stephen W. Dorsey's book-keeper, as the notary public of all others in the city of Washington, for the oath was made here. Mr. Vaile, with his undying hostility to the whole party, selected him as the man before whom he swore to that affidavit, and which he was making solely because he would not have an affidavit from any of them. He was violating the law, and asking Brady to violate the law by accepting the oath of a subcontractor, and he picked out this man as the man before whom that affidavit should be made. Now, gentlemen, Mr. Vaile on the stand did not remember before whom that oath was taken. He had to have some excuse for that, and therefore enunciated that theory. But that is not all, gentlemen. Mr. Vaile would not have any benefit from their oaths because he had such a hostility to them all. I have been looking for a memo-

randum which I have made, and which has escaped me for the moment, but I say with entire confidence that within three months of that time, both before and afterwards, Mr. Vaile was accepting the benefit from two, if not three, other oaths made within those three months by members of this party whom he hated so much, and whom he would not derive any benefit from. That is true, I think, upon The Dalles and Baker City route, and true, if I mistake not, upon one other route certainly. I have a memorandum somewhere which will show it.

This oath on the Vermillion and Sioux Falls route is the oath of a subcontractor in violation of the regulations. Mr. Rerdell, I think it is, says that the transaction was this: Vaile was at "outs," according to the expression of one of the defendants, with Stephen W. Dorsey, and he wanted to get along without the oath of the contractor and he undertook to see whether Brady would accept the oath of the subcontractor. After a little time Mr. Vaile came back and said that Mr. Brady would accept the oath of the subcontractor. Mr. Brady on the stand was asked about it, and he did not seem to remember the transaction particularly, but he said "of course I would take the oath of the subcontractor. Why should I not take the oath of the subcontractor if he was the man who was performing the service?" Vaile did not happen to be performing the service, but Mr. Brady still took his oath. Gentlemen, Mr. Brewer, the clerk, told you on the stand that he called Mr. Brady's attention to that oath, it being the first subcontractor's oath which had been taken within his knowledge. He called Mr. Brady's attention to the fact that it was an exceptional thing, and Mr. Brady paid no attention to it, and, therefore, thinking there might hereafter be some question arising from that illegality, and Mr. Brewer being determined at any rate that his skirts should be clear from the stain of what he saw going on in the Post-Office Department around him, filed with the papers his own memorandum stating that he had called the attention of Mr. Brady to the fact that it was the subcontractor's oath, and he thus put a stopper to the theory which otherwise would undoubtedly have been brought into this case, as it has so often been, that it was a mere pro forma matter, and Mr. Brady did not know anything about it, the responsibility all resting with the clerk in charge. Mr. Brewer by his honesty and by his foresight prevented any such theory as that.

But Mr. Vaile is involved in more difficulties still with reference to the statements that he makes upon the stand. You must consider the one statement and the other as to the question whether Mr. Vaile is to be believed where he comes in conflict with other witnesses. On page 4025 there is quoted a paper which appears at an earlier stage in the case. By that paper it appears that early in May, 1879, Mr. Rerdell had commenced a suit against Vaile and Miner for money alleged to be due him for services, and he set out that they had employed him and that they had not paid him. Thereupon Mr. Vaile, after he was sued, on the 29th day of May, 1879, wrote Mr. Dorsey a letter. I call your attention to this now as bearing upon Mr. Vaile's other statement upon the stand that Stephen W. Dorsey originally had nothing to do with these contracts, and came into them some time along in March or April, 1879, when he could safely do so openly and avoid the effect of the statute which forbids a Senator to be interested in contracts. Now, see what light this letter of Mr. Vaile's, written before it was supposed there would be any question of this kind as to who was interested in these contracts, throws upon the case. It was written away back before any

Congressional investigation had been had. The letter is dated May 29, 1879. I will read it:

S. W. DORSEY, Esq.:

DEAR SIR: Rerdell has to-day sued us, "Vaile, Miner & Co.," though alleging the firm to be only "Vaile & Miner," for what he claims wages. He certainly has not properly considered this action of his, as you will readily see.

How was Mr. Dorsey, if he had no interest in this business, to know anything about it?

If it goes on it will expose, to an extent, our private matters—

Whose private matters? *Our private matters—*

in which you are interested.

Our private matters in which you are interested. Not our matters, but *our private matters* that must be kept out of sight.

It will draw forth who are the real parties of Vaile, Miner & Co., and it cannot be helped.

What was the objection in Vaile's mind to having drawn forth who were the real parties of Vaile, Miner & Co., on the 29th of May, 1879, when he swears on the stand here that Vaile and Miner were the only parties interested? What was the objection in Vaile's mind to having that drawn forth? What was the reason that led Mr. Vaile to say to Mr. Dorsey anything about that? What did Mr. Dorsey care as to who the real parties composing the firm of Vaile, Miner & Co. were? Is it not obvious, gentlemen, that Mr. Vaile meant "this will draw out our dealings among ourselves. It is a fight among the conspirators, and the devil will take the hindmost. You will be exposed, and your relations to us, illegal and improper, will be exposed. This thing must be stopped."

In view of all the facts in the case, he cannot recover anything and will draw himself into serious difficulties.

Mr. Vaile was not troubled about any money that he would have to pay Mr. Rerdell. That did not trouble him. It was clear to his mind that Rerdell could not recover anything.

It seems to me you had better advise him to dismiss his action at once, as we must answer in twenty days. I do not suggest this fearing that he could ever get a judgment against us, for he cannot—

Here comes the great sympathetic heart of Mr. Vaile again—

but to save the poor fellow himself from trouble.

Poor fellow!

He was in the employ of the District government at the time he claims to have been in our employ, and this may involve him in trouble. A man cannot serve two masters at one and the same time.

What does Mr. Brady think of that? Did Mr. Brady think he could not serve two masters at one and the same time, to wit, the United States and these contractors?

Having written that letter to Mr. Dorsey on the 29th of May, 1879, he did not get any satisfaction from Mr. Dorsey, and so by and by, along in June, Messrs. Vaile and Miner both went to work to do some swearing. I mean swearing in court, legal swearing. We have on page 4025 of the record sufficient of the affidavit quoted for me to read, although I do not find the affiants' names. I am certain that Mr. Vaile swore to it, and I think that it was sworn to also by Mr. Miner.

Mr. HENKLE. Both swore to it.

Mr. BLISS. I thought so.

The defendants Vaile and Miner—

This is the sworn statement they put into court—

each speaking for himself, on oath say that they are not indebted to the plaintiff on any account whatever—

Not indebted to Rerdell on any account whatever—

and that they never had any business transactions with him of any kind or nature.

We will show you about that directly:

That true it is the defendants Vaile and Miner, with one Stephen W. Dorsey, at one time employed him for a short time to aid in certain mail routes—

Vaile and Miner with one Stephen W. Dorsey employed him to aid in certain mail routes. Now, gentlemen, you see why it was that Mr. Vaile wrote to Mr. Dorsey that that suit would expose their private interests, and it would expose who were the real parties of Vaile, Miner & Co. They were Vaile, Miner, and Stephen W. Dorsey—

but say that he was fully paid for his said services; that they not only paid him the full amount he claimed to the time he discontinued his services, but, at his request, paid Charles T. Perkins *two hundred dollars* on his account, and said plaintiff is indebted to them in said sum, with interest thereon from the 1st day of May, 1879, exclusive of all offsets and just grounds of defense.

They swear that Vaile and Miner never employed Rerdell, but that Vaile and Miner *and Dorsey* did employ Rerdell, and that he was paid in full, and therefore, to be entirely consistent, when the suit was about to be tried they paid Mr. Rerdell \$200 more. That is the statement as it stands upon the record undenied. Of course, Mr. Vaile was able to explain all this. Of course it can be done in the most refreshing manner. Without going into the details, it is sufficient to say that it is to the effect that somehow or other, when they divided up the contracts, these services of Rerdell's being upon the White River route, which they did not take unto themselves at all, which they left entirely out of the division, which had nothing to do with the subsequent distribution whatever, it being treated, he says, as Rerdell's route, not included in the lots that they drew, or anything of the kind, but, he says, inasmuch as, somehow or other, in some way or other, Mr. Dorsey had become responsible for his share of all the debts upon the routes which they did distribute and divide among themselves, therefore Mr. Dorsey was in some way responsible, through Miner and Vaile apparently, for services rendered on a route which they did not count, which they did not distribute, which they had nothing to do with in either way, which Mr. S. W. Dorsey was not interested in before the 4th of March, because he could not legally be interested in any Government contract before that time, and which Mr. Vaile was not interested in, because they had transferred it all to Rerdell long beforehand—that in consequence of all that, in some way or other, that transaction rendered it right for him to swear that Stephen W. Dorsey, with Vaile and Miner, employed Rerdell to render services, before Mr. Dorsey went out of the Senate, and, therefore, he swore to this thing. Now, that is a pretty muddy statement. I think my statement of it is quite as clear as Mr. Vaile's, and a little clearer, and it is all there is about it. And he asks you to believe that when he swore to that statement, before any question had arisen on this subject, when he wrote that letter to Mr. Dorsey before any question had arisen on that subject, that that is the reason—he thinks the lawyer did not state it quite right. The poor lawyers have to be responsible for a great

many sins of others, probably because they have so few of their own. Mr. Vaile did not use his usual perspicacity of statement there. I do not remember who his lawyer was.

Mr. HENKLE. Mr. Hine.

Mr. BLISS. His lawyer was Mr. Hine. He does not appear on this trial. He says, "Lawyers are very careless. Has not that been your experience?" Mr. Vaile is a lawyer himself, gentlemen. But I have given you the reason why he says he swore to it. It is not, perhaps, quite ship-shape, but what it means is that S. W. Dorsey had done things which he never did do, and holds him responsible for liability which never existed, according to Mr. Vaile's statement.

But that is not enough. Mr. Vaile did other things before any question arose on this subject. He was liable on one, and he was liable on the other, and he was interested in these contracts. On page 4065 there is a letter which he addressed to the Auditor of the Treasury for the Post-Office Department, Mr. McGrew, dated July 9, 1880, relating to an entirely different route, in which it seems that there had been some money recouped. Money having been paid out for service on a route which it appeared afterwards should not have been paid out, the Government stopped it or sought to stop it; and Mr. Vaile having had that money the Government called upon him to refund it, and, in a vigorous way which they have, they not only called upon him to refund it, but they took care that it should be refunded, by stopping that amount out of other moneys coming to Vaile. And thereupon Mr. Vaile writes to explain the subject. He says:

Although I was subcontractor of record on said route at the time named, I was not subcontractor on my own behalf.

"As subcontractor I got this money, which you want to make me pay back, but I was only subcontractor in form; I was not subcontractor for my own benefit; I was subcontractor for the benefit of somebody else, and you should go to those other parties and get back this money, for I paid it right over to them; those men are in your control, and you can get the money from them; don't plunder me in this way—me, the poor, innocent, unsophisticated, large-hearted, sympathizing Vaile—don't plunder me, but go to the parties who are interested and for whom I was trustee." And then, for the purpose of aiding the Government in securing this thing and doing justice all around, he goes on and tells for whom he was trustee:

I was not a subcontractor in my own behalf, but as trustee for J. W. Dorsey, S. W. Dorsey, Isaac Jennings, and others, to collect said money and pay it over as said parties should direct. I further state that all money that ever came into my hands from said route I did pay over to the parties named as trustee, as by them directed.

I further state that all the money collected on said route not paid to said Jennings was paid to liquidate the debts of J. W. Dorsey, S. W. Dorsey, and others previously contracted, and not one dollar ever remained in my hands.

I further state, I believe both J. W. Dorsey and S. W. Dorsey are irresponsible—

Now you see why Mr. Vaile wrote this letter. He was not dealing, as he believed, with a responsible man, to whom he could go and say, "I, as subcontractor, received from the Government so much money, but I was merely your trustee; I paid it right over to you; now give it back to me, for the Government has called upon me to refund it, and I have got to do it." That would have been the way he would have done with responsible persons, but he was not in a position to do that. He says:

I further state both J. W. Dorsey and S. W. Dorsey are irresponsible, and it would

be impossible for me to collect any part of said money from them. As above stated, said money came into my hands only as their agent or trustee, and at once paid out as they directed. * * * Said Jennings agreed to perform the service on said route strictly—

After referring to the fact of Jennings being a sub-sub—

in accordance with the laws and regulations of the department for the annual sum of \$12,600, the duplicate of which contract was delivered over to S. W. Dorsey by myself, and which I believe is now in the hands of M. C. Rerdell.

He then goes on to say :

Therefore I request you not to compel me to pay the sum of money asked, but if I am liable at all, let the parties seek their redress at law, where all the facts can be obtained and justice rendered me. And it is also well known that I am a man of means, and any judgment rendered against me could and would be collected, dollar for dollar.

I am, very respectfully,

H. M. VAILE.

The amount sought to be recovered, as appears from papers on page 4066, was \$4,870.08, apparently.

Now, gentlemen, that is the state of things there. Mr. Vaile comes on the stand and tells you that Mr. S. W. Dorsey was not interested with him, had nothing to do with him, was not interested in these contracts, and asks you to believe it in the face of his letter to Dorsey which I have read to you, in the face of the sworn statement of himself and Miner. And Miner puts the same strain upon your credulity in asking you to believe him after he had sworn to that plea which I have read to you. Mr. Vaile asks you to believe it in the face of that letter written to Mr. McGrew as long ago as 1880, in which he says three times over that he received that money, which was for mail service on the Mineral Park route, as trustee for Stephen W. Dorsey, J. W. Dorsey, and others, and paid it out as they directed. Now, after that exhibition of Mr. Vaile, can you believe, gentlemen, that his memory is good? Can you believe that his judgment is good, when he asks you to believe him when he comes in conflict with others? Has he so large a stock of confidence laid up in your minds that you can accept from him his statement of the origin and progress of his dealings with Miner as the true and correct one?

Bear in mind that this is the man who when he came to put his subcontracts on file antedated them all, avowedly to avoid the law, and therefore in violation of it; that he is the man who puts into his partnership agreement with J. W. Dorsey and Miner a provision that certain subcontracts (not including any of these that I have been referring to, but subcontracts on the Caldwell route, I think it is, and one or two others) are *bona fide*. When, in an agreement with reference to subcontracts on file, you specify that two of them are *bona fide*, what is the inference as to the others? Is not the inference that the others are shams? And when Mr. Vaile is asked upon the stand what he means about those *bona-fide* contracts, he scratches his head and puts out his hand in that confiding way of his, and says he cannot tell.

Mr. Vaile, on the stand, repeats in the face of this evidence that Mr. Stephen W. Dorsey had no interest in these contracts until after he went out of the Senate. When I was cross examining him—I am sorry to say that counsel was not sufficiently shrewd, or sufficiently in the confidence of Mr. Vaile, to get it from him—the court intervened with a curiosity which, I presume, the court thought was justifiable, but its results must be very offensive to Vaile and Dorsey. After the examination had been going on about the division of the contracts which they made early in the spring of 1879, the witness said :

I have no recollection of meeting him again—

That is S. W. Dorsey—

until about the 5th or 6th of March; it is possible I may have met him during the winter, but I have no recollection of it.

Q. March, 1879?—A. 1879.

Q. Where was that?—A. At his house.

Q. What took place between you then?

No; I believe that did not come out in my examination. Mr. Henkle could not get it out. Now I feel better. Afterwards he said:

Then we added up the values and adjusted those values—I taking 40 per cent., Mr. Miner 40 per cent., and S. W. Dorsey 30 per cent.

The COURT. That is wrong; you have two forties and thirty there.

Mr. BLISS. You corrected him before; do not correct me now. I am reading the record correctly:

The COURT. You taking 40, Miner 40, and S. W. Dorsey 30?

The WITNESS. I should say I took 40 per cent., Miner 30, and S. W. Dorsey 30.

I was reading the record correctly.

Q. How did you happen to go to Senator Dorsey's house at that time?—A. For the purpose of a division.

By the COURT:

Q. What time was this, did you say?—A. About the 6th of March, immediately after Mr. Dorsey went out of the Senate; I think it was on the 6th of March. I know I intended to reach here immediately after the 4th and get it fixed in some way.

By Mr. HENKLE:

Q. I want to know, from the state of feeling between you and Senator Dorsey, whether you had determined that you would not go on in business with him or not?

He was then in business, Mr. Henkle assumes, with S. W. Dorsey, and the question is: "Had you determined that you would not go on in business with him?"

He says:

I know I intended to reach here immediately after the 4th and get it fixed in some way.

And he got here, and then on the 6th he went to S. W. Dorsey's house, and Mr. Henkle then asks him about that:

Q. I want to know from the state of feeling between you and Senator Dorsey, whether you had determined that you would not go on in business with him or not?—

A. I had; nothing on earth could have made me go on with him.

Q. Then you were determined to have a separation?—A. That was my determination.

Q. And you say it was with that view that you called upon him at his house?—A. It was.

Q. And you made him a proposition which he accepted?—A. He at first refused, but subsequently accepted it.

Q. Who were present when this final settlement and division was made?—A. Mr. Miner, S. W. Dorsey, and myself.

Q. Anybody else?—A. Nobody else that I recollect of. I don't think there was.

Mr. Vaile came here, arriving just after Mr. Dorsey went out of the Senate, when he would have time to settle up the business and arrange matters. He was determined to arrive here promptly after the 4th of March, intending to close up the business, because nothing on earth would have induced him to go on in business with Stephen W. Dorsey.

A little further along Mr. Vaile drops into hyperbole. He says that Mr. Dorsey never had anything to do with the business; he was not interested in the business, except he had loaned some money to these other parties. He was not going along in business with him; they had

had a row which was not ended. This question was put to him, on page 4018:

Q. What took place between you?—A. A separation.

Q. I want to know whether you quarreled or not?—A. We did.

Q. Had a high old quarrel, had you not?—A. Yes, sir.

Mr. MERRICK. What sort of a quarrel was the other one?

Mr. BLISS. A low quarrel, probably.

Q. What was the result of it?—A. We divided the routes and divided the debts.

Having had a quarrel with Mr. Stephen W. Dorsey, his associate and partner in business, he came here determined that he would end that relation and that connection. Nothing on earth could induce him to go on with him. And so they sat down and divided up their business. That division was made on the basis of 40 per cent. to Vaile, 30 per cent. to Miner, and 30 per cent. to S. W. Dorsey.

I shall have something more to say with reference to that division before I get through, but let me say in passing, are not those proportions suggestive?

Do you believe that Miner, having put in no money, having gone along in the business five or six months, got 30 per cent. for that; while Peck, who had apparently not put in any money—it does not appear that he had—and John W. Dorsey, who had put in a considerable amount of money, their interests were each counted as worth \$10,000, and that Mr. S. W. Dorsey paid them that \$10,000 each, and for that \$20,000 he got secured to him the money which he had advanced, and he got the 30 per cent. interest? I merely mention that in passing as one of the improbabilities which surround the theories of these defendants upon the stand. So much for Mr. Vaile, who comes in collision with some other parties in evidence, to which I shall have occasion to call your attention further on. But it is sufficient now to leave him where his own evidence and his own admitted acts place him.

Now, as to John W. Dorsey. I say broadly, gentlemen, as to him, that it is impossible for anybody to read the record which he has made before you without coming to the conclusion that it is the testimony of a weak, not shrewd, man, who came on the stand with a story to tell, but who, amid the troubles into which a sharp cross-examination led him—and if any of you have ever been witnesses you know how cross-examination may lead even an honest witness into trouble, through failure of memory or from accident—made one statement after another to account for the immediate difficulties in which he was involved, without looking ahead to see into what further difficulties the new statement would involve him. And he came out in just that way. The evidence of that is to be derived from little facts, little things in the testimony, some of which I propose to call your attention to in some detail. But before I go to those directly, let me call your attention to one statement of his on the stand which, I think, is sufficient, as the index, as the guide-post on the road, to show in what direction all his evidence leads, to wit: in the direction of untruth. John W. Dorsey, gentlemen, is the champion affidavit maker, so far as numbers are concerned, of these gentlemen, to whose ability in that direction Mr. Miner gave so strong a certificate. On the 21st of April, 1879, up in Vermont, he made certain affidavits, which are worth a moment's consideration at your hands. He made two affidavits, 4 C and 5 C, upon route 38134; he made one affidavit, 6 Q, upon route 38156, Silverton to Parrott City; and he made another affidavit, 4 O, upon 40113, Tres Alamos to Clifton. All those affidavits, gentlemen, were made on the 21st of April, 1879, and sworn to before Rufus Wainright,

clerk of Addison County. Now, in the first place, let us take the first two affidavits, on route No. 38134. Those affidavits were sworn to on the same day. The first one is:

The number of men and animals necessary to carry the mails on route 38134, on the present schedule, is three men and twelve animals. The number necessary on a schedule of ten hours, seven times a week, is seven men and thirty-eight animals.

That is 4 C. 5 C, is:

The number of men and animals necessary to carry the mails on route 38134, on the present schedule, seven times a week, is two men and six animals. The number necessary on the schedule of ten hours, seven times a week, is six men and eighteen animals.

In the first half of 5 C, the "seven times a week" is interlined. He swore to both of those affidavits on the same day. One was filed here in the department on the 6th of May, and the other was filed on the 8th of May. He is asked upon the stand to account for them, and here is his explanation, at page 4137:

Q. On the same day you swore that the number of men and animals necessary to carry the mail on that same route was two men and six animals. Both of those statements could not be true. Which was a lie? [After a pause.] Which was the lie and which was the truth? Take the papers and look at them and tell the jury?—A. [After examining the papers.] If I made a mistake I probably corrected it, as far as that was concerned.

Q. You did not say you corrected it. Both were made on the same day, and both could not be true. Take your choice and tell us which is the truth.—A. I had not observed before that these were both on the same route. I would like to make an explanation.

Mr. MERRICK. Certainly, sir; you are entitled to make any you can.

Mr. MERRICK. I do not want any information except what took place then. You swore to them up in Vermont.

The WITNESS. Yes, sir.

Q. Was Rerdell there?—A. No, sir. One came in the early morning mail at 3 o'clock, and I went out and acknowledged that one and put it in the next mail, as he wanted it right off.

Q. Do you recollect that?—A. Yes, sir.

Now, on page 4139:

The WITNESS. My memory was refreshed when you called my attention to the fact that they were both on the same route. I went up and had one acknowledged, which came in the morning mail, because he said he wanted it immediately, and I mailed it in the 11 o'clock mail. In the afternoon at 2.40 another one came, saying that there was an error, and he wanted to have me acknowledge that, and he would destroy the other one, and so I went up and acknowledged that and sent it on the next mail. It came on the night mail.

Q. Do you recollect that fact?—A. I recollect it from my memory being refreshed.

Q. Refreshed or unrefreshed, do you recollect that fact?—A. Yes, sir; I think I do very thoroughly.

Q. Is it because you made two affidavits on that route that your memory is refreshed?—A. No, sir; it is refreshed, as I told you, from the conversation that I had last summer.

By the COURT:

Q. You say the letter was from Rerdell?—A. Yes, sir.

By Mr. MERRICK:

Q. A letter written by Rerdell?—A. That is the way it seems to me.

Q. Both those letters were from Rerdell in Washington, were they?—A. Yes, sir.

Q. That is what Rerdell told you?—A. Yes, sir; and they were, too.

Q. They were received on the days that you swore to those affidavits?—A. I think they were; yes, sir.

Then there are presented to him two other affidavits, one on route No. 38156, Silverton to Parrott City, and the other on 40113, Tres Alamos

to Clifton, both sworn to on the same day, the 21st of April, up in Vermont. In undertaking to account for the discrepancy between them he refers to another affidavit which he had also sworn to, which I have not taken out here (6 E, Trinidad to Madison), and he will not say that he swore to that at Rerdell's request.

But he says that he received these others from Rerdell by letter from Washington; that Mr. Rerdell, having sent him one letter which came in the morning mail, discovered his mistake, and sent another letter covering another affidavit, which arrived in the afternoon mail; that Mr. Dorsey had used so much expedition in swearing that he had sworn to the first one and put it in the mail before the second one arrived; and so he swore to the second one and sent it back. And that is the way, according to his story, that he came to make those two inconsistent affidavits. And yet, gentlemen, it is beyond dispute that as early as the 15th of April, 1879, Mr. Rerdell had left this city and gone West. We placed upon the witness-stand here the three hotel-keepers, one from Sidney, in Nebraska, one from Greeley, in Colorado, and the other from Denver. They produced their hotel books, showing Mr. Rerdell's presence at those places respectively on or about the 19th or 20th of April, and he swore to his presence out there, so that it was absolutely and physically impossible that Mr. Dorsey's statement could be correct. He did not receive those affidavits from Mr. Rerdell by letters written in Washington in that way. It is absolutely impossible. He puts Mr. Rerdell in this city as late as the 19th or 20th of April; there is no escape from that; and, at that time, beyond all dispute, without any question whatever, Mr. Rerdell was away west of the Mississippi River. There is no doubt about it; there can be no question about it.

Now, what sort of a man is this who comes upon the stand and asks you to regard him as a truthful witness, when he swears in that way? Mr. Rerdell tells you, gentlemen, that he sent those affidavits to Vermont at a certain time in blank, and with directions to have them sworn to in blank, and that they came back here sworn to in blank, and were subsequently filed here.

Mr. CRANE (foreman of the jury). Whose handwriting is this on these affidavits?

Mr. BLISS. Mr. Rerdell's, I think.

Mr. CRANE. If Mr. Rerdell was in the West at that time they could not have been made out and sent to Mr. Dorsey in Vermont unless they were made here previously and sent from the West.

Mr. BLISS. No, sir; they were a lot of blanks that had been made up without the filling in here, and they were sent from this city. Mr. Rerdell says a lot of them were sent from this city in blank to Mr. Dorsey in Vermont to swear to, so that they could come back here and be ready for use when they were wanted. He says that before he went West he sent a whole batch of them up there, and that they came back in that way. But Dorsey says, "I never swore to any affidavits in blank; I am not any such man; I would not do it; I swore to them all filled up."

But, gentlemen, that is not all about these affidavits. Mr. Dorsey also swore here, on the 26th of April, to three other affidavits—one of them on route 38140, one on 38145, and the other on 38113. He says that Mr. Rerdell procured him to swear to these in Washington on the 26th of April, when at that time Mr. Rerdell was away west of the Mississippi; that is beyond all dispute; there cannot be any doubt upon that subject. But Dorsey swore to it broadly, located the time, and gave his reasons. And yet his only way of accounting for his making

such affidavits is that he was influenced to do it in that manner. I think that he does not say absolutely, with reference to one of the affidavits which I have produced to you, that he swore to it under the influence of Mr. Rerdell. I think, when his attention was called to that, he hesitated. There is certainly one such affidavit. It is 6 E, route 38140. He does not distinctly say, with reference to that, that Mr. Rerdell influenced him.

Mr. MERRICK. 4 C is in Kellogg's handwriting, but 5 C, according to Boone and Rerdell, was written by Rerdell; that is one of the original blanks.

Mr. BLISS. At any rate Mr. Dorsey says he got them in Vermont, from Rerdell, by letters from Washington, the two letters arriving on the same day, and each containing one affidavit. At that time Mr. Rerdell was not in Washington or anywhere near it. There is no escape, gentlemen, from the position in which Dorsey has placed himself by his failure to remember that it is sometimes wise not to have any memory.

Mr. CRANE. Were both of them written by Kellogg?

Mr. MERRICK. The body of 4 C is written by Kellogg, and the second oath (5 C) of John W. Dorsey is written by Rerdell, according to Boone's testimony and Rerdell's.

Mr. BLISS. However that may be, the great fact in connection with them is Mr. Dorsey's statement of the way in which he came to swear to them, in pursuance of the policy of these defendants, to put all the rascality of the case upon Mr. Rerdell. His statement is not true, and is conclusively shown not to be true. All the evidence goes to sustain much more strongly the statement of Mr. Rerdell that he sent a package of blank affidavits to Mr. Dorsey in Vermont, and that Dorsey signed them in blank and sent them back here, and they were used as necessity arose.

Again, as to Mr. John W. Dorsey, let us take another little matter, and it is just as well to note it as we go along. He says that he paid S. W. Dorsey money under a private arrangement; that at the time Mr. S. W. Dorsey was claiming to advance the money for these others he was paying Mr. S. W. Dorsey money under a private arrangement. Mr. Dorsey, when on the stand, detailed his arrangement with Peck about going into it, how dependent they were upon Peck, upon his knowledge of the business, Peck's ability to get bonds, his ability to put up certified checks on the routes where they were required; then when Mr. Peck went to New Mexico, and found that his health was so broken up that he could not go on with the business, and having learned that he could not come back, Mr. Merrick pressed upon him the question: "If you found out that Mr. Peck could not go on with the business; if this was before you had put in any bids, all this was before you had assumed any liability, why did you not then abandon the business and retire when you learned that he was no longer able to fulfill his part of the business?" He answered, at page 4111:

I had gone so far I did not feel like doing it.

Q. Had you sent a cent?

That should be, "Had you spent a cent?"

A. I had put some money in the business.

Q. What did you pay in money for prior to the 1st of January, 1878?—A. For advertising, postage-stamps—not advertising, but printing.

Q. Printing what?—A. These circulars.

Q. What circulars?—A. Circulars to be sent out to postmasters.

Q. Were you here during the fall of 1877 at all?—A. No, sir.

Q. Had you yourself furnished any money?—A. Yes, sir.

Bear in mind that Mr. Boone swore that he received all the money to pay for these circulars and all such expenses from S. W. Dorsey.

Q. To whom did you give it?—A. I sent to S. W. Dorsey.

Q. I may be mistaken, but I understood S. W. Dorsey to say that he advanced the money.—A. That was a private arrangement between him and me; there was to be nothing said about it at all.

Q. What was a private arrangement?—A. My furnishing that money.

Q. How much did you furnish him?—A. I don't know; I paid different sums at different times.

Q. As much as \$5?—A. As much as \$500.

Q. When?—A. Some of it was sent in about the 1st of December.

Q. How much?—A. I think it was \$500.

Q. How sent?—A. By draft.

Q. On what?—A. I could not say now; it was a draft on New York.

Then he continues, and states that he took some money out to Chicago with him; had had that money in his house up in Vermont for the purpose of keeping it from unjust creditors. Being in Chicago on other business, he sent from Chicago \$500 by draft of some Chicago bank, which bank he did not know, to S. W. Dorsey under this private arrangement.

Q. How much do you say it was?—A. I think it was \$500; I won't be certain about it.

Q. And you bought a draft and sent it on here?—A. Yes, sir.

Q. How long after you bought the draft was it that you came here?—A. It was about three weeks, I think.

He then went back to Vermont, he says, before he came here, and he sent this money to S. W. Dorsey. I shall have something to say directly about his story upon that subject, but I want, for a moment, to call your attention to another statement as bearing upon that.

Mr. DAVIDGE. Mr. Bliss you will hardly be able to get through to-day?

Mr. BLISS. No, sir; I do not expect to.

Mr. DAVIDGE. I was going to suggest that we adjourn, as it is within two minutes of the time.

Mr. BLISS. That is why I wish to give just this precise reference I am looking for, and then we can adjourn.

Mr. DAVIDGE. I have a bad headache.

Mr. BLISS. I thought I had the reference here, but it is sufficient for me now to state it without the reference, as Mr. Davidge wants to adjourn, and in the morning I will give you a reference to the page. Mr. John W. Dorsey swore that he sent this money to Mr. S. W. Dorsey under private arrangement, and that statement, being surrounded by all sorts of difficulties, to which I shall call your attention, is, however, met by the square and distinct statement of Stephen W. Dorsey on the stand that, so far as he knows, Mr. John W. Dorsey never put a dollar into the business. Stephen W. Dorsey swears that he does not know of a dollar ever having been paid by John W. Dorsey, and yet John W. Dorsey asks you to believe that at a time when all these parties were borrowing money of S. W. Dorsey, because they were impecunious, he, J. W. Dorsey, under a private arrangement, sent this money to Stephen W. Dorsey. Stephen W. Dorsey says, in another connection, that he has no knowledge that John W. Dorsey ever paid a cent.

Shall I stop now?

The COURT. Adjourn the court.

Thereupon (at 4 o'clock p. m.) the court adjourned until to-morrow morning at 11 o'clock.

FRIDAY, MAY 4, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. BLISS. [Resuming.] Gentlemen, just previous to the adjournment yesterday we were considering the question of Mr. John W. Dorsey's connection with certain papers which we allege he signed, and there arose some little confusion apparently as to the question of the handwriting of certain of the papers. As I was myself probably a little at fault for the confusion I recur to the matter now before passing on with the course of my argument. The papers which were signed in Vermont were 4 C and 5 C, upon the Pueblo and Rosita route; 4 O upon the Tres Alamos and Clifton route, and 6 Q upon the Silverton route. There were two affidavits upon the Pueblo and Rosita route, one affidavit upon the Tres Alamos and Clifton route, and one affidavit upon the route from Silverton to Parrott City; all four being executed in Vermont under date of 21st of April, and sworn to there before the notary. The evidence of Mr. Rerdell is that the body of 4 C was written by Mr. Kellogg, that the body of 5 C was written by Mr. Rerdell, that the body of 4 O was written by Mr. Rerdell, and the body of 6 Q was written by Mr. Rerdell. Some question apparently arose from a similarity in the handwriting of the affidavits 4 C and 5 C, one being stated to be written by Kellogg and the other being stated to be written by Rerdell. The evidence on that point of both Rerdell and Boone is uncontradicted.

As to Mr. Kellogg's handwriting, there are in the record several letters admitted by him upon the stand to have been written by him. Among others are 20 D and 43 F. I do not know whether 6 T is admitted to be in his handwriting or not, but it is signed by Mr. Boone, and Mr. Boone says it was written by Mr. Kellogg in his presence. I therefore take the liberty of handing you, gentlemen, the three papers which are undoubtedly in Kellogg's handwriting, and then I hand you the two affidavits on the Pueblo and Rosita route, as to which the question arose. The body of one is stated to be in the handwriting of Mr. Kellogg and the body of the other in the handwriting of Mr. Rerdell. If you will look more particularly at the first line of the affidavit, comparing it with the paper signed by Mr. Boone, I think you will have no question whatever as to the correctness of the evidence in that respect. There is no dispute about it in fact on the record, and nobody denies it. Mr. Boone swears to it and Mr. Rerdell swears to it, and the other papers are admitted by Mr. Kellogg. Of course you understand that the filling up in several of those papers is by Rerdell. When I say the filling up, I mean of course the numbers and the figures. The filling up in both 4 C and 5 C is in Rerdell's handwriting, and the same is true of the figures in the other affidavit made in Vermont on the 21st of April. Those affidavits [handing two others to jury] are sworn to as being in Rerdell's handwriting, including the filling up and everything else. Here is another affidavit, 6 E [submitting affidavit to jury].

Mr. CRANE (the foreman). This one [indicating] you gave me yesterday as written by Kellogg.

Mr. BLISS. 4 C was written by Kellogg and 5 C by Rerdell. 6 E, which I now hand you, is sworn to be in the handwriting of Kellogg. 22 F, which I now hand you, is also sworn to be in Kellogg's handwriting. I am now speaking of the body of the last two that I handed you, and not of the filling up, which is in a different handwriting.

Mr. GILL (a juror). Who wrote 6 Q?

Mr. BLISS. That was written by Rerdell, according to the evidence, except the signature. The body of 25 S is also sworn to as being in the handwriting of Kellogg. The filling up is by somebody else. Now, in reference to these papers you will bear in mind that those dated on the 21st of April, which are 4 C, 5 C, 4 O, and 6 Q, were all sworn to by Dorsey in Vermont on the 21st of April, and he says as to all of them that he acted upon the statement of Mr. Rerdell contained in a letter sent to him from Washington. In point of fact it appears beyond dispute that at that time Mr. Rerdell was not in Washington and nowhere near Washington, but was west of the Mississippi. Mr. Rerdell said that in point of fact before leaving Washington to go West he sent to Mr. J. W. Dorsey a lot of affidavits in blank, and when he came back here on the 5th of May he found those affidavits here, and they were subsequently filled up. That is the statement made by him in that connection.

Now, let us go to another matter which I have commented upon. I stated to you, as testing the truth of the evidence given before you by John W. Dorsey, that John W. Dorsey swore that he paid money to his brother Stephen under a private arrangement. He alleged that he sent him money from Chicago, it being money which he had taken from home, having gone temporarily to Chicago, and being absent about three weeks. He says he sent the money from Chicago to Stephen W. Dorsey here by a draft on a bank in Chicago, the name of the bank he being unable to state. He said that having sent it he returned home. He thought he sent \$500 from Chicago, and subsequently he came here and paid him a sum which, with what he sent from Chicago, made the total amount, \$2,000 and that that was under a private and confidential arrangement with his brother. He was forced into that statement because Mr. Merrick plied him suddenly with the question why, when he learned that Mr. Peck was unable to go on with what he had undertaken, he having said the important thing to him was Peck's ability to get bonds and Peck's ability to get the checks on the route which required certified checks, he still went on; why he did not stop then, as he learned that as early as September or October, 1877. Mr. Dorsey to get out of that difficulty said, "Because I had gone too far." "What had you done?" "I had paid money." "What money had you paid?" "I had sent my brother \$500." He then went on and made that statement. He was then asked why, if this was the condition of things, he sent the money to his brother; why, having gone into an arrangement in which Miner was interested, and in which Boone was performing the duties here, he sent the money to his brother. He then raised some question as to whether there had been any partnership or papers actually signed, and yet he admitted that they practically had closed things, and as to the money that he alleged he paid in Washington after he came here he could not give any very good reason, or any reason practically, why he gave that money to his brother, and why he did not give it directly to Miner or to Boone, who were managing the business here, and with whom he admitted by that time he had entered into partnership. He could not give any excuse for that, but he said he wanted to save the money that he gave his brother for his own use; that he expected to have something to do in putting on service, and in contracts that he was going to get under some arrangement.

At that time, gentlemen, they had not got a contract and they had not put in a bid. There was not anything of that sort done. He said that under a private and confidential arrangement with his brother he was keeping this \$2,000, while they were, according to their theory

and Stephen's theory, borrowing money from Stephen to carry on the preliminary operations. John W. Dorsey undertakes to tell you that at that time, under a private and confidential agreement with his brother, he was giving of his own money to Stephen W. Dorsey not less than \$2,000, and he states expressly that Stephen W. Dorsey was ostensibly advancing the money to the parties, but he in fact was doing it, and he accounts for how he got that money which he claims he sent from Chicago, not telling what the bank was, in order to give us an opportunity to verify his statement by the statement that he had it for a year or two in his house up in Vermont, and he was keeping it there against creditors who had claims against him and judgments against him which he felt in equity he ought not to pay. He took that money and brought it down here and he says that he gave it under this private and confidential arrangement to his brother Stephen, and he did not mean to let any of his partners know anything about it. Now, let us see just how that story hangs together with the evidence of Mr. Stephen W. Dorsey upon the subject. Mr. Stephen W. Dorsey was not examined in that immediate connection, however.

I read from page 3880:

Q. Did Miner or John W. Dorsey know anything about the contract business and carrying the mail?—A. That I could not answer, but from my best knowledge I should not think they did know much about it.

Q. Did Boone, at any time, tell you to keep Miner and Dorsey away from here; that they were stupid and did not know what they were doing?

That question referred to the fact that Boone stated that when the Congressional investigation was going on he told Stephen W. Dorsey to keep Miner and John W. Dorsey away from here or the committee would get at the whole thing.

A. I don't remember whether he did or not.

Q. You don't remember whether he did or not?—A. No; I don't think that that applied to either one of them, though.

Q. That is not my question. Do you recollect whether he told you anything of that kind?—A. I don't remember.

Q. Can you say he did not tell you?—A. I do not say that.

Q. You furnished the money, I understood you, to Boone, on account of these other parties?—A. Yes, sir; these checks that they had here yesterday.

Q. Money for printing and all the expenses?—A. I do not know what it was for. Whenever he brought me an account I gave him a check for it.

Q. Was there any money provided at all up to the time of the awarding of the contracts except what you furnished?

Up to the time of the awarding of the contracts in March, 1878; and John W. Dorsey says he sent the first of this money from the West in November, 1877, and gave him the balance when he came here in January, 1878.

A. I presume Mr. Miner and J. W. Dorsey furnished their part.

Q. Do you know anything about it?—A. I do not.

This is the man to whom John W. Dorsey says he had paid \$2,000 which was to be used for these expenses, Stephen W. Dorsey ostensibly paying expenses, but he in fact doing it. He gives the testimony which I have read. John W. Dorsey's testimony will be found on page 4119. When Mr. Stephen W. Dorsey comes on the stand he says he does not know that John W. Dorsey furnished any money.

Q. How much did you furnish from the time the contracts were awarded up to the time they were to go into operation, the 1st of July, 1878?—A. I could not tell that without looking at my books.

The books that he would not let us look at.

Q. Can't you give us an approximate estimate?—A. Oh, I should say from seven to nine thousand dollars, as an estimate.

Q. Was any money paid you at that time?

Mind you, up to the 1st of July, 1878.

The WITNESS. By them?

Mr. MERRICK. By any of these parties that were liable to pay it?

The WITNESS. During that period?

Mr. MERRICK. Yes; the 1st of July, 1878? Was any paid to you?—A. None of it was paid to me.

Now, in that condition of things, which man are you going to believe? Are you going to believe that John W. Dorsey was forced on the stand, in the endeavor to save himself from one trouble, to manufacture at the moment a lie and to say that he had invested money, and when asked how, to say that he had given it to his brother Stephen; or are you going to believe Stephen W. Dorsey, who swears that he never received any money from any of these parties until the 1st of July, 1878? As between those two parties, if you come to the question of weighing the evidence, you are dealing on one side with a man who was admittedly capable of making two affidavits on the same day and of swearing that he did it at the instigation of a man who was not accessible to have instigated him to do it. He is the same man who swears that he is guilty of the attempted fraud of establishing a side post-office on the Tongue River route.

As to John W. Dorsey, let me refer to one other little discrepancy, which indicates the kind of man he is. He says that while he was in Chicago for two or three weeks in the fall of 1877, Peck, who had gone to New Mexico, wrote him to write Stephen W. Dorsey to get bonds for him. Stephen W. Dorsey says nothing about that whatever, but says that Peck wrote him directly. There is no pretense of Peck's going around through John W. Dorsey or anything of that kind. As another indication of the kind of evidence which Mr. John W. Dorsey gave to you, I ask you to consider the evidence as to the alleged selling out. He alleges that some time in November, 1878, he was here for a couple of days. We had heard nothing in any manner of any negotiations for selling out, I think, until after we put in and called attention to Mr. John W. Dorsey's letter from Bismarck, dated on the 25th of December, 1878, in which there was a reference to Vaile's having bought him out. Mr. John W. Dorsey's attention was called to that in some way in the course of the examination by Mr. Merrick, and why John W. Dorsey had so written. He said, "Well, I came here for a couple of days in November, 1878, and I had a conversation with Vaile as to selling out, and left a letter for my brother." He says he found at that time he wanted to get out. He did not tell us why he wanted to get out. The service up there was going on. He knew nothing about the subcontracts which Vaile had filed. He says expressly that he knew nothing of the subcontracts which Vaile filed, and which were the source of trouble between the other parties. But he says he had some negotiations, and he wanted to get out, and he left a letter to his brother. He did, on the whole, stick to it that there was a letter. That letter, gentlemen, we could not get at. We could get at no papers in their possession. But we disclosed in our examination that we had in our possession, as they thought, a copy of a letter written by Stephen W. Dorsey from here and dated the 9th of December, 1877; the letter of John Dorsey of December 25 being avowedly an answer to Stephen Dorsey's letter of the 9th of December. We called upon them for that letter and they did not produce it, but John W. Dorsey went on and undertook to give an

account of an alleged letter of the 7th of December, which letter he said was destroyed by having been left in a garret into which the snow came during a season of inclement weather. The letter of December 7th they admitted that they had, and it appeared affirmatively that John W. Dorsey had read a written copy—not a press-copy—but a written copy, within a short time before he testified. That letter they did not produce, and that letter they did not tell us anything about. But Mr. John W. Dorsey did think there was another letter of the 9th of December, as well as one of the 7th, and he went on and gave in some detail what he claimed to be contents of those letters; the effort on his part being to account for the language of his own letter, which is on page 2239. The letter is dated Bismarck, December 25, 1878. It is addressed “Dear Senator.” I will read some of it to you:

Your favor of the 9th is received, and I am glad that Mr. V. has bought out, though I have no doubt but this route alone—

The Bismarck and Fort Keogh route—

will pay him or some one else \$100,000 clear of all expense within the life of the contract.

You may think that I am oversanguine, but I would be willing to take my chances on it. I did not expect to suit every one when I came here, and have succeeded in not doing it. Mr. Vaile, nor any one else, knows anything about the difficulties one has to contend with here till he tries it. I thank you very much for your offer, and will be pleased to accept it and do the best I can. I would be glad to leave here at once, but Mr. Vaile writes me to start the mail three trips a week January 1, on horseback. I don't want anything to do with it, as he will not be pleased if I do ever so well. I have done all the hard work, and he talks as if it was fun to do it. I will do the best I can while I remain, but hope to leave soon after Jan'y 1st.

Now you notice, gentlemen, that that letter says, referring to a letter of Stephen W. Dorsey of the 9th:

I am glad that Mr. V. has bought out.

Not that Mr. Vaile is negotiating to buy out, not that Mr. Vaile shows a willingness to buy out, but—

I am glad that Mr. V. has bought out.

An absolute fact is stated there. That, gentlemen, is important in connection with the fact that when you get down to the evidence of the others in connection with the division, it is alleged by Stephen W. Dorsey that he paid \$10,000 to John W. Dorsey, not to Vaile, for his interest in the following May. If Vaile had bought out in December, 1878, what becomes of the story of the payment of \$10,000 to John W. Dorsey for an interest he had sold out four months previously? Mr. Dorsey undertakes to account for that, and he goes on and states the contents of the letter of the 7th, of which they admittedly had a copy but would not produce it. He gave his recollection of it, although we tried to have them produce it and claimed that we must have the best evidence. With regard to the letter of the 7th, he says that Vaile had filed his subcontracts and had cut out Peck's interest and his, and had by that transaction made worthless the security which S. W. Dorsey held for money loaned. He says Mr. Dorsey stated in this letter to him, which he did not produce, that if these subcontracts proved to be on file his interest and Peck's would be entirely absorbed, as well as Stephen W. Dorsey's. He said, “You need not feel bad about it. I will give you a ranch to have charge of and an interest in the business.” That was all of the letter of the 7th. He had acknowledged here a letter of the 9th, in which there was a completed transaction stated. Then he went on and undertook to state the contents of the letter of the 9th.

He said it said, "Mr. Vaile proposes to give you and Peck each \$10,000 for your interest in this business. He proposes to pay me my money also." Then he was asked if as a matter of fact he sold out, and he said he eventually sold out to Stephen W. Dorsey. Although Mr. Dorsey notified him in December that Vaile had then bought out, he undertakes to say that he sold out to Stephen W. Dorsey in the following May.

It is recurred to on page 4127. After telling that he had seen the copy there, he is asked various questions, and persists in the same story; suggests also that Peck had been bought out; that "Peck and I united our means;" and goes on claiming that there was no sale, though he says he wrote that letter of the 25th of December, referring to the letter of the 9th, in which he says he is "glad Mr. Vaile has bought out;" then he also says, as showing the authority of Mr. Vaile in the matter, that Mr. Vaile directed him to remain there—not dealing with a partner—but he says, "I want to get away as soon as I can; I have no desire to remain here taking care of Mr. Vaile's interest, and I hope to leave here immediately after the 1st of January." And yet all that he can say is that the interpretation of that letter of the 9th, as he gives it, is that "Mr. Vaile *proposes* to buy you out;" not that Mr. Vaile has done so. And yet he says that he has no doubt that Mr. Vaile has so good a thing that there will be \$100,000 profit on that route alone. He states that in the letter of the 25th of December, and yet he tells you that when he was here in November he was so disgusted with the business, so disgusted with the look of things, that he was anxious, as he says, to save something from the business, and he left a letter for his brother, authorizing him to sell. He was here on the 23d of November, and left on the 26th, and yet a brief month afterwards he says that Mr. Vaile "will make \$100,000 profit on that route alone." Why did he want to sell out in November? Why did he want to save something from the business then? What change had occurred in that short month which made the difference between wanting to sell out to save something from the business and Mr. Vaile making a profit of \$100,000?

In the preceding September or at the end of October he had signed a partnership agreement antedated August 16, and he says in the same way that he signed that because he was willing to do almost anything to save something from the business. And, if I mistake not, in that connection he admits then a knowledge of the filing of the post-office drafts, which he says afterwards he did not learn until away down to the letter of the 9th of December. At any rate, whether he admits it or not, he says that by that agreement which he signed he knew that it was giving to Vaile the absolute power to do anything—to file post-office drafts which should cut them entirely out.

You see, gentlemen, how thoroughly Mr. Dorsey involves himself in contradictions, involves himself in falsehoods, from beginning to end of his testimony.

I ought to say, by the way, gentlemen, with reference to those affidavits which I handed to you, those which are dated and sworn to on the 26th of April were sworn to before Kellogg here in Washington, and as to all of them except one Mr. John W. Dorsey swears that he swore to them under the instigation of Mr. Rerdell here in Washington, relying upon Mr. Rerdell not only for the number of men and horses to put in, but also upon his statement that he was subcontractor, when he never was subcontractor on that route; that he did all that in reliance upon Rerdell.

And that matter of the subcontract reminds me of one thing that I have omitted to say. He says Mr. Rerdell wrote the word "subcon-

tractor" after he signed it. And he says, "I never signed an affidavit where I appeared as subcontractor in that way." But he pretty soon found out where he was landed, and he could not explain it. Then Mr. Merrick said to him in substance: "Then you swore to this affidavit as contractor, knowing perfectly well that you were not contractor, did you not?" And he finally had to say that he could not explain it. He either swore to that affidavit as a contractor, or he swore to it as a subcontractor. But he stated that in whichever case he did it he swore to it on the instigation of Mr. Rerdell. And yet, with reference to those affidavits of the 21st and 26th of April, it is shown to you that beyond all question Mr. Rerdell left Washington on the 17th of April, was at Sidney, Nebraska, on the 21st, was at Greeley, Colorado, on the morning of the 24th, and was at Denver, Colorado, on the evening of the 24th, and remained there until the 25th. And yet Mr. Dorsey undertook to tell you that he swore to an affidavit in Washington on the 26th at the instigation of Mr. Rerdell. As to one of these affidavits I ought to say that he does subsequently say that he will not say that he did swear to it on the instigation of Mr. Rerdell. But he makes no change as to the others.

These are John W. Dorsey's statements before you. You have his statement as to the money which he claims to have transmitted to his brother—his statement as to the manner of sending it, and the attempted explanation of that. And yet he comes on the stand and asks you not only to believe that Mr. Rerdell is a liar and has made a story out of the whole cloth, but that Mr. Pennell is a liar, that Mr. McLellan is a liar, that Mr. Lambert is a liar, that Mr. Cable is a liar, that all these men, with no earthly interest in the matter, are liars. I do not know whether Mr. Swift came into the category or not. But, at any rate, he says all those men are liars, and he asks you to believe him in preference to them. I devote no more attention to Mr. John W. Dorsey.

The only other of the defendants who was admittedly, at the outset, interested in this mail service was John R. Miner. Miner is the gentleman who comes before you admitting that, having been indicted for frauds upon the revenue, he paid \$1,800 rather than stand his trial. He is the man who, substantially by his own admission, and by the evidence of his own witness, Mr. Waugh, forged the six names on that Hall petition that was presented to you; by his own admission practically, because he did not dare say that he did not. While he says he does not remember whether he did it or not, yet he says if he did it, it is the only time he ever did anything of that kind. He says, at page 4191:

Q. What is your explanation of it?—A. If those six names are in my handwriting, a petition came to me exactly like that, and I copied it with the names, for I had no means of knowing those men or knowing their names other than as I have explained. They are proven to be genuine men, living there, and the balance of the petition contains genuine names. Two of them were witnesses in this case, and they have testified that it is their handwriting.

Only one witness, I think.

I have no recollection that I did copy the petition, but I could not have done it in any other way.

Mr. MERRICK. Is that competent? It is a matter of logic, from the testimony. It is not an explanation.

The COURT. It is an explanation, but how it holds together I do not see exactly.

Mr. HENKLE. That is a question for the jury.

The COURT. His explanation implies, in the first place, that this is a copy of another paper, so far as the first half dozen names are concerned. It implies that the balance of the names are genuine and original to the same paper. The explanation will go for what it is worth.

That is Mr. Miner's statement: "*If* he did it" he did it under those circumstances, but he does not remember whether he did it or not. Again, at page 4273:

Q. You stated something about your having written the four or five or six names that first appear on that petition?—A. I stated that I was in doubt as to whether I had so written or not. That resembles my handwriting.

Q. You don't recollect of having done it?—A. I do not recollect it.

Q. They are all on one piece of paper, and another piece is apparently pasted on to that?—A. That is the appearance.

Q. You said that if you wrote those names you copied them from some other petition.—A. I said so because they are genuine names, and I had not any possible means of knowing those men's names other than to have copied them from a petition. Those same names appear on other petitions asking for the same thing.

He could commit forgery, could forge men's names, because he found their names upon another piece of paper. He could forge a note for \$3,000, and a man's signature to it, because he found the man had signed another note for \$3,000. Then, further along, at page 4281, he says:

Q. You said, at page 4207, that possibly you copied the six signatures to the Hall petition. Were you in the habit of copying petitions and signatures?—A. I never copied any other petition and signature, so far as I know, and I am not certain that I did that.

Q. If you were not in the habit of copying petitions and writing signatures, and this was the only one, would you not recollect it and be able to say whether you wrote those names or not?—A. I do not recollect whether I did or not.

Q. Don't you think if this was the only case and you did act in that way that you would recollect it?—A. I do not recollect it.

Q. You are not willing to say that you did not write those names?—A. I have not yet said that I did not write them.

Q. You are not willing to say that you did not?—A. I do not propose to say so.

Q. You do not propose to say so?—A. I am in doubt as to whether I did or did not.

Q. Although it was the only case in which you ever did it, if you did it in that case?—A. I never did it in any other case. That is certain.

Q. You are willing to swear that you never did it in any other case?—A. I am willing to swear that I never saw a petition on which I did it, and have not seen a petition on which I did it.

This man, who is not able to say whether he forged those names on that petition, is perfectly confident that he never forged any other petition. Now, gentlemen, if a man went into the business of forging any paper, and if he never had done it before or afterwards, do you not believe that the recollection of that fact would make a lodgment in his mind, and when the paper was presented to him, if he was testifying truthfully, he would say frankly: "Yes; I remember I did forge that paper?" The trouble was that Mr. Miner, all the way through his testimony on the stand, showed a knowledge of law, and a care, if possible, to keep out of the four walls of a criminal statute, which indicated to him that it was necessary not to admit that he forged that petition, at the same time that he saw how strong the evidence was against him. And after Mr. Miner had testified to that, Mr. Henkle, anxious that Mr. Miner should have no doubt on the subject—for it could not be that you had any doubt, gentlemen—put Mr. Waugh on the stand, and Mr. Waugh under oath said he was fully acquainted with the handwriting of Mr. Miner, and he had no doubt those six names were in Miner's handwriting.

Mr. Miner also is the man who admits that in the petition on the Mineral Park and Ehrenberg route, which is identical in form and names with the petition on the Mineral Park and Pioche route (both pretending to be signed by the same persons, and both lies on their face, because their statements are shown beyond question to be untrue), he did interline the operative word "Ehrenberg," which was the name of the terminus of the route, and that it is in his handwriting. He says it is over

some kind of an erasure, and he wants you to believe that it is over another word "Ehrenberg," as if there was going to be any writing of Ehrenberg over Ehrenberg!

Mr. Miner is the gentleman who wrote to Mr. French that they could cheat the Post-Office Department by giving a side supply out there, if they only did not let the Government know it. And he wrote to him also to stop the postmaster up there from sending registers on here, because these registers told that the service was not being performed properly. That is the honest, straightforward man engaged in this business—the same man, who being asked on the stand about a letter which he wrote to Hayes, says, "Oh, well, that is not under oath." No matter about that. But he wants you to believe that he would not tell a falsehood under oath.

Mr. Miner is the same man, gentlemen, who undertook to employ Mr. Carey, an honest Frenchman in Oregon, as a sort of jury-fixer, to fix Mr. Abbott up there and prevent him from sending complaints here that there was no through mail on that route; that the thing was utterly unnecessary, though the Government was paying \$52,000, and though Vaile says he got \$20,000 of profit out of it. He is the man who was trying to stop the mouth of Mr. Abbott.

He is the man who told Mr. Boone that when these bids were to be signed before a notary, some one would come and acknowledge those bids before him, as being Peck. Somebody did come, Mr. Boone accepted that man as Peck, and yet he tells you now that he has no doubt that he was imposed upon. They got part of those bids probably signed by Peck, but they had to be acknowledged, and Mr. Peck had not done it, and so they put somebody up here to personate Peck, and Miner is the only man who is shown to be directly concerned in it, because he it was who told Boone that the man would come, and the man did come.

John R. Miner is the man who, when one of Peck's bids, on the night before the bids were to be put in, got spoiled in some way, and there was no way to get another bid, took it out of the room, returned in a few minutes with it signed in the name of John M. Peck, though admittedly John M. Peck was not in Washington and had not been in Washington for weeks before the signing of those bids, and has not been here from that time down to the present. At one stage of this matter Miner undertook to deny the Peck proposal, but at another time he moderates it down and says he does not remember.

Miner, gentlemen, is the same man who made two affidavits on the Tongue River route, in one of which he stated that one hundred and fifty men and one hundred and fifty animals would be necessary, and in the other of which he stated that thirty-seven men and seventy-three animals would be necessary to perform the same service upon the same time. And Miner is the man who had such relations, direct or indirect, with Thomas J. Brady as to induce Mr. Brady to accept the larger statement and to squelch the smaller.

Miner is the man who told the Congressional investigating committee that he made oaths as estimates; that he knew nothing about the facts. He told you here that he knew nothing about the facts.

Mr. Miner is the man who writes to one of his subcontractors out there in a very significant way: "We make no boast of being *solid*."

Miner is the man who writes to Hayes out in California that "route 46132, Julian to Colton, is the best route for you and for me, and we must work together." When Mr. Hayes wants a little more money than Miner and his associates were willing to give him, and he writes about it, Miner writes to Hayes: "You do not seem to understand this

business; this getting expedition requires active work in Washington, and it requires large expenses." When he comes on the stand and is asked what that means, he says, "Why, didn't I have to incur expenses in living in Washington?" A large portion of the time he seems to have lived at the house of Stephen W. Dorsey, and apparently without any very great expense. But no matter what expense he may have been to for living, why did he say "the expense of *getting expedition* is very great"—not "the expense of getting mail service," "increase of trips," or "the expense of living here," but "the *expense of getting expedition* is great in Washington." Does not that mean precisely what S. W. Dorsey told to Moore—that they must take out of the gross receipts of the business, before they divided the profits, the expense of keeping the influence which they had in the Post-Office Department?

I have a memorandum here of some discrepancies in which Mr. Miner involves himself, but I will not stop to call attention to more than a single one of them. At page 4164 he is asked about the partnership contract:

Q. When was it signed?—A. It was signed by Mr. Dorsey at Bismarck, and by Peck in New Mexico. It was sent to them for their signatures, which took some time.

Admitting that it was not executed until October, though it was dated the 16th of August.

Q. Did you consult Mr. Dorsey and Mr. Peck about making that contract?—A. I wrote to them immediately after Mr. Vaile gave me these propositions to put in—

Those are the propositions given him to put in for the purpose of preventing their being declared failing contractors—

asking their assent to such an arrangement if I could effect it, and they responded favorably.

You remember he had a power of attorney, and therefore he had a right to bind them to anything.

Q. Did John W. Dorsey and Peck know anything about—

Referring to some arrangement with Vaile as to whether they were going into this business of putting subcontracts on file—

the execution of those subcontracts, or did you do it in fraud of their interest?—A. I do not remember whether they knew anything of it or not. I did it by virtue of the power of attorney which they had given to me for the purpose of protecting Mr. Vaile's interests. [Page 4225.]

Both of those statements, gentlemen, cannot be true. I have here a memorandum of some other things about Mr. Miner, but I will pass those until I take them up in connection with the same matter in reference to Stephen W. Dorsey.

We come now to Stephen W. Dorsey. Mr. Dorsey, differing from the other defendants, stands in this position: that he was not, by his own admission, interested in these contracts until some time early in March or April, 1879, having gone out of the Senate on the 4th of March, 1879. On that identical day he writes to Brady a letter in which he claims to be operating under a power of attorney from the other defendants aside from Miner and Vaile, and shortly afterwards he admittedly became interested in the contracts. So long as he was a Senator there was a very binding statute of the United States which would have prevented him from having any interest in mail contracts, and would have sent him to the penitentiary if he had. Therefore Mr. Dorsey appears before you in the condition of a man claiming that he was not originally interested in these contracts. We say that he was; that the whole scheme originated in his fertile and ingenious brain, and that John W.

Dorsey, Miner, and Peck were simply the puppets that he used, and that when, at a later period, more money was needed than it turned out he could or cared to advance, then Vaile was brought into the transaction.

What did S. W. Dorsey do in the early stages? He gave up his house to the preparation of bids. He gave up a room for an office for Miner. He took so much interest in Miner that, though John W. Dorsey was in the city here, yet, not being the man of business that Miner was, John W. Dorsey was left to room somewhere else. John R. Miner roomed in his house, and there the bids were prepared. Mr. Stephen W. Dorsey was undoubtedly at times present while the bids were being prepared. I think there is no dispute about that. Boone had been preparing bids upon all the routes, and when they learned, in the progress of their scheme, that that involved the getting of more certified checks than they had or were able to secure, Mr. Dorsey is apparently the man who directed the destruction of those bids which had been already prepared on these routes. Mr. Dorsey, by his own admission, altered the bids or advised their alteration, and his advice was taken, to the injury, as they say, of themselves. But his advice was promptly taken by the others. He advised the alteration of the bids upon two of the routes in this indictment, and they were altered after the sums had been fixed. And how had those sums been fixed? You remember that Mr. Boone had gone to the elaborate preparation of sending out circulars asking information from postmasters at the termini of every mail route that was to be included in the letting, and he had received in reply a large amount of detailed information. One of those circulars was produced to you here. Anybody can see that that information would be very valuable to anybody engaged in bidding. It gave the nature of the country, the number of streams to cross, the amount of mail to be carried, cost of hay and other expenses, and a great many details. On the basis of those circulars he had made up what is called the bidding-book, which was simply the book of advertisements produced here. Boone had put upon that bidding-book—he, the expert brought into this business to advise all these ignorant persons—the amounts which he thought were fairly to be bid, and he tells you that the amounts on all the routes they bid upon were below the prices indicated by the circulars which had been received. Admittedly Mr. Dorsey suggested the alteration of that bidding-book as to two routes in this indictment, and Mr. Boone tells you, I think, that it had been altered in S. W. Dorsey's handwriting upon several more of the routes.

The amount of it all was that all that preparation, all that expense to which Mr. John W. Dorsey was contributing—the only evidence of what was done with money for those preliminary expenses revolves around post-office business, sending out those circulars and getting them back, and paying \$150 postage, to which Mr. John W. Dorsey was contributing in this confidential manner through his brother Stephen—all that was cast aside, and cast aside against the advice of Boone, cast aside, so far as the evidence shows, at the instigation of Stephen W. Dorsey, a man who had no interest, but who, from having been in the Senate and having had some investigations there in connection with the Western country, was supposed to know all about it. And yet that very circular had been gone into by Boone, after information, from Stephen W. Dorsey; and if he had known all about it, if he was in a shape to give all that advice intelligently, he might have saved that money. I have no doubt that when Mr. Stephen W. Dorsey came to look these bids over he was so confident that the money was to be

made, as he told Moore, as John W. Dorsey told various people, by increase of trips and by expedition; that the important thing for them to do was to get the contracts; that the way to get the contracts was to bid so low that they would come under others; that Mr. Stephen W. Dorsey, the master spirit in this business, took that bidding-book and cut all prices down below what Mr. Boone had advised. And there was the beginning of their temporary trouble which rendered it necessary to take Mr. Vaile in, and rendered it necessary to share with him a portion of their large profits; because they got the bids so low that they could not get subcontractors to take the service off their hands, and they had to stock many routes, and the capital was not forthcoming with which to do it.

But it is sufficient for me here to call your attention to the intervention of Stephen W. Dorsey—this man claiming not to be interested in the contracts or the bids—in cutting down the prices. He cut down The Dalles and Baker City route from \$11,888, I think it was, to \$8,888. And I think Miner said, with some regret, that they could have got it at the \$11,888, for the next bidder was above that price. But S. W. Dorsey admittedly cut down that route. He was very anxious to get a long route like that, which could be expedited and increased, and that route having been let at \$8,888, was made to take from the Treasury \$72,000 before the contract term closed.

Mr. Stephen W. Dorsey is the man who paid all the preliminary expenses, save, of course, that extraordinary confidential contribution of John W. Dorsey's. He was the only man that was known to Boone or anybody outside as having anything to do with it. Miner had no money. Nobody apparently had any money but Stephen W. Dorsey.

But, gentlemen, Stephen W. Dorsey did more than that. All these things I have told you about were done before the contracts were awarded. The evidence is uncontradicted, so far as I can find, that Stephen W. Dorsey signed the name of John M. Peck to at least two of the bids on routes named in this indictment. He signed upon the Canyon City route, and he signed another one which is known in this case as 2 P, I think, and is also marked proposal 4. He signed the name of John M. Peck to those bids. And it is sworn to here by Boone, and I think also by Rerdell, certainly by Boone, that that signature was put there by Stephen W. Dorsey. Stephen W. Dorsey was on the stand, and so far as I can find he did not contradict that testimony. His attention, I think, was directed to one of these bids, and he made some criticism upon it, but I do not understand that he denied signing it; and as to the other there is no pretense that he denied the signing of it.

Here, then, is this Senator of the United States, not interested in these contracts, and yet he did all these things. He was not interested in these bids, and yet he signed the name of John M. Peck to the bids. There is no evidence before you that John M. Peck ever gave him any authority to sign his name to any such thing.

Not only that, the contracts were awarded early in March, and on the 4th of March, 1878, just one year before Mr. S. W. Dorsey went out of the Senate of the United States, upon a piece of abbreviated paper, such as we have seen in other exhibits in this case, identified as being United States Senate paper, where something has been torn off above, we find this, 8 A:

WASHINGTON, D. C., *March 4, 1878.*

Hon. THOMAS J. BRADY,
2d Asst. P. M. Gen'l:

SIR: I have to request that all contracts intended for me be forwarded to the post-

master at Washington, D. C., and all acceptances, communications be addressed to me, care lock box 714—

Of which we have heard so much—

Washington, D. C., until otherwise ordered.

And oblige,

J. M. PECK.

And the evidence of Mr. Boone is that he wrote that letter, and that Stephen W. Dorsey signed the name of John M. Peck to it, and Mr. Dorsey did not deny that fact. So that he was not only interested in the bids, not only signed Peck's name to bids, but he signed Peck's name to that request to have sent to the particular box that he designated all the contracts and all the papers relating to this service.

Mr. MERRICK. What is the date of that letter?

Mr. BLISS. 4th of March, 1878.

Into his hands were to go all the papers relating to every contract that John M. Peck got. Yet he wants you to believe that he was not interested in any way in that business; that he, a Senator of the United States, was doing that business in connection with all these things here that I have narrated, and more—some of which I am going to call your attention to directly—and yet he had no interest in the matter!

As early as June 10, 1878, he was writing a letter (10 F, page 1079) as to the Ojo Caliente route, making suggestions of changes there. He apparently had learned that there was a talk of affecting one route at the expense of another, and he writes a letter to Brady in connection with that.

Somewhat earlier, I think, than that, he was interested to find out the length of the route from Bismarck to Fort Keogh, and thereupon he writes from the Senate of the United States, and upon Senate paper, a letter to General Rosser. In reply, General Rosser tells him that the route is three hundred and three miles long, though advertised as two hundred and fifty. That letter to Stephen W. Dorsey is taken to Thomas J. Brady, and Mr. Brady immediately goes to work and restates the distance over that route, and from that time on treats the route as three hundred and three miles long. And in all his increases, in all his expeditions, in all his changes of schedule—for that schedule he extended from eighty-four to one hundred and eight hours, directly in violation of the stipulation of the contract and indirectly in the face of what he refused to do in other cases, because he said he could not legally do it—he takes as the true length of that route what was stated by General Rosser to Stephen W. Dorsey.

Mr. CRANE (foreman of the jury). One of the jury would like to see that paper.

[The paper was handed to the jury.]

Mr. BLISS. Mr. S. W. Dorsey, having no interest in this business—we all understand that, of course, because he says so—by 18 B (page 789), a subcontract in this case—became a subcontractor upon the route from Pueblo to Greenhorn. That subcontract is dated April 1, 1879. The rate of pay upon that route, then, was not the rate of pay existing subsequently when they claim they were antedating contracts, but he became subcontractor for a rate of pay which shows that when that subcontract was drawn it was not antedated, as they have endeavored to make out that so many of their other subcontracts were.

Mr. S. W. Dorsey not only signed this paper that the jury now have, and signed the bids of Peck, and did all these other things I have stated to you, but he, beyond all question, dealt with Moore. Whether

Mr. Dorsey had an interview with Moore before he went West early in the spring of 1878, or whether his only interview was after Mr. Moore came back in July, 1878, admittedly he dealt with Moore. He says on one occasion that he never spoke three words to Moore, but later on he goes so far as to say that he may have had two interviews with him, one of them being in April and the other in July. He says he does not remember the April interview. He says that he may have had some conversation with him about the mail service and things of that kind. Moore says that he was sent to him by Miner; that Dorsey received him in such a manner as to show that Dorsey knew that he was coming; that Rerdell was present. Rerdell says he was present. Then Moore goes on and details the conversation that he had with Dorsey, in which Dorsey told him what was to be done; told him how the routes were to be expedited; told him also about what he was to do, what directions he was to give, what encouragements he was to give to subcontractors as to the routes being expedited and increased, and all of that detail which it is unnecessary for me to go over again. But I simply call your attention to the fact that this is not an invention of Moore's now made for the first time, as they apparently would wish you to think, but that Moore did go and tell McBean the precise things that Stephen W. Dorsey told him he might tell to subcontractors; told him precisely what would happen; told him precisely what McBean says did happen, except that when he told him there would be two orders, one for increase and the other for expedition, what did in fact happen was that one order included both increase and expedition. Moore told Major that there would be an increase before the 1st of July, 1878, and the increase came. He told him there would be another increase; that other increase came.

Mr. Dorsey beyond all question paid Moore more or less money directly or indirectly; I do not care whether it went directly into the hands of Moore, or whether it went from Dorsey to Miner and from Miner to Moore.

Mr. Moore says that he had a conversation with Miner at Denver, in July, 1878, in which Moore told Miner that he could not work any longer for a mere salary; that he must have an interest. Miner told him he could not make any such arrangement to give him an interest without S. W. Dorsey's approval. Moore comes on to Washington, sees Mr. S. W. Dorsey here, apparently about the 10th or 11th of July, 1878—Mr. Dorsey leaving Washington almost directly after that—and when he opens the matter to Mr. Dorsey about having an interest, Mr. Dorsey says that he cannot make any such arrangement without the approval of Miner.

Mr. GILL (a juror). Mr. Bliss, I would like a little information. You say that on the Bismarck and Tongue River route the petition called for three trips a week on a schedule of eighty-four hours. I cannot understand how the trips can be performed.

Mr. BLISS. I do not remember that I said that the petitions called for three trips a week on a schedule of eighty-four hours. As I recollect it, the petitions upon that route asked for fifty hours.

Mr. HENKLE. Sixty-five hours.

Mr. BLISS. Sixty-five hours, Mr. Henkle says. You cannot understand how they can be performed. In point of fact, the only evidence there is of the performance of the service prior to the increase of trips and expedition, is that the service was not performed within the schedule time; that it took seven, eight, or nine days to perform the trips, though at that time the schedule time did not exceed one hundred and eight hours.

Mr. GILL. I cannot see how the three round trips could be made in eighty-four hours.

Mr. MERRICK. His difficulty is, that he cannot understand how he could make three times eighty-four hours in one week.

Mr. BLISS. One man might start on Monday, another on Wednesday, and another on Friday, each making his round trip in a week.

Mr. GILL. I do not see then how he could make it in the week.

Mr. BLISS. In a week from the time he started.

Mr. GILL. Oh, I see it now.

Mr. BLISS. I think S. W. Dorsey's evidence, as well as that of Boone, is that Dorsey paid Moore's salary while he was gone, or a portion of it, by sending a check to Moore's wife, at Chicago. The arrangement with Moore before he went away was that Mrs. Moore should be paid, that arrangement having been made by Boone. Mrs. Moore not receiving her pay, Boone goes to S. W. Dorsey as the proper person to apply to, and tells him that it has not been done. Mr. S. W. Dorsey thereupon promptly sends a check to Mrs. Moore. And yet Mr. Dorsey has not any interest in this business at all, gentlemen.

Prior to that time, as Boone says, Mr. Dorsey employed him early in November, I think it was, on behalf of these parties, and Mr. Boone refusing to be employed simply upon a salary, Dorsey agreed to give him an interest. Mr. Boone swears that that was so. Mr. Dorsey tries to make it appear that he did not agree to give him an interest, but he left that in sort of a state of suspended animation as to whether he was to have an interest. But in the mean time, till the other parties came here and they made their own arrangement, he was to work along upon a salary, with no suggestion of any rate being fixed. But he says plainly and distinctly that he refused to have anything to do with it upon a salary; that he must have an interest. Dorsey was the man who was parceling out interests in these proposed contracts and assigning an interest in them to Boone. Mr. Dorsey is the man who Miner says must be consulted before an interest in the business can be given to Moore, and Mr. Dorsey is consulted by Moore as to getting an interest in the business, and Mr. Dorsey agrees to give it to him. Mr. Dorsey is the man, who, with no interest in these contracts, procured the bonds, Mr. Peck having, as we used to say at school, "flunked" and not being able to furnish the bonds. Mr. Dorsey went to work and got one of the bondsmen, and then he went to Boone and asked Boone to get another of the bondsmen. Boone got one bondsman and Dorsey got the other. Miner had not sufficient responsibility to get a bondsman, as he told you himself. Peck either had not sufficient responsibility or sufficient physical ability to get bonds, and so Dorsey went to work and got bonds here from his personal friends in Washington. He also sent out to Arkansas to five separate postmasters, each one of them holding his position substantially at Dorsey's beck and will, the letters showing that one or two of them had been directly appointed at his request, and one of them but just confirmed. He sent out to five postmasters packages of bonds, and asked them to execute the bonds without having put into them at the time of execution the name of the bidder. They were sent to be executed without the name of the bidder, and yet the postmasters were to certify to the sureties. The statute says that every bond shall be certified by the postmaster, and also says that if any postmaster certifies to a bond without the name of the bidder being in it he shall be liable to punishment by, I think, five years in the penitentiary. Mr. Dorsey admittedly was the man who made this request as to these bonds of five postmasters. We have shown you

affirmatively on this stand that two of them were honest enough to refuse to do it. What was the case with the other three there is no evidence before you, but Mr. Dorsey was the man who was engaged in attempting to get these parties, his dependents, into an illegal business. Yet he asks you to believe that he had no interest in the business. He, a Senator of the United States, was trying to entice others into the violation of a direct statute of the United States, and he was doing it only for friendship. He was not even doing it for fun, as Mr. Brady seemed to be afraid he might be thought to be making expedition for. He was doing it simply for friendship.

Mr. Stephen W. Dorsey, still a Senator, employed Mr. Rerdell to go into this business. He sent Mr. Rerdell, who was acting as his clerk, up-stairs in his own house to help fill up the bids the night before they were put in. He gave Mr. Rerdell a lot of post-office papers, consisting of contracts, and so forth, and asked him to examine them and wanted to know whether he thought he could wrestle with them, and was competent to manage that business. He found Mr. Rerdell a clerk under the District government, drawing a salary there, and he asked Mr. Rerdell whether he would not like to go West, to the Bismarck route, for the purpose of arranging things there, which apparently John W. Dorsey was not competent to arrange. He did not seem to have overmuch confidence in John W. Dorsey, if the statement is correct that he subsequently said that John W. Dorsey was too stupid to attend to the business in California. He sent Rerdell out there to attend to that business, and he told Rerdell if he had any trouble in getting leave of absence he would arrange with the District commissioners to get him leave of absence. At a later stage of the case he tells you that, according to his best recollection, Mr. Rerdell remained, through his influence presumably, drawing his pay from the District government down to the 1st of May, 1879, though engaged very largely in attending to the business of Mr. Dorsey in connection with these routes. Mr. Dorsey wants you to understand that he had no knowledge that Mr. Boone was to be frozen out, and the plan of Mr. Vaile's coming in was something that occurred after he left here, and with which he had nothing to do. Yet he asked about Mr. Vaile and his responsibility before he left here. He sent Mr. Rerdell to Mr. Boone. He told Mr. Rerdell that Mr. Boone was to be put out, and he sent him to Mr. Boone to get from Mr. Boone the pigeon-holes and the papers and everything of that sort, and they were brought to his own house. Promptly on the 8th day of August Mr. Boone was frozen out of those contracts and compelled to sign a discharge and release; and yet these same gentlemen, Vaile, Dorsey, and all of them, want you to believe that there was nothing known about Vaile's coming into this business until Brady in some mysterious way telegraphed to Vaile on the 22d day of August, fourteen days after Boone had been frozen out, and then about the 24th of August Vaile came in in that self-sacrificing way to which I called your attention yesterday. Stephen W. Dorsey sent Rerdell West, and he gave Mr. Rerdell \$3,000, I think, which was deposited to the credit of the firm of John W. Dorsey & Co. in bank, and he, Stephen W. Dorsey, John W. Dorsey not being here, John M. Peck not being here, nobody being here who was avowedly concerned with that business, gives him authority to draw that money from the bank in the name of the firm of John W. Dorsey & Co., going apparently to the bank with him and giving such instructions. He admitted he did it, and when asked why he did it said, "Why should I not have done it? It was my own money." Of course it was his own money, deposited to the credit of one of his

own firms, and of course he had a right to draw it. But it does not do, having done that, to come here and ask you to believe that he had no interest in these contracts at that time.

Mr. Stephen W. Dorsey arranged the clauses in the subcontracts. Mr. Boone, under the general directions given him, had prepared subcontracts which contained such clauses as he had been in the habit of seeing, and such clauses as he thought were proper, and, having had them printed, when they came to Mr. Stephen W. Dorsey's eye he said, "Those will not do. You must have that clause stricken out, and you must put in another clause." To save reprinting the whole of the documents they were sent back to the printing office and black lines were run through the clause which Mr. Dorsey directed to be taken out, and the new clause was printed in underneath where there was a blank space. Those subcontracts were thus gotten up, and one or more of them, certainly more than one, I think, appeared before you as papers used in this case, filed in the Post-Office Department and becoming exhibits here. Yet Mr. Dorsey had not anything to do with these contracts, except from friendship. Mr. Dorsey could tell Mr. Moore that the profits of the business were in the expedition. He could tell Mr. Rerdell that the profits were in the expedition. He could astonish Mr. Boone, who had been in the mail service for years, and who at that time had one-tenth of all the contracts for star routes in the country. He never had seen a clause for expedition such as that. He knew nothing about expedition. And yet Mr. Dorsey was able, although entirely disinterested and with no interest in this matter, to get up this form of subcontract. He got up the provision in the subcontract which was the basis of their system of profits; because, having taken the service so much below the figures fixed by Boone, their only chance for profit was in expedition. If they made the ordinary subcontracts providing that the subcontractor should do the work for so much and should have all the subsequent increase, then the system would not have been profitable. They would have sowed the seed and the subcontractor would have reaped the harvest. But Stephen W. Dorsey went on and put in a clause which provided that of expedition the subcontractor should get 65 per cent. for doing all the work and 35 per cent. should be reserved for the people here whose heads conceived the scheme. In fact, gentlemen, as you have all seen, all the profits were in the expedition. In fact the 35 per cent. or more reserved to the contractors here was the profit of these conspirators. Moore knew nothing about those rates. Moore was told to make the best contracts he could with reference to expedition, but with a suggestion that 40 per cent. given to the subcontractor and 60 per cent. reserved to the parties here would be a very good arrangement for Mr. Dorsey and his associates. Mr. Moore operated in a measure upon that plan, because we find that he made a contract with Mr. Major on the route from Redding to Alturas, by which if they got expedition there was to be paid to Major only an additional sum of \$4,000. In point of fact they got expedition, and there was allowed by Brady for expedition just about \$20,000. Mr. Moore worked upon the very principle which Mr. Dorsey suggested to him of 40 per cent. That seems to have been cutting deeper than they were able to cut with most of their subcontractors.

Stephen W. Dorsey, by the evidence of Mr. Rerdell, gave the instructions and handed over the papers provided by the Post-Office Department for the establishment of post-offices in order to get up that side post-office sixty miles off the line, at a fictitious place, with

a fictitious postmaster, with fictitious inhabitants, and with a fictitious petition signed by the gang of men who were putting up the ranches upon that route. He gave Rerdell the papers and the instructions which were to result in the getting up of that side post-office—an arrangement which, if it had been carried out, would have cost the Government, in view of the subsequent expedition, about \$12,000 a year, and would have bridged over the difference between the two hundred and fifty miles that they took the route at and the three hundred and three miles which General Rosser said was its actual length. Mr. Rerdell says that Dorsey gave him those papers and those instructions, and Mr. John W. Dorsey says he heard of it from Rerdell. Mr. John W. Dorsey admits that he heard of it, and admits that he undertook to carry out the instructions, and would have carried them out if it had not been that he found Pennell and Lounsberry out there too honest to do it. And yet they want you to believe that this man Rerdell, who at that time was a mere clerk under the District government, who never had had anything to do with the mail service, and who knew nothing about it, except that he had been employed by Dorsey one night in filling up the bids, conceived that scheme of the side post-office and conceived it for the benefit of Miner and Dorsey. At that time, gentlemen, Mr. Vaile had not appeared publicly in the matter, for that was in July, 1878. They want you to believe that Mr. Rerdell was engaged in that fraudulent scheme, not even being under a salary except what he was getting from the District government, using his vacation to go out there to render this service to Mr. Dorsey; that he, wholly ignorant of the mail service, conceived that scheme of a side post-office, and that he got from the Post-Office Department the blanks which are required when a new post-office is added, and did this thing. Gentlemen, that story will not be accepted as true. Mr. Stephen W. Dorsey, carrying out his own personal interest, was not only concerned in attempting to seduce these postmasters into an illegality, but he was concerned in attempting through Rerdell and John W. Dorsey to seduce the postmaster at Bismarck, and such other persons as could be got into the scheme, into a fraud upon the United States. And yet he wants you to believe he had no interest in this business. He was engaged in procuring illegal acts. He was engaged in procuring money fraudulently from the Treasury, but that was all done for the benefit of persons other than himself. Stephen W. Dorsey also employed Mr. Hodges out in Colorado as a traveling agent for these parties. Mr. Miner did not know him. Mr. Dorsey suggested his employment, and Mr. Dorsey gave him the letters of introduction with which he operated. Mr. Dorsey gave him the railroad passes under which he traveled. Right here let me say that you will remember that Stephen W. Dorsey gave the railroad passes to Moore. He gave Moore his brother John's railroad pass, John being up at Bismarck and not needing a railroad pass to the Pacific. The result was that he, Stephen W. Dorsey, somehow or other having that pass, gave it to Mr. Moore to use. When Mr. Moore returned here in July Mr. Dorsey, according to Mr. Moore's statement, had that interview. Dorsey himself admits it. When Mr. Moore returned here in July Moore says that Mr. Dorsey had a conversation with him with reference to the service, and wanted to know about it and how it was getting along, and asked him to go and telegraph to The Dalles to find out whether the service from The Dalles to Baker City had been commenced and put on, because he said if that service was on everything would be all right. How did Mr. Stephen W. Dorsey know anything about the

service? What was his interest in having Moore telegraph to The Dalles to find out whether the service was on? Later on, gentlemen, but very little later on, as I recollect it, Miner writes to Mr. Joseph, out in New Mexico, saying that he writes at the request of Stephen W. Dorsey, and asking Mr. Joseph to take the subcontract on that route. Of course he has to say that Mr. Stephen W. Dorsey cannot claim to be acting for himself, for he is still a Senator of the United States. Therefore he says he does it on behalf of John W. Dorsey. Stephen W. Dorsey was interested in getting the subcontract upon that route down in New Mexico, the Ojo Caliente route. That was the same route, gentlemen, by the way, as to which he wrote with reference to some addition of service and change of service to the Postmaster-General on the 10th of June previous. Stephen W. Dorsey is the man who, according to the evidence of Boone, and I think, also, according to the evidence of Rerdell, but certainly according to the evidence of Boone, gave as a reason why Mr. Boone could not remain in the business, that Mr. Brady was hostile to him, Boone—as Boone tells you was in point of fact the case—and that Mr. Brady would not do them any favors and would not do anything for them so long as Mr. Boone remained in the combination. So Mr. Boone was promptly frozen out on the 8th of August. Stephen W. Dorsey says that he had no interest in it. Harvey M. Vaile swore under oath in a plea filed in court that Stephen W. Dorsey was interested with him and Miner. Whom do you believe, gentlemen, the oath of Mr. Vaile, taken at that time when there was no likelihood of any question of this sort arising, or the statement of Mr. Stephen W. Dorsey, swearing to keep himself out of the penitentiary? Mr. Vaile not only swore to that, but Mr. Vaile wrote a letter to Mr. Dorsey and he told him about this suit and said it would expose all their relations. He asked him to exercise his influence with Mr. Rerdell to prevent that suit from going on. Mr. Vaile, when no question had arisen about Dorsey's interest, wrote to Mr. McGrew, the Sixth Auditor of the Treasury, that Stephen W. Dorsey was interested with him in these contracts long before the period when Mr. Dorsey is willing to admit that he became interested in them. He dares not admit that he was interested in them until after the 4th of March, 1879. Mr. Vaile, one of these defendants, one of these gentlemen sitting here and acting with the rest, tells you a different story. If the counsel can manage to agree upon a theory upon which they can present their case to you without crossing each other's track—without Mr. Brady saying, "I was deceived by Dorsey; I acted in good faith, and Dorsey is the rascal;" and without Mr. Dorsey saying, "I hadn't anything to do with this business, Mr. Brady and Mr. Miner and the others are the rascals"—if they can manage to get up a theory on which the counsel can agree in presenting their case to you without severing that combination which has existed so beautifully between them hitherto, Mr. Vaile, this man who made that statement under oath and before he went on the stand, who wrote that letter to Mr. Dorsey, and who wrote that letter to Mr. McGrew, will, by the mouth of his eloquent counsel, Judge Henkle, ask you to believe that he lied under oath when there was nothing at stake, and that he has told you the truth here in the extraordinary story that he has told you. I say they will do it if they can manage to do it without crossing each other's track; but I have never been able to convince myself that they would dare successively to get up and argue this case to you.

At this point (1 o'clock p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. [Resuming.] I was considering, gentlemen, the relations of Mr. Stephen W. Dorsey to these contracts and to this case, and I now call your attention to another passage in the testimony. I have referred to the involuntary testimony which was derived from Mr. Vaile, and Mr. Vaile's actions and declarations off the stand and under oath before any question arose here. I now pass to a passage in the testimony of Mr. Miner, which appears on page 4280. He had been questioned as to his testimony before a Congressional committee which was engaged in investigating these contracts in the spring of 1880. After having been questioned as to the affidavit to which I have already referred, and as to the number of men and horses, and its being a jumping estimate, this passage was read to him from his testimony before the Congressional committee:

Q. Did you ever understand in any way that Mr. Dorsey was interested, directly or indirectly, in the Peck and Miner contracts?—A. Not until this transfer which I speak of was made.

Q. That was the first intimation you ever had of his interest?—A. That was the first knowledge that I had of it.

Q. Had you any intimation of it?—A. No intimation. What exists in a man's mind without any evidence, I do not consider an intimation.

Q. Was there anything existing in your mind on that subject?—A. Yes; but I had no evidence of it.

Q. Let us have what was on your mind?—A. I supposed that when he had finished his Senatorial career he would probably take these Peck routes; but I had no evidence of it. I had not the slightest evidence to make me think so.

And then he was asked:

Did you so testify?—A. I don't know whether I did or not.

Q. Have you no recollection about it?—A. I have none.

Q. None whatever?—A. None whatever.

Q. You do not recollect being asked anything about that subject?—A. I do not remember anything about it.

Q. Did you testify as follows:

"Q. You say that you supposed when he quit the Senate he would take a share in those routes?—A. Yes, sir; in the Peck routes."

"Q. Why did you think that when he got out of the Senate he would take a share in those routes?—A. Because Mr. Peck is his brother-in-law, and had been connected with him in business matters, in building railroads, &c., and I presumed that Mr. Dorsey would join with Peck in this business."

"Q. You felt all the while as though you had a man in the United States Senate?—A. I felt that there was a man in the United States Senate with whom I had been intimately acquainted for a dozen years."

"Q. Did you not feel further that there was a man in the United States Senate who was interested with your partner?—A. No."

"Q. Did I not understand you to say a while ago that you had always had it in your mind that when Dorsey got out of the Senate he would take his share of the contracts?—A. What I said does not bear the interpretation that you give it."

"Q. You do not know anything about the expedition on Dorsey's and Peck's routes?—A. No; it is a matter of record. Of course I have not access to the record."

"Q. You had always expected that Dorsey, as soon as he got out of the Senate, would take his share in those routes?—A. I said that I supposed he would."

"Q. It was in your mind that he would?—A. It was in my mind."

"Q. And the very thing that was in your mind **happened** shortly after Dorsey left the Senate?—A. Yes, sir."

Did you so testify?—A. I don't remember whether I did or not.

Q. You don't remember anything about it?—A. I do not.

Q. You don't remember whether the questions I have read were asked you?—A. I do not.

Q. And you do not know whether the answers you gave were as I read them?—A. I do not.

Q. Your mind is a perfect blank on that subject?—A. I have never looked at that testimony since it was delivered, and I have no recollection as to what it was.

In that way Mr. Miner escaped being brought face to face with some

rather troublesome testimony that he had already given before Congress. At another place on this record, in the examination of Miner by his counsel, Judge Henkle, on page 4169, I find the following testimony:

Q. What were the relations between you and Mr. Vaile and Senator Dorsey during the winter of 1878-'79?—A. They did not improve after December.

Q. They got no better fast?—A. We let each other alone very severely.

Q. I want to know now if you had any conversation with Senator Dorsey late in the winter, or at any time in the winter, in which he said anything about what he proposed to do with Vaile when he got out of the Senate.

Anything of what he, Stephen W. Dorsey, proposed to do with Vaile when he got out of the Senate.

Mr. MERRICK. I object.

The COURT. Have you any proof on that subject?

Mr. MERRICK. Not a particle.

Mr. HENKLE. No, sir; but it is in the same line. I want to show that Dorsey in the winter said to Miner that when he got out of the Senate he was going to kick Vaile out of this whole concern.

Mr. MERRICK. Well, you may prove it.

General Henkle offered here to show that Mr. Stephen W. Dorsey, a United States Senator, with no interest in these contracts and with no power over them, with no relations to them, except that of having been a lender of money to some of the parties concerned in them, was going to kick out Mr. Vaile, who was in them, who was a partner, who was a subcontractor upon all of the routes, who had the power in the matter, and who had the interest. Mr. Stephen W. Dorsey, the United States Senator, as soon as he got out of the Senate and had a little time and the statute did not interfere with his appearing in his real character, was going to kick Mr. Vaile out! And yet Mr. Stephen W. Dorsey had not any interest in these contracts. Following this along a little further, gentlemen, and with reference to the relations of Mr. Dorsey to this business, we find that on the 4th of March, 1879, the very day that Mr. Dorsey's Senatorial career ended, he addressed a letter to Mr. Brady, in which he says:

SIR: Being duly empowered to act for John M. Peck and John W. Dorsey, mail contractors, I hereby enter in their behalf my protest against the acknowledgment of any subcontracts or powers of attorney now on file in your department, or which may hereafter be filed in the name of H. M. Vaile, or in the name of any other person.

These subcontracts or powers of attorney were made and filed without the knowledge, authority, or consent of said Peck and Dorsey, and in their behalf I demand that they be canceled on the first day of April, and that no other subcontracts to any person whatsoever shall be accepted by you upon any mail routes in the names of said Peck and Dorsey, except those in the Indian Territory, unless such subcontract shall be accompanied by a power of attorney given by said Peck and Dorsey after the date of this letter.

I am, respectfully yours,

S. W. DORSEY,
For JOHN M. PECK,
JOHN W. DORSEY.

You see, gentlemen, the kicking-out process commenced promptly on the 4th day of March. There Mr. Dorsey put on record a statement that he was duly empowered to act for John M. Peck and John W. Dorsey, and yet he on the stand and John W. Dorsey on the stand are neither of them able to indicate in any way how he got such a power from either one of them. Mr. John W. Dorsey was in trouble; he did at one time start in to say that there was a power of attorney, but as it happened so promptly he was just then met by the question which Mr. Merrick put to him, "Then Mr. Dorsey was taking an interest in this thing

while he was still in the Senate?" and Mr. John W. Dorsey took the back track and paddled in again. He was not prepared to say that there was any power of attorney. He did not know exactly what it was, but Stephen W. Dorsey did this, and he for one did not propose to repudiate his act. All the way through, as he says on another occasion, he was embarrassed by the fact that he had got his brother into this business. Mr. Stephen W. Dorsey tells you on the stand that he did all this, and that he knew of this condition of things, which led him to write that letter on the 4th of March, written, I assume, after 12 o'clock noon when his term expired. He knew of the condition of things which led to his writing that letter as early as the previous December, but, sensitive and careful man that he was, he was not willing to interfere in any manner with the contracts of anybody else, not willing to even have the appearance of wrong-doing, not having done any of these things which somebody in the guise of Stephen W. Dorsey had been doing since the previous November, signing Peck's name, demanding that all Peck's contracts and papers should be sent from the Post-Office Department to him, employing the different persons, arranging how they were to be paid, paying them, attending to the whole business, and having it all conducted at his house. This gentleman, wishing to save even the appearance of wrong-doing, says he did not do this, though he knew of the condition of things as early as December which led him to write the letter on the 4th of March, and he said in his testimony, "I know now what you are trying to reach, and I will give it to you." The question was why he did not do it earlier. He said:

For the simple reason that John W. Dorsey not being here, and Peck not being here, and I being in the Senate, I thought it would be an improper thing for me to act for them when I was in that position.

That is the reason. It was an improper thing for Stephen W. Dorsey to act for them while he was in the Senate, as their representative, under the form of a power of attorney, placing on record in the Post-Office Department their objection to the subcontracts which Vaile had filed; but it was a perfectly proper thing for Stephen W. Dorsey to do all of these things which I have related to you, for the simple reason, gentlemen, that the one became a matter of record and could be brought up against Stephen W. Dorsey face to face with the section of the statute which forbid him to be interested in such things, while the others were secret matters, done out of sight, done without a record, known only to few, and known only to those who were either his coconspirators, his dependents, or his employés. Those things he was willing to do; but he was not willing to act as the attorney on the record of John W. Dorsey or John M. Peck, because it was an improper thing while he was in the Senate of the United States. Gentlemen, that is the story that comes to you from the lips of the man who dared not produce to you the book which he admittedly had in his own possession, showing the correspondence, showing the accounts that he admittedly has and which he does not want read. Leaving the books testified by Rerdell out of the question, he admittedly has some books containing the accounts of this mail service. He is the man who dared not produce the letter-books and dared not produce the books and accounts by which he settled with Bosler only in November last. He says to you that he was so sensitive that he could not act as the attorney for somebody who had a post-office contract. Bear in mind, gentlemen, in this case that John W. Dorsey told all through the western country, to the two Johnsons at Toquerville, along up at Bismarck and Fort Keogh, and I think in one or two other places, that his brother, a United States Senator, was inter-

ested with them and that they relied upon him to carry on the business. He made those declarations out there when there was no anticipation that trouble would arise and when their interests were to be promoted by it. Bear in mind, gentlemen, that through the whole correspondence both before and since Mr. Dorsey went out of the Senate, the paper with the stamp of the United States Senate was used for that correspondence and was sent broadcast over the country to give at least the appearance of the fact to people who knew nothing about statutes upon that subject that these conspirators were backed by and associated with a Senator of the United States. Bear in mind, gentlemen, Mr. John W. Dorsey's private arrangement in money matters with Stephen W. Dorsey. If you believe John W. Dorsey, where were Stephen W. Dorsey's sensibilities upon this subject? He was having a private and confidential arrangement with John W. Dorsey in connection with these contracts, receiving money and ostensibly giving it out, although really Mr. John W. Dorsey was furnishing it. Bear in mind that Mr. John W. Dorsey was so considerate that Stephen W. Dorsey should not be brought into it that when he had money to furnish for these contracts, and when Mr. Miner was admittedly his partner and associate, he would not trust it to Mr. Miner, his partner and associate, but trusted it to his brother, the Senator, who was so careful about having anything to do with the contracts. Bear in mind that Mr. John W. Dorsey actually gives that as a reason why he would not be concerned. Bear in mind, gentlemen, that Stephen W. Dorsey tells you himself that Mr. Peck wrote him about getting bonds. He would not be concerned in doing anything with reference to aiding them. He would not be concerned in being their attorney of record, but he would be concerned in getting their bondsmen for them. Bear in mind, gentlemen, that on the 6th day of March, two days after the kicking-out process commenced by that letter which Dorsey wrote to Brady you find Stephen W. Dorsey, by his own admission and by the evidence of Mr. Vaile, engaged in negotiating with Mr. Vaile, who had come here "hell-bent," as the expression used to be in our boyish days, to get rid of Stephen W. Dorsey. Vaile declared that nothing on earth would induce him to go on longer with Stephen W. Dorsey, and he hurried here, and thinks he arrived here on the very day after Mr. Dorsey's Senatorial term ceased, and on the 6th of March, at Mr. Dorsey's own house, he entered into a negotiation with Vaile by which this condition of things was to terminate and by which Mr. Vaile should get out of the hell in which he was in going along with Stephen W. Dorsey. Dorsey entered into that negotiation acting solely by himself. Peck was in New Mexico. John W. Dorsey was in this city, but John W. Dorsey, by his own statement and by the statement of the others, took no part in it. John W. Dorsey did not dare to say that he had ventured to give any paper or power of attorney, any authority, to Mr. Stephen W. Dorsey to do these things, and there is no suggestion any where that Mr. Stephen W. Dorsey during the progress of this business consulted John W. Dorsey or anybody else. He acted as and for himself and as and for his own. It cannot be said that Mr. Stephen W. Dorsey so acted because he had made an arrangement with Peck, because Mr. Stephen W. Dorsey tells you himself on the stand that after he had gone thus far with Mr. Vaile he was summoned to New Mexico by the sickness of John M. Peck, and went out there, and then and there in New Mexico he made the arrangement which he claims to have made with John M. Peck, buying him out and paying him \$10,000 for his interest in these losing contracts and in this losing business to which Peck never

had contributed a dollar. He paid him \$10,000, or agreed to pay him \$10,000, and then came back here and perfected the matter. So that Mr. Dorsey was operating, making his arrangements, negotiating, bargaining, closing, substantially and in fact though not in form, this whole business and relieving Vaile from the trouble in which he was and from being obliged to keep on with him. All this he did, commencing within two days after he went out of the Senate, and in that way apparently John W. Dorsey was allowing him tacitly to go on, because John W. Dorsey felt very bad that he had got him into the business, as he stated. That expression of John W. Dorsey's dropped out in the course of an answer to some question that was put him on cross-examination as to why he acted so and so. He had got him into the business. After the cross-examination closed Colonel Ingersoll took him up and he tried to get some kind of an explanation out of him as to what he meant by getting him into the business, and it turned out that he meant getting him to advance the money; a considerable portion of which, by Mr. John W. Dorsey's own account, he had himself given to Stephen W. Dorsey, that Stephen W. Dorsey might ostensibly advance it, while in fact John W. Dorsey did.

Now, gentlemen, as to the relations of Mr. Stephen W. Dorsey to these contracts there are one or two little scattered items of proof which it would be well for you to bear in mind. Mr. Boone tells you that while the Congressional investigation was going on he went to Mr. Dorsey and told him, "Get your brother John out of the way; he will make trouble if he is here during the investigation; get him out of the way." That investigation was not the investigation consequent upon Mr. Brady's demand for the additional appropriation, but the earlier investigation made in 1878, where these contracts were to a considerable extent the subject of an examination. Boone said, "Get him out of the way," and the result was, I say, because it was *post hoc* and therefore I say *propter hoc*, John W. Dorsey promptly went to Bismarck. As to Mr. Stephen W. Dorsey another isolated fact is entitled to some consideration here and that is that on the 17th of April, 1879, Mr. Dorsey started Mr. Rerdell West with letters certifying to his character and capacity, and certifying also that he was his friend. He gave him two letters, one to Governor Routt, and the other to a man named Paddock, whom he calls "Dear Mart." He not only certified to him as his friend, but put together, gentlemen, what I am afraid Mr. Merrick will not agree with me in saying do go together, and what after the developments of this trial I am afraid I cannot claim always go together. He said, "He is not only an upright man, but a thorough-going republican." He put those two together, and then he went on and said:

He has, together with Colonel Peck, a great many mail routes in your State, and if you can aid him in any way I shall be grateful to you.

In his letter to Paddock he said:

Mr. Rerdell has large interests in Colorado.

In the letter to Routt he said:

Colonel Peck has a great many mail routes in the State.

When asked what interests Rerdell had in Colorado he said he did not know. "Rerdell's interest was simply the interest he had, I suppose, in these contracts as the employé of myself." This was on the 14th of April, 1879. So on that date Mr. Dorsey recognizes the fact that he was interested in these contracts. He was then asked in

regard to his statement that Colonel Peck had a great many mail routes in that State. I read from pages 3931, 3932 :

Q. Had Colonel Peck any interest in any route in that State on April 14, 1879?—A. There were routes in his name.

Q. Had Colonel Peck any interest in any route in that State on April 14, 1879?—A. I say there were some that stood in his name.

Q. Had he any interest in any routes in that State?—A. No. I bought him out before that.

Q. He had no interest?—A. No, sir.

Q. Why, then, did you say that he had an interest?—A. Because the routes stood in his name. I could not explain a long business transaction in a letter of introduction very well.

Q. What was the occasion for putting Colonel Peck's name in there?

In answer to that he rather thought that Colonel Peck was in some way or other a friend of Routt's. There a passage occurred, gentlemen, which may have impressed itself upon your mind. That is the point where Mr. Ingersoll said :

I don't think I am half as smart as the witness.

And the court said :

I don't think you are either.

Mr. WILSON. That is a pretty strong circumstance against a defendant.

Mr. BLISS. I ought to call your attention in passing to another fact indicating Mr. Dorsey's action and the authority which he took in signing Mr. Peck's name. One draft, which was issued by the Post-Office Department, and which was given to Mr. Dorsey on the 16th or 17th of August unindorsed and drawn to the order of John M. Peck, was, as early as the 18th of August, deposited by Stephen W. Dorsey to his private account with Donnell, Lawson & Co., of New York, indorsed with the name of John M. Peck.

The COURT. You have given the month, but not the year.

Mr. BLISS. It was in the year 1880. I am speaking merely of the authority which Mr. Dorsey exercised in signing Peck's name whenever he chose. He signed Peck's name to that draft which came into his possession on the 15th or 16th of August, and it was sent as early as the 18th of August for deposit in that bank. I think there is no evidence as to whether Mr. Dorsey sent it or not, but it was sent, Mr. Peck being in New Mexico all the time.

Mr. MERRICK. He signed Peck's name, but not for him.

Mr. BLISS. He signed the name of John M. Peck.

The missing contract that I called your attention to at one time I have here. It is a subcontract that Stephen W. Dorsey made on the 1st of April, 1879, and it is at the rate of \$548. The route was expedited and the pay increased in the following June. It cannot be claimed that that contract was antedated, as was claimed with regard to various other contracts which were troublesome in their dates, because if that had been so they would have inserted the rate of pay which then existed.

Gentlemen, I now pass from the time when Stephen W. Dorsey was obliged by his position in the Senate to conceal his interest in these contracts. Immediately after the 4th of March he avowedly became interested in them, and the whole transaction made such an impression upon Miner that he assumed that the moment Dorsey was free from the prohibition of the statute he would avowedly appear as interested. Bear in mind all these things which Mr. Dorsey did while he was still in the Senate. He did everything that a man could do who was actually in-

terested in mail contracts, save formally going upon the records of the Post-Office Department as being so interested. I ask you now to hear me for a few moments with reference to the affidavits to which I shall call your attention on the subject of the action of Mr. Stephen W. Dorsey after March, 1879, when he went out of the Senate, in connection with this business, as showing the nature of his relations and transactions. 6 E, gentlemen, is the oath of John W. Dorsey made here on the 26th day of April upon the route from Trinidad to Madison, in which he describes himself as subcontractor when he was not subcontractor. It is one of the oaths which he says was made at the instigation of Rerdell, who was on that day in Denver, Colorado. It is an oath declaring that the number of men and animals necessary on route 38140 on the present schedule and three trips a week—

Is one men and four animals.

Apart from the obvious insertion of these numbers subsequent to the making of the rest of the affidavit, I call your attention to this—

Is one men—

showing that the word *men* was written there first with the idea that the number would be more than one.

The number necessary on a schedule of twelve hours, three times a week, is three men and eleven animals.

That oath, Mr. Rerdell says, was sent with others by him in blank to John W. Dorsey in Vermont before he left here on the 15th or 17th of April, and it came back sworn to in blank and he found it here when he returned about the 4th or 5th of May, and then it was used. He says that the filling in of the numbers there is in the handwriting of Stephen W. Dorsey; that Stephen W. Dorsey filled the affidavit in after it came back here from Vermont.

Mr. CRANE (the foreman). There is something we cannot understand about these affidavits. There is another one that was sent there and that he swore to before a magistrate in Vermont.

Mr. BLISS. Not on that route, I think. On the Pueblo and Rosita route there are two. I think there are not two on that route. I am glad to have you ask me about it, but my recollection is this: There are on route 38134, from Pueblo to Rosita, two oaths sworn to on the same day by John W. Dorsey in Vermont. There is on this route only one sworn to by John W. Dorsey, and that was sworn to here.

Mr. CRANE. What we cannot understand is why, if these affidavits were filled out here, there was any necessity for sending so many of them up there.

Mr. BLISS. The point is this: They had to have the signature of John W. Dorsey. He was to sign for the routes upon which he was the contractor, beyond all question. The regulations said that the affidavit must be signed by the contractor. Mr. Rerdell said that they sent a lot of affidavits in blank. The blank affidavits which were intended to be used on John Dorsey's routes were sent to Vermont to Dorsey, or given to Dorsey.

Mr. CRANE. But if they were filled out here what was the necessity of sending two up there?

Mr. BLISS. They sent a lot up there to have them executed. They were to be filled in here afterwards as they wanted them. You see, gentlemen, that the route is not specified. The number of the route is inserted afterwards. They were all sent up in blank. They were about in this form:

The number of men and animals necessary to carry the mail on route ——— on the present schedule, and ——— trips a week, is ——— men and ——— animals. The number necessary to carry the mail on a schedule of ——— hours ——— times a week is ——— men and ——— animals.

They were sent up there entirely in blank to have the signature of the contractor put to them.

Mr. CRANE. Mr. John Dorsey swears that in the morning he received an affidavit and made oath to it and sent it away, and in the afternoon he received another one over the same route. What we cannot understand is, if they were filled up after they got back here, what the necessity was for sending another affidavit.

Mr. BLISS. What I say is simply that that story of Mr. John W. Dorsey's is a lie from beginning to end. He says he got one letter in the morning from Rerdell from Washington asking him to swear to the affidavit that was inclosed, and he got by the later mail another letter from Rerdell from Washington asking him to swear to the affidavit that was then inclosed. In point of fact Rerdell was not in Washington, and had not been in Washington for several days previously, and therefore the story of John W. Dorsey cannot be true. He did not get the oaths in that way at all. He got them as Rerdell says, a package at a time in blank, and he signed them and swore to them in blank, and they were sent back here in blank, and when they wanted to use the oaths they then took them up and filled in the number of the route and the number of men and animals, and then filed the oath. Now, Mr. Rerdell says that he sent those affidavits there in blank. As to one of them, it is in Rerdell's handwriting. As to the other, it is in Kellogg's handwriting—all but the filling up.

Mr. MERRICK. They were both getting them up.

Mr. BLISS. Kellogg was doing the writing for the concern here, also. He wrote some of these blank affidavits, and they sent a package of them to John W. Dorsey in Vermont to be sworn to. Some of them were in Kellogg's handwriting and some of them were in Rerdell's. Back they came signed and sworn to in blank. They had them in stock, and if they wanted an affidavit upon a given route they took it out of stock and used it. If they wanted an affidavit of John Dorsey's they took it and used it. If they wanted an affidavit of Peck's they took it and used it. When they used it they filled it up, inserting the route and inserting the number of men and horses. As confirming that story I call your attention to the fact that, beyond all dispute, in the affidavits the body of which was written by Kellogg the blanks are filled in in an entirely different handwriting, and that handwriting is sworn to by Boone and by Rerdell in the particular oath you have there as being the handwriting of Stephen W. Dorsey.

The COURT. The filling up.

Mr. BLISS. The filling up. That is what I am speaking of. As to that particular affidavit Mr. Dorsey I think has something to say. Mr. Boone having sworn that the filling up was in the handwriting of Stephen W. Dorsey and Mr. Rerdell having sworn that Mr. Stephen W. Dorsey filled it up as a fact, Mr. Dorsey is asked upon the stand (page 3944) if he can say that he did not fill it up and he answered :

I say I don't think I did. I don't remember it.

His attention was directed to it. No man familiar with the handwriting of Mr. Stephen Dorsey, no Hill, no Kellogg, comes on the stand to deny the statement of Boone and Rerdell that that is the handwriting of Mr. Dorsey. Mr. Dorsey does not deny that it is his. He did not remem-

ber filling it up, but he does not think he did. The whole world of Mr. Dorsey's acquaintances, everybody who was acquainted with his handwriting, it was open to them to have put on the stand and to ask them, "Is that the handwriting of Stephen W. Dorsey?" Forewarned by the experience that Judge Henkle had with Mr. Waugh, they did not put anybody on the stand.

Mr. CRANE. The filling up seems to be in two different handwritings and two different inks.

Mr. BLISS. I was going to say something as to that particular affidavit. Mr. Rerdell says that he wrote that in, and Mr. Boone swears that it is Rerdell's handwriting. I refer to the word twelve. You will see that that word twelve is the only one in that paper that is written over an erasure.

Mr. CRANE. The word "trips" appears to be written over an erasure.

Mr. BLISS. I would not contradict you, Mr. Foreman, but I think you are in error about that. However, that is a matter of observation.

So much for that. Now, I pass along to 22 F, which is the oath upon the Ojo Caliente route. That oath I pass to you, gentlemen, and you will see in the same way that the number of the route, the number of trips, the number of men and animals, the number of hours, and the number of times per week are all inserted after the oath was written, and in a different ink. That affidavit is an affidavit, I think, sworn to here by John Dorsey on the 26th of April, and sworn to, as he says, at the instigation of Rerdell, who unquestionably was then in Denver, Colorado. Now, as to that oath Mr. Rerdell tells you that the filling up was done by Mr. Stephen W. Dorsey. Mr. Boone tells you that that filling up is in the handwriting of Stephen W. Dorsey. Mr. Dorsey was examined and asked on page 3771, if he did not fill it up, and he said:

I have no recollection; I have no idea that I ever did it. I have no recollection at all.

If that was not his handwriting why did they not put somebody on the stand to swear that it was not his handwriting? Boone is the man by whom that was sworn to, the man whom none of them have dared to say has told an untruth deliberately upon the stand. All they have said of him was that he was mistaken. That is the farthest they have gone. It was open to them, and there was a chance where, if false testimony was being given, they could have contradicted it. This is not only the testimony of Boone, that in his opinion it is the handwriting of Stephen W. Dorsey, but Rerdell swears that it is Dorsey's handwriting and I think he saw it filled up. There was an opportunity to contradict Mr. Rerdell in the most conclusive manner; and yet no man familiar with Stephen Dorsey's handwriting came on the stand to say that it was not his handwriting. All that Mr. Dorsey said about it was that he had no recollection of it. Why did they not produce Hill or Kellogg or Bosler, the intimate associate and friend? Why did they not bring some one of those men here, some one of the hundred men who are familiar with his handwriting, to tell you, "Gentlemen, Mr. Rerdell lied; that is not Stephen W. Dorsey's handwriting?" Going on a little further, I hand you 25 S, being the affidavit on the White River, route sworn to by John Dorsey before Kellogg, in the city of Washington, on the 26th of April. This is another one of those affidavits which Mr. Dorsey says he made at the instigation of a man who was out in Colorado. In the same way, you see, the number of the route, the number of trips, the number of men and animals, and the number of hours have been filled in. It is very easy to see that they were inserted at another time than the time when the body of the affidavit was written. Mr.

Boone tells you in like manner that that filling up is in the handwriting of Stephen W. Dorsey. Mr. Rerdell tells you in like manner that not only is that the handwriting of Stephen W. Dorsey, but no friend, no acquaintance of Dorsey's dare take the stand and deny that that is the handwriting of Stephen W. Dorsey. When Stephen W. Dorsey himself was on the stand as a witness his own counsel did not dare to call his attention to that affidavit. They did not dare to seek to get from him even the qualified denial that was made as to the others, that he had no recollection about them. That affidavit was left with the evidence of Boone and Rerdell. Mr. Stephen W. Dorsey comes on the stand and is examined and is allowed by his counsel to pass off the stand without any attempt to answer or to dodge that testimony. It stands before you, gentlemen, as undisputed, unequivocal testimony, which, I think, the court will tell you you are bound under your oaths to consider as true.

The COURT. What is the date of that affidavit?

Mr. BLISS. It is dated the 26th of April, 1879. I will not undertake to say that that affidavit presents evidence of it, but there are some affidavits in this case that present evidence that they were in the habit of copying them and keeping press-copies in a letter-book.

The COURT. Let me inquire of you whether you claim as to these affidavits, bearing date the 26th of April, that the date was added after the oath was made.

Mr. BLISS. I know nothing about that, sir.

Mr. MERRICK. It would appear from the looks of the affidavit that it was not, if your honor will examine it. The ink in which Mr. Kellogg's name is written is the same in which the date of the jurat is written.

Mr. BLISS. Of course, your honor, the affidavits being made in this way in blank the date of the jurat was not inserted, the idea being that the officer who took the jurat would correctly insert the date.

The COURT. That is what I wanted to know.

Mr. BLISS. In this case, the jurat bearing the signature of Mr. Kellogg, the date, I think, bears evidence of having been written at the same time and with the same ink. What I mean to say is that it indicates that they were not ordinarily going into complicity, when they prepared these blanks, with the officers before whom the oaths were taken. They did not expect to swear to them and have the date left blank. Their arrangements were made with the expectation that the date would be correctly stated.

The COURT. What about the appearance of the date in the jurat?

Mr. BLISS. When you look at the words "twenty-one" or "twenty-six" and "April" they appear to be in a different handwriting from the rest. In all the affidavits the jurat is beyond all question in a different handwriting and different ink. I have no question in my own mind that the date of the affidavit inserted by Wainwright in Vermont is the correct date when Mr. Dorsey appeared before him. We make no question about that, and have no reason to do so. We have no reason to doubt Kellogg's statement, except for his association with these gentlemen. But the question of the date in the jurats is not particularly important. There is, however, something to confirm the truth of Mr. Kellogg's dates upon one or two of these affidavits. 22 F, for instance, was sworn to on the 26th of April, 1879, and filed in the department on that day.

Mr. CRANE (foreman of the jury). Did he see Dorsey sign them?

Mr. BLISS.. I do not know as to that.

Mr. CRANE. I do not want to be too inquisitive about this.

Mr. BLISS. I am glad you have asked the question. As to that affidavit on 38145, with reference to which you asked me about Rerdell

having seen Mr. Dorsey sign it, Mr. Rerdell does not say as to that that he saw the signing of it; as to some of the others I think he says that he saw the signing. But as to the one on 38145 he says, at page 2234, he does not think he ever saw it until the last trial, and does not say that he saw the signing of it.

19 F is a letter transmitting the affidavit (22 F) apparently. Boone and Rerdell swear that so far as the signature is concerned—and I think more than that, but I wish to refer for the moment to the record, for I desire to be accurate in these things—they swear to it as being the handwriting of Dorsey, so far as the signature is concerned, certainly; that was naturally placed there at that time because of the day when it was transmitted, the other letters of transmittal being signed mostly by Rerdell. At the time that that letter was transmitted Mr. Rerdell was not here. As to this 19 F, this is all in the handwriting of S. W. Dorsey, including the signature, John W. Dorsey, as testified to by Rerdell, judging entirely from the handwriting. [Page 2337.] Mr. Boone, at page 2692, says of 19 F:

This is a letter transmitting a sworn statement of the number of men and animals on the route, 38145, and resembles the handwriting of S. W. Dorsey.

Q. Is it your best judgment that it is his handwriting?

Mr. INGERSOLL. That is not the way to ask it.

Q. In whose handwriting is it?—A. It is a handwriting entirely different from Stephen W. Dorsey's.

The COURT. That is not an answer to the question. Who wrote that letter, if you know, judging from the handwriting?

The WITNESS. It resembles the handwriting of Stephen W. Dorsey; it is a disguised handwriting. It is different from the ordinary way he writes.

Q. It is a disguised hand which you say resembles that of Stephen W. Dorsey?—A. Yes, sir.

Q. Whom does it purport to be signed by?—A. John W. Dorsey.

Q. Is it the handwriting of John W. Dorsey?—A. No, sir; it is not.

That is as far as Mr. Boone goes. Mr. Boone thinks the handwriting resembles Mr. Dorsey's, and says positively that it is not John W. Dorsey's. Mr. John W. Dorsey does not seem to have been asked as to the letter, but Mr. Boone says it is not Mr. John W. Dorsey's handwriting. Rerdell says it is in the handwriting of Mr. Stephen W. Dorsey, and you will bear in mind as to that that it is natural it should not be in the handwriting of Mr. Rerdell, because, according to the date of it on the back, it was written at a time when Mr. Rerdell was admittedly out West. Mr. S. W. Dorsey does not seem to have been asked anything more than in regard to the oath which I have already shown you. He does not seem to have been asked upon that subject by anybody. So we must stand on the evidence of Rerdell declaring that it was Stephen W. Dorsey's handwriting, and of Boone making the qualified statement that it resembled his handwriting. When Stephen W. Dorsey came upon the stand he was not asked anything about it.

Now, I am going to show you the oath 81, which is a little dilapidated [handing it to the jury]. That is an oath upon the Eugene City and Bridge Creek route, one of the routes which passed to Stephen W. Dorsey. It is signed by John M. Peck, and there is the same evidence of insertions. You will see that the "four," "nine," "fifty," and "ten" are all over erasures, as also these words "ten," "thirty," "fifty," "nine," "four," and apparently the route (44140), though I speak with less certainty as to that, are all obviously inserted in blanks, and are written, in a measure, I think, with different ink, and the most of them over erasures.

As to those affidavits, I desire simply to sum up by saying that as to those which I have shown you, other than the one now before you, Boone swears the filling in to be in S. W. Dorsey's handwriting; Rer-

dell swears it to be in S. W. Dorsey's handwriting; and I am under the impression—though Mr. Merrick thinks I am wrong—that as to one of them Mr. Rerdell stated that he saw it filled in. As to the others, I see by my memorandum here that Mr. Rerdell does not say that he did see them signed. He simply testifies to the handwriting and nothing else.

Now, as to 9 O, which is a petition that Mr. Rerdell states that he saw Mr. Stephen W. Dorsey write. He so states on page 2345:

Q. I hand you a petition on this route, marked 9 O, and ask you if you know in whose handwriting the body of that petition is?—A. The handwriting of S. W. Dorsey.

Q. In saying it is in the handwriting of S. W. Dorsey, do you speak from your knowledge of the handwriting solely, or from any other knowledge; and, if so, what?—

A. I saw S. W. Dorsey write this petition.

Q. When?—A. It was in April, 1879.

And of course it is in a disguised hand, and I hand it to you for your inspection in connection with the letter to which I called your attention, and which is partly in a similar disguised hand. As to this 9 O, at page 2699, Mr. Boone says:

I should say that Stephen W. Dorsey wrote that—wrote the heading.

Mr. BLISS. Yes; I mean the heading.

I have one or two more papers here that I want to call to your attention in the same connection, and one of them is 5 E, which is the letter transmitting one of the oaths on the Trinidad and Madison route, and is dated on the 28th of April, 1879. On page 2691 Boone testifies:

It has the appearance of being in the handwriting of Stephen W. Dorsey.

Q. Is that your best judgment?—A. Yes, sir.

The COURT. Let me see it. I would know it myself now.

On page 2336 Mr. Rerdell says:

All of this, including the signature of John W. Dorsey, was written by S. W. Dorsey.

Q. When you say it was written by S. W. Dorsey, do you speak from your knowledge of his handwriting, or from your knowledge of the fact?—A. It is from my particular knowledge of his handwriting and the circumstances connected with it.

As to this paper, 5 E, Mr. S. W. Dorsey makes no denial of it being in his handwriting. I think he was not questioned about it.

30 S is a letter transmitting oath on the route from Rawlins to White River. That is stated to be in the handwriting of Stephen W. Dorsey, and so far as I have been able to find Mr. Stephen W. Dorsey was not questioned about it on the stand in any manner.

The COURT. Mr. Stephen W. Dorsey was not able to see, of course.

Mr. BLISS. No, sir; not able to read the papers. But as to the others he was questioned as to whether he did certain things, and he had no recollection of it. As to this and one or two other papers I have just referred to no question whatever was put to him.

There is another series of papers similar to these in their general character, but which were undoubtedly filled up by Mr. Rerdell, and Mr. Rerdell states that the filling was done by direction of S. W. Dorsey, Mr. Dorsey in some cases, if not in all, I think he said, gave the figures which were to be inserted. Upon those papers, of course, there is no opportunity for a test by handwriting. The only opportunity there was for a test was by denial, and that we were not favored with, I think.

One of the papers that I now refer to, for instance, is 20 F, which is another oath upon the Ojo Caliente route. There is an erasure there, but it is apparently the erasure of the name of the route. There is an erasure under the "5" in the number of the route, 38145, and "Ojo Caliente" is over an erasure, and "Parrott City" is over an erasure. The

"three" before "times," "three" before "men," and "seven" before "animals" are obviously inserted in blank. The "eighty" is the same way, I think; the "9" and "27," I think you will see, were obviously inserted in figures at different times. At page 2337 the evidence as to 20 F is this:

The body of this is written by myself—

Says Mr. Rerdell—

all except the signature of John W. Dorsey and "State of Vermont, Addison County; Rufus Wainwright, clerk of Addison County Court, 11th;" all of the remainder was written by myself.

Q. By whom was the signature of John W. Dorsey written?—A. Written by John W. Dorsey.

Q. Were the words designating the numbers in there before the signature of John W. Dorsey was affixed, or not?—A. No, sir; they were written afterwards.

Q. In other words, the affidavit was taken in blank, was it?—A. The affidavit was taken in blank, and the figures 38145 and the words Ojo Caliente, Parrott City, 3, 7, 30, 8, 27 were filled in by me after—

Q. [Interposing.] After the oath was taken?—A. Yes, sir.

Q. In other words, the words designating the route, the place from which and to which, the number of men and animals, and the time were all written in afterwards?—A. Yes, sir.

Q. How came you to do that?—A. I did that under the direction of Stephen W. Dorsey.

Mr. Stephen Dorsey does not seem to have been questioned about 20 F, although he was questioned about 19 F, 21 F, and 22 F. I have it on my memorandum—and I may just as well state it now, and give Mr. Dorsey the benefit of it—that he somewhere denies that he ever gave any directions to have any affidavits filled up. In another place he says that he did, on one occasion, by telegraph—where there were two routes upon which some affidavit was wanted—give some directions, but he claims that he did not consider that those were such directions as would authorize the filling up of an affidavit after it had been sworn to. And in two other places, at least, where he is questioned, Mr. Dorsey says that he does not recollect whether he did or did not give directions to have a particular affidavit filled up. He does say in answer to his own counsel (I think it is his own counsel) that he never gave any such directions, and subsequently he says that he does not recollect it. It does not exactly appear what that transaction was with reference to which he telegraphed in connection with some oaths, to which I have just alluded.

24 S is the affidavit which is sworn to by Perkins, the subcontractor out in Rawlins, and that was admittedly sworn to in blank; the evidence of Smith, the notary, of Perkins, and Rerdell, and I think of somebody else, being that those figures, 1, 3, 84, 8, and 24 were not in there, though the route number was in. As to those, Mr. Rerdell's testimony is that the filling up was done by him.

And let me say as to all those cases in which Mr. Rerdell says that the handwriting is his, that Mr. Boone's testimony entirely agrees with his; and in all those cases in which Mr. Rerdell states that it is the handwriting of S. W. Dorsey, Mr. Boone either says the same thing, or, as in the case I referred to, there was the qualified statement that it looked very much like S. W. Dorsey's handwriting, and was disguised.

On page 2231 we have the testimony as to 24 S, which is that Mr. Rerdell says that he himself filled it in here. At page 2350 he says:

Q. I hand you an oath marked 24 S, purporting to be taken by Charles F. Perkins. I am not sure but you were examined about that?—A. I was.

Q. What have you to say about it? Give it briefly, and we will get it in the record in this connection.—A. The body of this is written by myself; it was sent in

blank to Charles F. Perkins, and came back in the manner in which it was sent, and I filled in the blanks that were left; put in the words "one," "three," "six," "eight," and "twenty-four."

Q. How came you to do that?—A. I put them in under the direction of Stephen W. Dorsey.

6 D is an oath on the Toquerville and Adairville route. That, however, is an oath of John M. Peck. [Oath handed to jury.] The changes are not so obvious there. It is not so obvious about the word "three." The "thirty-three," "seven," "five," and "thirty-five" are over erasures, and the "eight" was obviously inserted at some time in a blank. As to that paper there is considerable testimony in the case. It was taken up in the examination of affidavits apparently with a little more care than was given to the most of them. At page 2241 Mr. Rerdell says:

All of that is in the handwriting of John R. Miner.

Q. Do you know Miner's handwriting?—A. I do.

Q. Have you seen him write?—A. Often. The figures "41119" and "seven times a week," "three" (3), and "six (6), thirty-three, seven, five (5), eighteen (18)," are all in my handwriting.

Q. How came you to fill in with those words and figures the blank affidavit which appears according to your statement to have been in Miner's writing?—A. This was one of the blanks that was turned over at the time of the separation of the interests and when the petition had arrived for an increase of service on route 41119, from Toquerville to Adairville.

Which, you will remember, passed to S. W. Dorsey.

Mr. S. W. Dorsey instructed me to make up one of the affidavits, and I made the calculation myself and filled this in.

Q. What specific instructions did he give to you with reference to the calculation you were to make?—A. Well, he gave me the per cent. of the increased pay.

Q. How much per cent. of increase was there to be?

And then counsel have something to say.

The WITNESS. I can only give the conversation in substance.

Q. Give it in substance; and where you cannot recollect the language, give it in language that conveys the exact substance as near as you can remember it. And whenever I ask you for a conversation hereafter, give the whole of it.—A. He said to fill out one of Peck's affidavits for daily service or seven times a week, on the Toquerville and Adairville route, and to preserve the proportion of from 150 to 200 per cent. increase.

He afterwards makes a correction about that, and brings the percentage, I think up, to 250.

I asked him to make the calculation. "Oh," he says, "you can make it. That is all you want to do—preserve the proportion."

Q. Can you explain to the jury what you mean by preserving the proportion, and what you mean by 150 to 200 per cent.?—A. Yes, sir.

Then the question is waived, apparently, and afterwards there is this answer:

A. I took the number of men and animals on the then schedule and added them together as one part. I then took the number of men and animals on the proposed schedule and added them together. Then I said, as the first is to the second so is one hundred to the answer, getting as near to the proportion as I could. It is very rarely that you can get it exactly.

Q. Did you at that time have any information in regard to the number of men and animals used on the existing schedule?—A. I did not, sir.

Q. Did you have any information of the number of men and animals that were necessary on the proposed schedule?—A. I did not. I only carried out the idea of the percentage of increase without any regard to the other. I did not know.

Q. You say that Mr. Dorsey told you to take one of Peck's blank affidavits. How many of these blanks did you have?—A. I had quite a number of them. I do not recollect the number.

Q. For what purpose were they kept?—A. For that purpose, to be used whenever expedition was anticipated or to be allowed, for filing in the department.

Then, further on, at page 2278, the matter is recurred to, and the correction is made from 150 to 250 per cent. instead of 200 per cent. The affidavit comes up again on pages 2334 and 2335, where it is testified over again in the same way. Then on page 2361 this occurs :

Question. You have spoken of having inserted certain numbers or figures in some of these affidavits made for expedition by the direction of Mr. S. W. Dorsey ; were those directions general or specific as to each case?—Answer. They were specific, except in one case.

Q. What case was that?—A. On the route from Toquerville to Adairville, No. 41119, the instructions were general there, simply to make it up covering a certain percentage of increase.

Q. On the others, when you say the directions were specific, what do you mean? What were the directions?—A. In every case he furnished me with the numbers to put in.

Mr. Stephen Dorsey was examined with reference to that, and I desire that the jury should understand precisely what he said and precisely what the facts are alleged on the one side or the other in this case, and not only here, but everywhere else. At page 3945 this appears :

Q. Did you give Rerdell directions as to filling up one of these blank affidavits?—A. Well, the only recollection I have about that is that he telegraphed me, or wrote me, when I was West, in 1879, that the department required a shorter schedule on two routes, I think, but what reply I made to him I don't remember.

Q. Did you not direct him to fill up a blank affidavit and preserve the proportion of 150 to 200 per cent.?—A. Oh, I don't think I did.

Q. What is your recollection about giving him directions as to filling up the affidavit?—A. My recollection is that I did not, but I don't know ; it is possible that I might have done it.

That being in Mr. Miner's handwriting, Miner says, at page 4245, substantially that he does not remember anything about it; that he wrote it; that when he wrote it it was clearly intended for Peck, because it reads "Territory of New Mexico, county of Colfax," but that he does not remember that piece of paper, and—

A. If it did not happen to appear in my handwriting I should not know that I had ever seen it before. I have no recollection in regard to it.

Q. Was it a blank when you sent it to Peck?—A. I don't know.

Q. If Rerdell filled it up afterwards it must have been a blank, must it not?—A. I don't know anything about it, whether he filled it up afterward or before, or at any time.

Q. Did you send it to him, after you wrote it, to put in the number of men and horses, and to send it back?—A. I don't think I ever gave it to him afterward or before ; I don't remember anything about it.

Q. That is your memory about it?—A. I said I don't remember anything about it.

Q. Nothing at all about it?—A. I do not.

Q. Is that John M. Peck's signature?—A. I think it is. It is not my handwriting, that is certain.

6 Q is an oath upon the Silverton route, another of the Dorsey affidavits, made in Vermont on the 21st of April. In the same way you will see that the number of the route is filled in the blank, and that the "3," "10," "15," "7," "6," and "30" were obviously filled in blanks ; and not only that, but that all except the number of route (38156), was obviously written over erasures. [Oath handed to jury.] Now, as to that Mr. Rerdell testifies, at page 2347 :

A. The body of this is in my handwriting. The signature is that of John W. Dorsey.

Q. Were the numbers in there before Mr. Dorsey's signature was affixed?—A. No, sir ; I put those in after it was sworn to.

Q. After the jurat was there?—A. Yes, sir.

Q. Do you know when you put them there?—A. Either on the 5th or 6th of May.

By Mr. INGERSOLL :

Q. What year?—A. 1879.

By Mr. BLISS:

Q. When you put in those numbers there, how came you to select the particular numbers?

The WITNESS. On this?

Mr. BLISS. On any one of them; take that, for instance.

A. On all that I have had presented to me so far, that I entered, except on the route from Toquerville to Adairville, 41119, the figures were made up by S. W. Dorsey.

Q. By whose direction did you put them in, if by anybody's?—I put them in by the direction of S. W. Dorsey.

Q. Where did he tell you to put them?—A. To put them in the blanks that were left in the affidavits that were sworn to in blank.

Mr. CRANE (foreman of the jury). I do not want to trouble you too much——

Mr. BLISS. [Interposing.] No trouble.

Mr. CRANE. If the affidavit was filled up and sworn to, how came those erasures there?

Mr. BLISS. I cannot tell you. I notice that we failed to ask the witness on the stand how the erasures came to be there. It would look as if they had filled it up with some number, and then for some reason had changed them, I know not why. The only thing I can suggest consistently with the testimony—for I have no right to go outside of the testimony—is this, and it is borne out by the evidence in the Pueblo and Rosita route, where there are two affidavits sworn to on the same day. One of these appears to have been filed in the department on the 6th of May, and the other one appears to have been filed in the department on the 8th of May. In the mean time there is a letter signed with John Dorsey's name requesting that the first affidavit may be withdrawn to enable him to correct errors. The next day the second affidavit was placed on file, and in that the numbers of men and horses are stated considerably less than in the first. The number in the affidavit originally filed on the 6th of May was stated so absurdly large for that route—I think the number of horses stated as necessary upon that little route was thirty-eight—that it is very obvious to me that the fact was that somebody said: "Here, that is absurd; these numbers are too large for anybody to believe, or for anybody to act upon; you have got to make a change in respect to that." And there came a change on the next day. The one filed on the 6th of May states the number of animals necessary on the proposed schedule as thirty-eight, the length of the route being forty-nine miles nominally, but really only thirty-five. The other affidavit, filed on the 8th of May, puts the number of animals down to eighteen. The number then necessary on the existing schedule was, in the original affidavit which was withdrawn, stated as three men and twelve animals. In the new one they put in, it was two men and six animals. While in the old one it was seven men and thirty-eight animals necessary on the proposed schedule, in the new one they put it at six men and eighteen animals. My idea is that somebody suggested that the idea of having seven men and thirty-eight animals upon that route was an absurdity, and said that the affidavit must be withdrawn, and it was withdrawn. Then another blank was taken and these smaller numbers inserted. And whoever was engaged in that business, gentlemen, did not mean to be the loser by the transaction, because he kept the proportions in each affidavit between the figures on the proposed schedule and those on the present schedule, so that the amount that would be allowed to the contractor would be the same whether he took the one affidavit or the other. But it was too absurd a thing to leave on the records of the Post-Office Department the idea that thirty-eight animals were necessary to carry on that route,

which was only thirty-five miles long, with a schedule of ten hours. The inference I draw from that is borne out by still another fact in the case, a fact which is sworn to by Mr. Rerdell, and they had the opportunity to contradict him if there had been any possibility of doing so, because he stated that it was done at the instigation of Mr. Turner, and yet Mr. Turner did not contradict him. With reference to the Trinidad and Madison route, both Rerdell and Boone stated that the word "twelve," which was written over, was in Rerdell's handwriting (in 6 E), while the balance was in the handwriting of others, the filling up being in the handwriting of S. W. Dorsey. At page 2336 Mr. Rerdell is asked:

Q. I hand you 6 E, and ask you in whose handwriting that is. That is an oath?—A. Yes, sir. The body of this was written by W. F. Kellogg. The signature of it is that of John W. Dorsey. The figures 38140, the word "three," the words "one," "four," "three," "three," "eleven," and the word "subcontractor," were written by S. W. Dorsey. The word "twelve" was written by myself.

Q. Were those things written in by Dorsey written before or after the signature of John W. Dorsey, do you know?—A. No, sir; I can't testify to that.

Showing that Mr. Rerdell was not present at the insertion of these things by Mr. S. W. Dorsey. And here I may say that when that question was up before there was a difference of opinion between myself and Mr. Merrick, and Mr. Merrick was right and I was wrong, for Mr. Rerdell did not state that he saw Stephen W. Dorsey fill them up; he stated that as to the petition 9 O, but not as to the others. He confined himself to his opinion entirely as to the question of handwriting, in which Mr. Boone agreed with him in every case, and in which nobody contradicted him. Therefore he says in answer to this question:

Q. Were those things, written in by Dorsey written before or after the signature of John W. Dorsey? Do you know?—A. No, sir; I can't testify to that. The word "twelve" that I wrote in was written afterwards and after it was filed in the Post-Office Department.

Q. After it was filed in the Post-Office Department—how came that?—A. The schedule that was contemplated was a longer schedule than twelve hours, and they were told that they had to bring it down to twelve hours.

Mr. INGERSOLL. I object to that.

Q. Who told you that?—A. Mr. Turner.

Q. You were told that at the Post-Office Department; what then was done?—A. He handed me this and I erased, I think, the word "fifteen" and put in "twelve."

Q. Where was that done?—A. That was done in room 22, Post-Office Department.

Q. Is there more than one room 22 in the Post-Office Department?—A. I forget what floor it is on, but it is on the same floor where the contract offices are generally located; it is the second story above the street, I believe.

So you have the evidence that on the Pueblo and Rosita route two affidavits were filed; the one containing the large numbers was withdrawn, and the next day the small one filed, but the proportions were kept up.

In the Trinidad and Madison case you have the evidence that the affidavit was altered at the suggestion of Mr. Turner, in a room at the Post-Office Department.

In answer to the question which the foreman put me as to why these figures were written over erasures, I suppose that an affidavit, having been made up at one rate and with one set of figures, was taken and altered and another set of figures inserted, either because it was done handily there in the Post-Office Department, or because at the office there might not, for the moment, have been any further supply of blank affidavits signed by the contractors. But when the witness was on the stand we neglected to call his attention to the fact that these figures were over an erasure, and therefore we have no authority to do anything upon that subject except to draw an inference from similar transactions in the other cases to which I have referred.

These are matters of detail, gentlemen, and I am aware that it is tedious, and yet, at the same time, the jury have manifested so much desire to learn everything there is about it that I have taken much more time than I anticipated.

Mr. MERRICK. Do not hurry yourself; it is very important.

Mr. BLISS. I find also on page 3936 that there is a statement to which I wish to call your attention, in the testimony of Mr. Dorsey:

Q. At the time of this distribution of these routes, in view of this law of Congress which I have just read and the affidavit that was required by the Post-Office Department as the basis of the pro rata calculation, did you not also divide up among you a lot of blank affidavits?—A. I do not remember about that.

Q. Do you know whether you did or not?—A. I do not know.

Q. Do you not know that it was understood between the parties that affidavits should be furnished, if necessary, respectively, by one side to the other?—A. Oh, there may have been some conversation of that sort.

Q. Was it not a fact that you did have for your routes a quantity of blank affidavits?—A. I do not remember whether it was or not.

This is Stephen W. Dorsey's testimony.

Q. You cannot say whether you had them or not?—A. No, sir. All those things were turned over to Rerdell; all the papers, everything in relation to the case, he had charge of, and I did not have anything to do with.

Q. You turned them over to Rerdell as your agent?—A. As my employé.

Q. And you say you did everything that you could do to obtain expedition and increase?—A. Everything that was lawful and proper where I thought a route ought to be increased.

Q. Did you not direct Rerdell to get all the increase and expedition that he could?—A. Probably.

Q. Do you not recollect that you did?—A. I don't remember.

Q. Do you remember what instructions you gave to this agent of yours to whose custody you committed this property?—A. I do not remember all the instructions; I suppose I gave such instructions as I thought necessary at that time.

Q. Can you not recall what instructions you gave him?—A. Oh, no, sir; I cannot recall.

Q. Did you leave him in control, management, and manipulation of the business free and undisturbed by any intervention on your part?—A. Left it absolutely to him. After I left here the 27th of June, 1879, up to July, 1882, the expiration of the term of these contracts, I do not believe I had any more to do with them, Mr. Merrick, than you had, or any one, and I did not care three straws about them.

Now, gentlemen, there is the evidence upon that subject. The affidavits have taken up so much of my time, and I have been so much interested in them, that I shall ask the court to allow me to withdraw my suggestion of an extended session to-day, and I will endeavor to be very brief on Monday morning. But before the adjournment to-day is probably as good a time as any to consider the testimony in regard to these affidavits. I ask you to bear in mind, gentlemen, that, constantly, these affidavits do not conform to the regulation. They are not affidavits which, in accordance with the regulation, state the number of men and horses which will be required on the contract schedule, but some of them state the number that will be required on the time then running, but with more trips than are then named in the schedule; some on the time that will be required on the then slow time, but running the full number of trips that they seek to get; and some not so many. They are inconsistent with the regulation right along. I have referred to that regulation before, and I refer to it again now, and ask you to bear it in mind. Mr. Chandler was correct in regard to it. Mr. Chandler, I may say, is almost always correct. Mr. Chandler always seeks to be correct, always seeks to conduct himself properly and fairly before a jury, as a lawyer ought. Mr. Chandler told you—and I am happy to adopt that statement—that the regulation had the binding effect of law upon the Second Assistant Postmaster-General, and upon all these parties dealing with

him. And yet one of the affidavits presented to the Second Assistant Postmaster-General did not conform to that lawful regulation. The other the Second Assistant Postmaster-General accepted, and based his action upon an affidavit which did not conform to that lawful regulation. I ask you, therefore, in considering these affidavits, to bear that fact in mind, that they were illegal in their very form, and entirely without regard to the question of any additions or insertions.

Mr. CRANE (the foreman of the jury). Cannot the court sit to-morrow, your honor? I would like to say, on the subject, that we have now been engaged on this case five months, during which time my business has been drifting along like a ship at sea without a rudder. I was taken by surprise when I was called upon to act as a juror in this case, but I procured somebody to take my place in my business, and now I feel very anxious to get through. Furthermore, I have a premonition that if this trial is spun out much longer it may come to a conclusion in consequence of the sickness or death of some one of the jury.

The COURT. I think the jurors have rather improved on it. We are not so far now from the end of the case as you probably apprehend.

Mr. CRANE. In a few days I shall have business that will call me out of town, and I should very much like to attend to it.

The COURT. I should be glad to sit continuously, but it has not been the habit of the court, and if the court had adopted that method, probably the trial would have been broken up before this, if we had sat every secular day including Saturdays.

Mr. EVANS (a juror). I would like to keep Colonel Bliss talking until 10 o'clock to-night.

Mr. BLISS. Your honor, I think that is the highest compliment that has been bestowed upon any counsel in this case.

The COURT. I have observed indications that seem to point in the direction that some of the jury have a different opinion about sitting on Saturday.

Mr. WILSON. [To Mr. Bliss.] Can we not now settle that little matter about Turner?

Mr. BLISS. Mr. Wilson wants me to call attention to the fact that he thinks Mr. Turner by some general language did deny Mr. Rerdell's statement of the alteration of that affidavit in his presence.

Mr. MERRICK. That is a matter for argument.

Mr. BLISS. That is a matter for argument, and I propose to read the testimony on that subject on Monday morning.

Mr. MERRICK. I object to him doing anything of the kind.

Mr. WILSON. Colonel Bliss has done justice to my colleague, Mr. Chandler, and now I would like him to do the same for me.

Mr. BLISS. You gentlemen will have an opportunity to follow me, and you can then sum it up, if you can make a consistent theory upon which to sum it up. You cannot compel me to state your matters for you. I will read, the first thing on Monday morning, the passage Mr. Wilson refers to.

Mr. MERRICK. I shall object to it.

Mr. BLISS. This is the first disagreement on our side.

The COURT. The court will allow it.

Mr. MERRICK. They do not say that Colonel Bliss has misstated it.

Mr. WILSON. I have not said a word.

The COURT. I think, gentlemen of the jury, it is too late in the trial to change our habit. We shall adjourn over until Monday morning.

Thereupon (at 4 o'clock and 4 minutes p. m.) the further hearing of this case was adjourned until Monday morning, May 7, 1883, at 11 o'clock.

MONDAY, MAY 7, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. BLISS. [Resuming.] In looking over the printed record, gentlemen, of what I have said to you heretofore, I discover that I have made one omission that seems to me to be with regard to a matter of sufficient importance——

Mr. WILSON. [Interposing.] Colonel Bliss, before you go on——

Mr. BLISS. [Interposing.] I will fulfill my promise.

I refer to the endeavor, as was alleged, to suppress evidence adverse to them on the files of the department, where it might meet the eyes of unfriendly investigators. The attempt to bribe the man Abbott was mentioned. I desire to call your attention in passing, and without enlarging upon it, to a similar transaction in connection with Mr. Nephi Johnson on the Toquerville and Adairville route. The condition of things was this: That on the 12th of April, 1879, these defendants wrote there to have petitions gotten up, and that on the 10th of July they announced that the service had been increased to seven trips a week and the time reduced to thirty-three hours, although the petitions asked for forty-eight hours. Finally, on the 3d of April, 1880, we find the following letter, which is on page 982:

DEAR SIR: We have concluded to increase your pay \$1,556 per annum, in order to meet the objections you have made in regard to route 41120. This action is voluntary on our part, and is intended to cover all losses on account of failure of trips or loss of time, and in future you must be expected to bear all fines and deductions. We make this allowance in order to have the service remain as it now exists, as I find that you have been writing letters to your Delegate asking to have the schedule time changed to what it was originally. If the schedule time on this route were changed back to where it formerly was, at your pay, we would lose considerably. As it is we have, of course, a small profit.

If the schedule time were changed, we certainly would endeavor to have it put back to once a week.

Hoping that you will perform the service in the future so as to avoid all fines and deductions, and further, that you will write to your Delegate asking him to withdraw all objections as to the present schedule——

You will see that they voluntarily added to his pay \$1,556, that being the fractional amount necessary to carry his pay up to \$10,000, and you see that they say:

As it is we have, of course, a small profit.

They were then paying Mr. Johnson \$10,000, and they were receiving \$20,894.22. That was the small profit. They had been paying him \$8,444, and apparently they feared that he would throw up the service, and so they voluntarily added \$1,556, making his total pay \$10,000. They say, you see:

If the schedule time on this route were changed back to where it formerly was, at your pay, we would lose considerably.

In point of fact, if it had been changed back to where it was, instead of losing considerably, they would have been receiving \$5,200 and paying out only \$3,381. Not satisfied with that, or the petitions not disappearing from the files as they desired, on the 9th of May we find this paragraph in a letter:

I would like you to write at once to Mr. Cannon, asking him to withdraw his objection to the present schedule as proposed in your letter.

And any papers that may have been on file containing objections to that schedule promptly disappeared.

Now, gentlemen, at the close of my argument on Friday last Mr. Wilson called my attention to the fact that I had made a statement, as I did, that Mr. Rerdell stated that he altered an affidavit by putting in the word "twelve" in the presence of Mr. Turner, and I stated, as I believed correctly, that that was not denied by Mr. Turner. Mr. Wilson thinks that it was denied, and I therefore give him the benefit of the statement that Mr. Turner does make a general statement that he had no knowledge of the alteration of any affidavit whatever, which of course implies that he did not see it. Having made that statement, I have also to correct the other statement, and say that while Mr. Rerdell states that he made the alteration at the suggestion of Mr. Turner that they desired less time and to reduce the schedule to twelve hours, and that he says he made it in one of the rooms of the contract office, it is possible it may have been made without Mr. Turner's having seen it.

I referred on Friday to the affidavits sworn to by John W. Dorsey in Vermont on April 21 and in Washington on April 26.

Mr. WILSON. If you will allow me, I would like also to call your attention to your remarks, on page 4824, in relation to what you said about Fitzalon, Raton, and Pagosa, so that before you conclude, if you desire to do so, you can correct your statements.

Mr. BLISS. What is there that is not correct?

Mr. WILSON. The incorrectness is that you say he made retroactive orders in those cases when the record is right the other way. That is all. I simply desire to call your attention to that fact.

Mr. BLISS. If you will take the pains between this and recess to look at the record and see where I have been incorrect I will be glad to correct my remarks. My recollection still is as I stated it. Of course if you gentlemen have gotten out of the idea of summing this case up on the same principles that you kept books, grave-yard principles, and suppressing everything, it will be unnecessary to interrupt me; but if you do not propose to do it I will give you the benefit of correcting any misstatement that I may make.

Mr. WILSON. I beg your pardon. You will see I am not trying to suppress anything. I am trying to disclose something.

Mr. BLISS. I am aware of that.

I had referred to the affidavits made by John W. Dorsey on the 21st and 26th of April, as he stated, at the instigation of Rerdell, as showing to you that Mr. Dorsey was not telling the truth. It is impossible that they could have been made at the instigation of Rerdell, because Rerdell was thousands of miles away. I referred in the same connection to the fact that Mr. Rerdell swore that he sent affidavits in blank to Mr. Dorsey as well as to Mr. Peck just before he went West in April, 1879. I refer to it now merely as bearing upon a matter to which I am about to pass and to treat of with a little more accuracy than I have hitherto done. With reference to Mr. Stephen W. Dorsey I desire to call your attention briefly to this: That the oath on the Trinidad and Madison route, being 6 E, was sworn to before Kellogg by John W. Dorsey on the 26th of April, that the body was written by Kellogg, and that the word "twelve" was written by Rerdell, being the word which he states he interlined in Turner's room after the conversation with Turner, and which word appears as written over an erasure. That affidavit was filed on the 30th of April. The order was made upon it on the 9th of May. Mr. Rerdell states that as he left here to go West before it was filed, and did not return until the 5th of May, he cannot say whether the words other

than the "twelve" were inserted before or after it was sworn to; but he does say that they are in the handwriting of Mr. S. W. Dorsey, and that he found the affidavit on file when he returned here on the 5th of May, and that then, at the suggestion of Turner that the department desired shortened schedule, he inserted the word "twelve" over an erasure. Mr. Boone also swears that that affidavit was filled up by Stephen W. Dorsey. Mr. Stephen W. Dorsey says he does not think it was, but he has no recollection of it whatever. That affidavit was transmitted in letter 5 E, dated the 29th of April, which is sworn to as being in Stephen W. Dorsey's handwriting, somewhat disguised, and that fact is not denied by Mr. Dorsey in any manner. You will see, gentlemen, that that affidavit having been filed while Mr. Rerdell was away would have to be altered and transmitted by somebody else; I say altered because it was filled up by Stephen W. Dorsey. The evidence is that it was transmitted by him also, and he does not deny it on the stand.

The affidavit, 22 F, on the Ojo Caliente route, was sworn to before Kellogg by John W. Dorsey on the 26th of April. The body was written by Kellogg. Boone says the filling up is in the handwriting of Mr. Stephen W. Dorsey, as he thinks. He does not think the signature of John W. Dorsey is genuine. Mr. John W. Dorsey also says it is not his signature, if I remember right. Mr. Rerdell says that Stephen W. Dorsey wrote the filling-up, and that he states it not from having seen it, because he did not see it. He says he states it from a knowledge of his handwriting. Mr. Stephen W. Dorsey says that he has no recollection about it. He does not think he did. Gentlemen, that affidavit was transmitted in letter 19 F, which was filed on the 24th of April. The letter transmitting it is dated the 23d of April, and was filed in the department the 24th of April. Yet the affidavit itself bears date the 26th of April. Mr. Boone says that the letter of transmittal of that affidavit resembles Stephen W. Dorsey's disguised hand. Mr. Rerdell identifies it as Dorsey's disguised hand. Mr. Stephen W. Dorsey says, "I don't think I did write it. I have no recollection of doing so." He fails to answer the distinct question put to him whether he will deny that he wrote the letter transmitting it. The reason for that, like the reason for the other, is that Mr. Rerdell was absent. In that case there was something peculiar. The oath, 20 F, had been prepared for a reduction to eighty hours. 22 F, which was the one acted upon, and which Stephen Dorsey filled up, was for a reduction to fifty hours. The oath, 20 F, having been prepared for eighty hours, had been sworn to by John W. Dorsey in Vermont on the 11th of March, and was all, including the filling up, in the handwriting of Rerdell, though he says the filling up of the figures was done by direction of Stephen W. Dorsey. It was transmitted to the department in the letter, 21 F, on the 16th of April, the day before Rerdell went West, and was filed the same day. The letter, 21 F, is all admittedly in the handwriting of Mr. Rerdell. The condition of things, therefore, was this: That Mr. John W. Dorsey having sworn in Vermont to an affidavit looking to a reduction of eighty hours, and Mr. Rerdell having transmitted that affidavit to the department on the 16th of April and then gone West, in some way or other it was arranged between Brady and Dorsey that instead of a reduction to eighty hours there should be a reduction to fifty hours. The reduction to fifty hours required a new affidavit, and that affidavit was filed, and is 22 F. The filling up of that affidavit was stated to be in the handwriting of Stephen W. Dorsey, and was transmitted in the letter which it is not denied that Stephen W. Dorsey wrote. The order in that case, gentlemen, was made on the 29th of April, before Mr. Rerdell returned.

They were determined to get that expedition through on the Ojo Caliente route at once. Mr. Rerdell having left on the 17th of April, and having returned here on the 5th of May, the fine work that was to be done in that case was done by Mr. Stephen W. Dorsey. We find him coming to the front on that occasion. You will bear in mind, gentlemen, that this was just after the admitted division of the routes. Mr. Dorsey states, and I shall have occasion to call your attention to it again, that the division was as of the 1st of April, and that it had so far gone into effect that Mr. Rerdell had been employed by him before he went West, and went West in consequence of that division. Therefore Mr. Stephen W. Dorsey had come into the sole ownership of this route at that time by his own statement, and Mr. Rerdell, the factotum, having gone West, Mr. Stephen W. Dorsey came forward and made these alterations and transmitted these papers.

25 S, the oath on the White River route, was sworn to before Kellogg on the 26th of April, 1879. The body of that affidavit was written by Kellogg, and the filling up is sworn to be by Stephen W. Dorsey. Rerdell says he does not know whether the filling up was before or after he went West. It was filed on the 26th of April, after he had gone West, and it was transmitted also in a letter written by Stephen W. Dorsey, and not denied by Stephen W. Dorsey on the stand. The filling up of this oath was not denied by Stephen W. Dorsey on the stand. The order in that case was made on the 1st of May, 1879, before Mr. Rerdell had returned, so that Mr. Rerdell could have had nothing to do with that whatever.

As to the oaths filled by Mr. Rerdell, as he alleges by direction of Dorsey, the oath on the Eugene City route, 8 I, sworn to before Taylor, in New Mexico, on the 22d of January, was filed here the 24th of May, the order being made upon the 26th of June, 1879. The body of that oath was written by Miner. You will bear in mind, gentlemen, that when that oath was sworn to on the 22d of January, 1879, Rerdell, as they say, had nothing to do with this route out there. It was one of the Miner and Vaile routes. Mr. Miner tells you that Rerdell was never in their employ but seven days. Yet the body of this oath was written by Miner, and sworn to by Peck, in New Mexico, on the 22d of January, 1879, while the filling up of the oath is beyond all question Rerdell's. It was not filed until the 24th of May, 1879, after Stephen W. Dorsey had come into the sole possession of this route, and after Rerdell had become his factotum, as he states, in charge of everything, and then, as we say, or at some time after the 1st of April, that filling up was done by Mr. Rerdell. Mr. Rerdell says so, and all the facts go to show it. It was transmitted to the department in a letter dated the 24th of May, and filed on that day, which was written by Rerdell. 24 S, which is the Perkins oath on the White River route, was sworn to on the 26th of March, and was filed here on the 16th of April, before Rerdell went West. The order was made upon that, and upon the other affidavit to which I called your attention, 25 S, which Stephen W. Dorsey does not deny that he filled, and which he filed on the 26th of April.

You will bear in mind, gentlemen, that while the jacket recites that the order on the White River route was made on the oath of Perkins as subcontractor, and while Brady in his statement to Congress so said, yet the calculation turned out to be based not upon Perkins's oath, but on the oath of John W. Dorsey made subsequently. It was made upon the oath which Stephen W. Dorsey filed and filled up, and not upon the oath of Perkins which Mr. Rerdell filed before he went West. You see why, gentlemen. The oath of Perkins looked to a less period of reduc-

tion than was asked for afterwards. The oath of Perkins looked to a reduction, I think, to seventy-two hours, if that was what the petition asked for; but after Rerdell went West it was agreed between Dorsey and Brady that the reduction should be to forty-five hours, and Mr. Turner tells you on the stand he was ordered to cut the figures down, and he erased those upon the order and substituted forty-five. Then it was necessary to have another affidavit, and that was the affidavit which was filled up by Stephen W. Dorsey, and which was filed, being transmitted in a paper, the handwriting of which he does not deny, nor does he deny the filling up.

6 D was sworn to in New Mexico by Peck on the 22d of January, 1879, and was filed on the 25th of June. The order was made on the 12th of July. It was filled up by Rerdell. They say Rerdell had nothing to do with that route at that time, or with the concern at all. In some way or other before it was filed the filling up came to be in the handwriting of Mr. Rerdell. Now, gentlemen, how was he at that time to do any filling up on those affidavits with regard to routes with which he had nothing to do? That was away back in January. Mr. Miner utterly failed to explain it. Mr. Rerdell stated that he filed it in June. He says he filled it up, and that it was one of the blanks that was turned over to Mr. Dorsey at the time of the separation early in April. He says that he filled it up with the percentages given him by Stephen W. Dorsey. On the other routes Stephen W. Dorsey gave him the precise figures, but in this case he gave him the percentage as from 100 to 250 per cent., I think. Mr. Dorsey says he does not think he did it; it is possible he might have done it. Then a little later on he says he is quite sure he did not do it, because Rerdell had general power to do everything. Miner says that the filling up looks like Rerdell's writing; that the body is his own, and he does not know when it was filled up. It was transmitted by Rerdell in 3 D on the 23d of June, and filed on the 25th of June, and yet the affidavit purports to have been made away back in the preceding January.

The oath on the Silverton route is a Dorsey oath, sworn to in blank on the 21st of April, and filed here the 6th of May, the day after Rerdell got back. The order was made on the 12th of June. The body of the oath is all in Rerdell's handwriting. He says he filled it up by Stephen W. Dorsey's direction after he came back from the West. It was transmitted on the 5th of May in a letter written by Rerdell. As to this oath, Mr. Dorsey on the stand makes no denial whatever.

The oath, 4 O, on the Tres Alamos route, is another of Dorsey's oaths, sworn to like the last by Dorsey in Vermont on the 21st of April, and filed on the 8th of May. The order was made on it on the 3d of June. Rerdell says that it was filled up by him by Stephen Dorsey's direction after he returned here on the 5th of May. It was transmitted to the department, on the 7th of May, in a letter admittedly written by Rerdell. As to these blank affidavits, Mr. Stephen W. Dorsey says, on page 3936, that when they made the division early in April he does not know whether they divided the blank affidavits or not. Mr. John W. Dorsey says he would not say he did not swear in blank. Rerdell testifies that he did receive blank affidavits, and that he did get instructions from Stephen W. Dorsey. Mr. Miner swears that they passed over to him for his routes, before the division, two affidavits which, I think, I shall be able to show you were filled up after the division. All these affidavits that I have called your attention to are upon routes which Stephen W. Dorsey admittedly took at the division in April, 1879. All the orders were made after the division, and were all, therefore, for Dorsey's admitted

benefit. While Rerdell was here, prior to the 17th of April, the filling up of all the affidavits—for instance, the affidavit on the Eugene City route, and the Perkins affidavit on the White River route, and after he got back, on the 5th of May, the filling up of the affidavits on the Toquer-ville route, the Silverton route, and Tres Alamos route are all in his handwriting, because he was here and could do the business. Between the time Rerdell left here, and the time Rerdell got back here, all the affidavits transmitted upon these routes were filled up by Stephen W. Dorsey, and the letters transmitting them were written by Stephen W. Dorsey.

As to Mr. Dorsey's presence, I think Mr. Dorsey himself swears that he was in Washington from December, 1878, until early in March, 1879, and until after the interview with Vaile, when Vaile came on here, and was so determined to see him and refused to go on with him. I shall show you that Mr. Stephen W. Dorsey, after they had had some negotiations, was summoned West by the sickness of Mr. Peck, and went to New Mexico. He says he returned here early in April. Mr. Dorsey is located by a letter written from Kansas City on the 9th of April. Mr. Rerdell seems to be of the opinion that that letter was written when Mr. Dorsey was on his way out there. I think all the circumstances show that that is an error, and that Mr. Dorsey is right when he says it was written while he was on his way back, and he arrived here on the 12th of April. Having arrived here on the 12th of April, he left on the 18th or 19th of May and returned on the 21st of June. He left on the 27th or 28th of June, and returned on the 6th or 7th of July, staid here a few days, then went away and returned here for a day or two in the fall, probably in October. Then he says he was not here again until August, 1880, which was the time of the interview at Chamberlin's with Brady and Bosler. That is Mr. Dorsey's statement, and I do not find anything in the evidence seriously contradicting that statement, except Mr. Rerdell's statement as to when the Kansas City letter was written. Mr. Dorsey tells you that his interest in the routes commenced on the 1st of April, and that he employed Rerdell in April to take charge of the business and turned it all over to him, and that it was in consequence of that that Mr. Rerdell went West on the 17th of April, 1879. Prior to that time, however, Vaile, Miner & Co. had the routes, and Mr. Dorsey had nothing to do with them.

Now, calling your attention to the dates, it seems to me pertinent and proper to call your attention to some other facts. The division, as I have said, took place as of the 1st of April, 1879. There were then set off to Mr. Dorsey twelve routes of those included in this indictment, Vaile, Miner & Co. took either four or five, one having been previously transferred to Mr. Sanderson. Dorsey having taken these routes in April, about the middle of April, during Rerdell's absence, increase of trips and expedition were ordered on two of the routes which passed to Mr. Dorsey, the route from Trinidad to Madison and the route from Ojo Caliente to Parrott City, the aggregate increase being \$4,526.92.

In May, 1879, increase or expedition, or both, were ordered upon two of Mr. Dorsey's routes, to wit, the White River and the Trinidad, and the amount there added in those two routes was \$14,764.25.

In June, 1879, Dorsey still being here, expedition and increase of trips took place upon four of the routes, to wit, the Greenhorn, Silverton, Tres Alamos, and the Eugene City, and the aggregate amount upon those routes was \$49,556.13.

Then in July, increase and expedition were ordered upon three other

of Mr. Dorsey's routes, to wit, the Toquerville, Mineral Park, and Rosita, and the aggregate upon those three was \$54,883.54.

So that in the brief period, gentlemen, of three months after Mr. S. W. Dorsey came into possession of the twelve routes—one of them being the Ouray route, upon which there was never any pretense of an increase—there were orders for expedition or increase of trips, or both, upon ten of the twelve. I said Mr. Dorsey took twelve routes on the division; Vaile and Miner took six, which makes eighteen; the Saguache route had previously been transferred to Sanderson, which makes nineteen. The Ouray route passed to Mr. Dorsey. It never was the subject of any order, so far as this evidence shows, except that away down in the fall of 1880, I think it was, Mr. Brady finally regarded the remonstrance of the postmaster, made to him a year or more previous, showing that there was a duplicate service over the same route; then he changed it. The claim on the other side is—though I do not think it is borne out—that the Ouray route had passed to Sanderson, and therefore that practically Mr. Dorsey did not have that. If he did not have that, then there were orders for increase or expedition, within that brief period of three months, upon ten of his eleven routes.

When the service commenced, gentlemen, on the 1st of July, 1878, the pay on those twelve routes was \$14,287.34. On five of those routes there had been, before Mr. Dorsey became the sole owner, either increase of trips or expedition, or some post-office added, which had made a considerable addition. But the total pay of \$14,287.34 had been carried up to \$30,362.98, and more than four-fifths of that increase had been upon the Mineral Park route in the preceding December. In three months the pay on those routes ran up to \$154,094.82.

And you will observe, gentlemen, that every one of these orders was made during a period when Mr. Dorsey was here, or going and returning. Nearly all of them were made during the period that Mr. Dorsey was here. Two of them, I think, were made when Mr. Rerdell was absent; and they were made at a time, gentlemen, when, you will bear in mind, Mr. Dorsey was not in the Senate. He was here, with no apparent business except to attend to this mail business; and I think you will all agree with me that he was in a pretty profitable business when in three months the pay ran up, on routes which had been let at \$14,000, to that amount.

Then, if you take his own story, all that he had paid was \$20,000—\$10,000 to Peck and \$10,000 to John W. Dorsey, and he had secured a bad debt besides. He had only paid \$20,000, and in addition had secured a bad debt, and yet these routes ran up to \$154,094.82. And bear in mind, gentlemen, that that \$154,094.82 is just that amount for a year, and if the contracts had been continued at that rate under the administration which succeeded Brady, the result would have been that Dorsey would have received from those routes during the contract term nearly half a million dollars on his alleged little investment of \$10,000 to Peck and \$10,000 to John W. Dorsey.

But, gentlemen, Mr. Dorsey left here, he says, in July, 1879, and did not return, except for a single day, until August, 1880, and the result, during that entire period of Mr. Dorsey's absence, is that there is no expedition upon any of his routes. He was here in August, 1880, and then went away, and returned in February and March. In August, 1880, there was an addition of \$17,964 upon the Redding and Alturas route, which was another of the routes which he took in the division. But that addition was only a restoration of the same amount which had been cut off in April, 1880, upon the Congressional investigation, and

during Mr. Dorsey's absence, and when he came back, in August, it was promptly restored.

Mr. Dorsey was here, as I say, in August, 1880, and then we find this transaction: This interview took place with Brady at Chamberlin's on the 16th of August, 1880, and if I remember correctly, Mr. Rerdell testified that Dorsey indicated to him that the subject of remissions was then up. We find that on the 16th of August there was an application made for remission of fines and reductions on the Silverton route. There is also an application made for remission of fines and deductions on the Ojo Caliente route on the same day. A week afterwards Powers is written to to get up affidavits for remissions on the Eugene City route. These are all Dorsey's routes, and that letter is in the record; and, as I have said, coincident with these things is this restoration of the \$17,964 upon the Redding and Alturas route.

Dorsey goes away in August, 1880, and says he does not come here again until about the time of the inauguration of General Garfield, March 4, 1881. We find his arrival promptly emphasized by the fact that in February and March, 1881, increases and expeditions were granted on four of his routes to the amount of \$58,224.34, those routes being the Tres Alamos, White River, Ojo Caliente, and the Redding route.

Now, therefore, gentlemen, before this bubble burst, after Mr. Dorsey, on the 1st of April, 1879, took possession of twelve routes, which when they were originally let were let for the sum of \$20,275.34, and which, when he took them were being run at a cost to the Government of \$39,354.98, before the 10th of March, 1881, in less than two years, Mr. Dorsey had run them up by some sixteen orders, all made coincident or nearly coincident with his presence here, to \$230,283.06. Where they would have gone to no one knows, except for the honesty of the administration which came into power, except for the honesty of the two men, MacVeagh and James, against whom Mr. Dorsey patched up Mr. Rerdell's affidavit, by his own confession, in order to make the pretense of removing those gentlemen from the Cabinet—a gentleman under accusation of crime of defrauding the Government in this way admittedly patched up the affidavit of Mr. Rerdell, addressed it to the President, admittedly went to the President with it, and then had the impudence to come here and malign the character of General Garfield by saying that upon that affidavit of an accused man, instead of seeking a trial, he would have removed two members of his Cabinet. Why, gentlemen, it is part of the impudence which characterized these gentlemen through a considerable portion of the preliminary stages of this investigation; a part of the impudence which led Mr. Dorsey upon the stand here to compare himself with the man whom he had educated, the man whom he had used, the man who had served him faithfully, had done all sorts of dirty things at his instigation to put money into his pocket, and say that he, Dorsey, was the elephant and Rerdell the pismire. Just think of the impudence, gentlemen, of this man going to Garfield, after this investigation had been stirred up, after newspaper attention had been attracted to it, after it was alleged and after it was proved that the Government had been by some means and by somebody defrauded of a large amount of money, and so misunderstanding his character as to say that he believes that he could have induced Garfield to remove two members of his Cabinet because he presented to him the affidavit of a man who, according to his own statement, he, Dorsey, had brought up, had led to infamy, and who, according to his own statement, had stated that MacVeagh had told a lie, and he believed, or pretends to believe, that upon that Mr. Garfield would have removed Mr. MacVeagh.

Now, gentlemen, that was the condition of things. Mr. Dorsey took those routes. Promptly after he took them they commenced mounting up, until, before he was detected, he had got them up, as I have said, to the sum of over \$230,000 a year, which would have taken from the Treasury for the remainder of the time the contracts were to run, if I remember correctly, about \$580,000. That is the connection of Mr. Stephen W. Dorsey with this case, so far as the pecuniary, the pocket argument is concerned.

We have heard, gentlemen, in this case, a good deal about books. A good deal of time has been devoted to books. I refer to the books which Mr. Rerdell says he kept. I am not now referring to those books, but to the letters, to the check books, to all those books which are admittedly in their possession and which they have not dared to produce here.

They come here, gentlemen, and say to you that they have produced all the checks, and yet, in point of fact, there are two checks unaccounted for in one series, and then there is a break from somewhere in 200 down to No. 500. And yet they undertake to tell you that they have produced all their checks. They were allowed by the court to introduce all that they put in, on the agreement that they would show where the missing ones were, but they have never pretended to carry out that agreement, and those missing ones stand to-day unaccounted for.

And not only that, but they undertook to say that there could not have been any check to J. B. B., because they said they had not produced any checks to J. B. B. They did not dare to produce the check-book and let us see whether there was any entry there of a check to J. B. B. They said boldly that there was not any; that they never drew any check to J. B. B. I do not know whether it got into the record, but Mr. Dorsey sat by his counsel and undertook to say that there was no check to J. B. B., and at another time Mr. Dorsey offered to give \$1,000 for the production of any such check, well knowing, of course, that if he had drawn any such check, it could not be in anybody's possession but his own. He said he had never drawn such a check to J. B. B., and yet there came on the stand here a judge from Colorado, whose character nobody dares to impugn, and he said distinctly that there was drawn and delivered to him by Stephen W. Dorsey a check to J. B. B. Rerdell swore that the check was for \$2,000. This judge says that he will not undertake to say precisely the amount of the check, but it was about \$2,000; and they could not in any way get him to vary from that statement, either as to the date of the transaction of drawing the check (which, I think, was in June, 1879), or as to the amount; and they did not contradict him.

Mr. WILSON. Had it anything to do with mail?

Mr. BLISS. Mr. Wilson asks me if it had anything to do with mail. I say I do not know. Mr. Dorsey told Rerdell that it had, and told him to charge it up to mail account. If you had produced the stubs, we should have seen whether Rerdell was right in saying that it was charged to mail on the stub. If Mr. S. W. Dorsey charged the Colorado debt to mail account, and thereby cheated his partner; if Mr. Bosler was at that time his partner, it simply does not concern us or this case. But the essential point is this: Was there a check for \$2,000 drawn to the order of J. B. B.? Rerdell says there was, because he says he saw the stub, and I think he says, also, that he saw the check, and they do not dare to produce the stubs of the check-book. If they had done that, and it was found to not contain what he said it

did, it would have overwhelmed Rerdell in disgrace, showing that he had lied upon the stand. I submit that you cannot, gentlemen, as honest men, familiar with the world, knowing how people act and how they argue, by any possibility help inferring that the book of stubs, if produced, would have confirmed Mr. Rerdell's statement and shown that it appeared there that the check to J. B. B. was charged to mail account.

I said that a good deal has been said about these books that Rerdell kept. Bear in mind, gentlemen, that the pertinency of those books only comes into importance in this connection: Mr. Rerdell states that Mr. Dorsey gave him a certain memorandum from which to make certain entries, and he produced what he said was that memorandum. He said that he opened a set of books in the middle of May, 1879, just after he had returned from the West and just after Mr. Dorsey had become the sole owner of these ten routes, and not only sole owner of them, but owning a portion of the other one hundred and ten routes. He says he opened certain books, making certain entries from that memorandum, and he appeals to those books as showing that that was a transaction made at that time. Therefore that is the pertinency of those books. Now, let us see briefly the evidence as to that.

If Mr. Rerdell's statement^s is correct, the memorandum in connection with a conversation which he says he had with Dorsey subsequently of course brings home the direct admission by Dorsey of the payment of money to Brady. That is the statement. Now, gentlemen, after the evidence you have had in this case is not that fact probable? When you reflect upon what Brady did; when you reflect how Brady did it; when you reflect on the principles or want of principles which he says guided him in his action; when you remember all those things done for the benefit of Stephen W. Dorsey; when you remember this two hundred and fifty thousand odd dollars of increases in the brief period of three months, is it not probable that Mr. Dorsey's statement to Rerdell that he was paying Brady (who, you will remember, told Walsh he was not making expedition for fun) was a correct statement? In connection with that statement you will bear in mind that we find Mr. Rerdell's letter in the spring of 1880 to Mr. Bosler. He refers also to a tabular statement and to some other facts, and the books and the statement of what is in the books become pertinent in connection with those things.

Now, as to this memorandum. When evidence was first given in this case by Rerdell's statements as to the existence of those books, there was for a considerable time apparently on the other side no disposition to deny the existence of the books, but simply to put themselves back on their reserved rights and to urge that they would not produce them. We went on for several days, the counsel on the other side stating that they would not produce them, with no intimation that the books were not in their possession, until, by and by, when we disclosed the fact that Mr. Donnelly (the chosen friend of Mr. Dorsey, the man who had done his writing for him, and who was doing his writing for him down to a time after this transaction commenced; who was on such terms with him that he borrowed money of him) had seen such a set of books as Mr. Rerdell said he kept, when we disclosed that Mr. and Mrs. Gibbs had seen such a set of books as Rerdell said he kept, then it became necessary apparently to change front, and they undertook to say that they never heard of any such books. But it was not, gentlemen, as I recollect, until that was the condition of the evidence that we heard anything from them, except that they were not going to produce the books; that they were not going to help us, and things of that sort.

There was another reason, perhaps, why it would not do to deny the existence of the books. Because this memorandum starts out in its very first entry—I think it is the very first one—by showing payments of \$10,000 to Peck and \$10,000 to John W. Dorsey by Stephen W. Dorsey, payments which he admits he made. And yet, gentlemen, if Rerdell was not keeping books for Stephen W. Dorsey, why was he in possession of a memorandum admittedly the first part of which was in his handwriting, and which stated those payments to Peck and to John W. Dorsey? Those are facts which Mr. Rerdell had no possible means of knowing except from Mr. Dorsey. It seems not to be denied now that everything in that memorandum down to the words “profit and loss” was written by Mr. Dorsey. The claim is that what there is below it was written by somebody else. They want to intimate that it was written by Mr. Rerdell, and yet I think no one on the stand goes far enough to say that squarely. Mr. Rerdell says squarely that it was written by Mr. Dorsey.

Mr. Hill, the witness that Mr. Dorsey produced here, says that all down to “profit and loss” was written by Stephen W. Dorsey, and if it was not for other circumstances known to him he should think all the rest was. Then he is asked as to the initials “M. C. R.,” and says he cannot say, but he don’t think Dorsey wrote “M. C. R.” This is the witness, Hill, who was produced to testify as to the memorandum. What was his experience? On being cross-examined he identifies squarely as Kellogg’s handwriting a letter which, beyond all dispute, was written by Rerdell. I showed him the letter, and on page 3683 he says:

Q. In whose handwriting is the body of the letter?—A. I think, without any doubt, it is Mr. Kellogg’s handwriting.

Then he paddles back:

I don’t know positively whose handwriting it is.

Q. You think that is Mr. Kellogg’s?—A. I can’t say positively.

There had been, in the mean time, a little by-play, not in evidence—some suggestion passing between counsel that that letter was Rerdell’s. Then he paddles back:

Q. In point of fact, is not that Mr. Rerdell’s handwriting?—A. I don’t know whether it is or not.

Q. You know Mr. Rerdell’s handwriting?—A. I do tolerably well.

* * * * *

Q. Did you not say when you saw the letters “M. C. R.” in the memorandum that you thought they were Rerdell’s?—A. I did not.

Q. What did you say?—A. I said that he could have written them.

Q. And you do not know whether they are Mr. Rerdell’s or not?—A. I did not say that I knew.

Q. I am asking that very question now.—A. I don’t know whether they are his or not.

He says his doubt is because the “M. C. R.” is in imitation of Mr. Dorsey’s hand. A man not sufficiently familiar with Rerdell’s handwriting to distinguish it from Kellogg’s says that the “M. C. R.” looks like Dorsey’s handwriting. In other words, it is an imitation. He is asked, at page 3685:

Q. Having sworn that without any doubt it is Kellogg’s handwriting, do you now swear that it is Mr. Rerdell’s?—A. Well, Mr. Bliss, when I say anything is in any one’s handwriting I would say so without putting in the words “without any doubt.”

He had said before:

Q. In whose handwriting is the body of the letter?—A. I think, without any doubt, it is Mr. Kellogg’s handwriting.

But when he is going to say that the paper is in the handwriting of any one he is not going to use the words "without any doubt." He says it is in Kellogg's handwriting, but if he has any doubt on the subject he puts in the words "without any doubt!" So much for Hill upon that paper.

I then went on and showed him the Haycock letter, which Mr. Dorsey on the stand admitted was his, and Mr. Hill promptly said it was not Mr. Dorsey's. I showed him the Clendenning letter, and he did not think that was Mr. Dorsey's. Mr. Dorsey, of course, admitted it on the stand. I showed him a letter written to Nephi Johnson, which was also subsequently admitted to be Mr. Dorsey's handwriting, and he said squarely that that was not in Mr. Dorsey's handwriting. I showed him a letter written May 5, about getting a new subcontract, which letter Dorsey admitted he had written to Brady (10 F), and he said he was very doubtful about that. By the time he got down to that point he thought it was better to be doubtful. But when I showed him 40 F and 41 F, which were the pencil forms of petitions sent by Mr. Dorsey to Mr. Joseph out in New Mexico—remember that the memorandum was in pencil also—those forms being indisputably in the handwriting of Mr. Dorsey, he said squarely that Mr. Dorsey did not write those. Those were pencilings, just as the memorandum was upon which he had undertaken to express an opinion as to the handwriting, and there is where he landed. He says also that the memorandum pinned to the form of bonds sent to Clendenning, and which Mr. Dorsey admitted was his, was not Mr. Dorsey's. He says that he doubts whether the letter to Paddock was Dorsey's, though Dorsey admits it was his; he subsequently says he thinks Dorsey wrote it. Hill says as to the guarantee to the Steineger contract on the Silverton and Parrott City route that that is not Mr. Dorsey's, though Mr. Dorsey says it is.

Gentlemen, Mr. Hill was involved in a great many further contradictions, but all that it is necessary now to do is to give you those, to show how reliable he was as a witness to prove that Mr. Dorsey did not write this memorandum, or that he wrote the first part of it and did not write the last of it? The plain truth, gentlemen, is that they had to admit that the first part of that memorandum was in Mr. Dorsey's handwriting, because, in the first place, it was so unmistakably his, and in the second place, it contained statements which could have proceeded from nobody except Mr. Dorsey. Mr. Dorsey being protected by the unfortunate condition of his eyes—which I notice within a few days has entirely disappeared, and he is here without any glasses, and able to see; I congratulate him upon it—Mr. Dorsey being protected by the unfortunate condition of his eyes from looking at the papers himself, puts on the stand his chosen assistants and workmen, Mr. Hill and Mr. Kellogg. I have shown you to what condition Mr. Hill arrived, and I do not wonder that during the course of his cross-examination his honor burst out with the statement that it was clear he did not know the handwriting.

Mr. MERRICK. That was Kellogg.

Mr. BLISS. One or the other of them.

Now, Mr. Kellogg, I think, carried the writing of Dorsey one line further down than Hill, if I remember aright. I think Hill and Kellogg varied it a line as to the part of the memorandum written by Dorsey; that is my impression. At any rate, Mr. Kellogg is very sure that he did not write the words "profit and loss;" that he wrote the word "cash," and all the words down to "profit and loss," but did not write the words "profit and loss," and did not write below that. He says he cannot say

as to the initials "M. C. R.;" he did not know about that. He is shown the letter to Paddock. He refers incidentally somewhere to some matter of the misspelling of Rerdell's name, and says that influences him a good deal, because he thinks Dorsey would know how to spell Rerdell's name. Then I showed him a letter to Paddock, in which Rerdell was written in just the same way as the other, and then he said he was not positive about it; he could not say. Hill had been on the stand, and the school of positive philosophers was reduced in numbers. I showed him the Routt letter; he could not say about that. Mind you, the letters were admittedly written by Dorsey, and in both of them Rerdell was spelled in the way which he thought Dorsey never would have spelled it. As to the instructions annexed to the bonds sent to Clendenning, he did not know, he said. As to the Haycock letter he said he could not say as to the signature; the body, he says, looked like Dorsey's, and he gets himself considerably in doubt as to the whole lot of them before he gets through. His condition is this: After one after the other had been shown him, and he had got wise from the turn of the "y's," and he had got the quirk of the "q," and talked about the "e's"—he was talking about "e's," but he was very uneasy—his summing up of these three papers, 18 X, 33 X, and 37 X was something like this: As to 37 X he is not sure that it has got any more quirl; he does not know how many quirls are necessary to make a "y."

Q. To make a "y" you do not know how many quirls are necessary?—A. It don't look very much like "y," anyway.

Q. Did he write his "y's" so that they did not look like "y"?—A. They look more like "q" than "y."

Q. According to the quirl I suppose you mean a queue at the back of the head. Look at that third one, and tell me the difference between that and the other two?—A. There is a very great difference.

Q. Now, take all three of them, 18 X, 33 X, and 37 X, and tell me your opinion about them. First, what is your opinion as to whether Mr. Dorsey wrote those papers or not?—A. In this one, the "y" in this name is more like his writing.

Mr. MERRICK. That is the "y" on 33 X.

The WITNESS. The rest of the name on these two looks more like his writing than that does there.

Mr. MERRICK. That is 37 X and 18 X.

Q. How about the general appearance of the bodies of the letters?—A. Well, sir, that letter would strike me as being more like his writing.

Mr. MERRICK. That is 18 X.

Q. How about 37 X?—A. That looks very much like that one, as if it might be written by the same person.

Q. How about 33 X?—A. I should question that somewhat as to its being his writing.

That is what he said as to three papers before him at the same time, and all of them subsequently admitted by Mr. Dorsey as being in his handwriting. That is the expert; that is the man familiar with the handwriting of Mr. Dorsey whom they put upon the stand to give evidence as to this memorandum. They could not have the benefit of Mr. Dorsey's own eyes, so they got the benefit of Mr. Hill and Mr. Kellogg, and there they stopped. I do not know why it was, but my friend Henkle would not even lend them Mr. Waugh to do a little swearing as to handwriting. And there it was—with this whole broad land available to them, with all the information available to them as to Mr. Dorsey's handwriting, the people who were familiar with it, Mr. Torrey, Mr. Donnelly, and others, they put no witness on the stand except Mr. Hill and Mr. Kellogg to say that that was not the handwriting of Mr. Dorsey in that whole memorandum.

But let us go a little further, gentlemen. This memorandum (31 X) reads as follows:

UNITED STATES SENATE CHAMBER,
Washington, ———, 187—.

Accounts.	Cash loaned.	Dors.	Peck.
S. W. D., Cr.....	\$10,500	\$10,000	\$10,000
Expense.....			
Cash.....			
Profit and loss.....			
J. H. Mitchell.....			

And J. H. Mitchell's name is in that part of the memorandum which they say that Mr. Dorsey did not write. Why did they not produce Mr. J. H. Mitchell here, an ex-Senator, whose name appears all over the Eugene City and Bridge Creek petitions, and appears all over The Dalles and Baker City petitions, I think it is, who goes, as appears by the records, personally to the department to ask an increase upon these routes? Why did they not produce Mr. Mitchell to show that he never had any dealings with Stephen W. Dorsey; that he had nothing to do with the mail service; that there was no reason why his name, the name of a Senator of the United States, you remember, a fellow-Senator of Mr. Dorsey's, should appear upon the books containing the mail accounts of Mr. Stephen W. Dorsey? Mr. Mitchell was here in court several times; Mr. Mitchell was here in obedience to the subpoena of the court. He was not put upon the stand. Why did they not produce him if he had been able to say, "I never had any money from Mr. Dorsey. There was no propriety, no sense in putting my name in books which related to Mr. Dorsey's mail service." Would not that memorandum in that case have received a good deal worse black eye than anything that Mr. Hill or Mr. Kellogg could have given it? It would be absurd to suppose that Mr. Dorsey was at that time going through the idle form of giving a memorandum to Rerdell to open an account with a man with whom he had never had any financial dealings. Mr. Mitchell was not produced. If Mr. Dorsey wrote the first part of this memorandum, how came it into the possession of Mr. Rerdell. If Mr. Rerdell was keeping no books for him, what was Mr. Rerdell doing with a memorandum which is obviously intended to be an abstract of a statement of accounts. If it is true, as Mr. Dorsey tells you, that Mr. Rerdell was keeping no books for him, why would he not produce them? Bear in mind, gentlemen, that as to that Mr. Dorsey withholds the check-book, withholds the letter-books, withholds the stubs, and then asks you to say that this memorandum is not genuine. Half of it is substantially admitted to be in his handwriting.

But, gentlemen, there is conclusive evidence—and here is where the books come in—that that memorandum is of no recent creation, to say the least. The books which Rerdell kept were made from it, and contained the entries in this case, beyond all question. On the evidence here there cannot be any dispute that there was in existence a set of books as long ago as the spring of 1880, which contained entries made from that memorandum, and those books were in the handwriting and keeping of M. C. Rerdell, whom Mr. Dorsey tells you, from the middle of April, 1879, he left in entire charge of his mail business, such entire charge that he turned papers over to him, and he cannot say whether among those papers were blank affidavits or not.

Now, as to these books, as I said when they were first referred to, there was no intimation that the other side had not possession of them, and they never dared, though we challenged them, and called their attention to the fact that the rule of law required that if they wanted to discharge

themselves from liability, the rule required them to tell, under oath, that they had not any such books, and then they would be free from any presumption of that kind. They never dared to state under oath that they had not those books. They have not, up to this moment, dared to state under oath, I think, that those books are not in their possession, certainly not in the form that the rule requires. I say, "I think," because it is just possible that Mr. Dorsey may have upon the stand said something upon that subject which I do not now recall. However that may be, after we disclosed the existence of these witnesses who would establish the existence of the books beyond all question, then the position changes; then the position was not that they had the books and would not give them to us, but that they had never heard of them; that they were perfectly astonished; that that was the first time they had ever heard of any such books. As I recollect it, there was an adjournment over Sunday, and perhaps an interval of four or five days, and then they say, "We never heard of any such books; it is perfectly astonishing that anybody should suppose that any such books ever existed." Rerdell swears that he kept such books, and opened them in May, 1879. He swears distinctly that he got them at a certain place, of a certain well-known stationer in this city, Mr. Ballantyne. Why did they not put Mr. Ballantyne on the stand, if it was not true, and prove that Mr. Rerdell lied about that? If Mr. Rerdell was not keeping books for Mr. Dorsey at that time, which was the time that he commenced service for Mr. Dorsey upon this mail business (after the 5th of May, 1879, when he returned from the West), why was Mr. Rerdell buying books? Why did not Mr. Dorsey produce the account of Mr. Rerdell, showing that Mr. Rerdell did not at that time charge to him (Dorsey), as I am confident that he said on the stand he did, the purchase-money of those books?

Those accounts we gave them notice to produce. They did not produce them. Mr. Rerdell says that he kept those books. Mr. Donnelly was recalled and was examined, at page 4389. There had been a question as to whether a certain charge should be \$25 or 25 cents, arising out of a matter of interest. Then came his answer saying that it should have been charged as \$25 and not as 25 cents, because it was a matter of interest on a note at Lewis Johnson & Co.'s, as you will see from this memorandum (94 X):

		Crdt. bills payable.	Chge. S. W. D.
Note due 28th Oct.....	3000.....	P. O. D.....	\$37107.....327. 50
Charges	25.....	do.....	\$38151.....378. 12
	<u>3025.....</u>	do.....	44140.....1500

44140 was the route from Eugene City to Bridge Creek, which Mr. Dorsey took.

Dep. by Rerdell, 46255—

Referring to the route—

422—

Rerdell was then in the position that he was depositing Mr. Dorsey's money for him. Then again:

Balance, 869.01, P. O. D., 44140—

Bridge Creek again—

1,266.39.

The footing is \$3,894.01 on both sides, and then comes this memorandum:

You will find this entered on page 52 of the journal, except interest & note.

Away back at that time Torrey was having trouble with the books, books which Mr. Torrey wants you to believe he never saw. At that time Mr. Donnelly, who had written a copy of the book that was in Mr. Torrey's possession, is called upon to reconcile it. Mr. Torrey says that he did write to Mr. Rerdell asking him for an explanation about it. Mr. Rerdell went to Mr. Donnelly and Mr. Donnelly said, "Why, this is the explanation, and you will find it on page 52 of the journal." And yet they want you to believe that no such journal existed; that no such books existed.

With reference to these books Rerdell says he bought them and began them in May, 1879. That, of course, was just after he took full charge of the service. He says, at page 2252, that Mr. Dorsey gave him this memorandum and told him to make up an entry.

Q. Now, after receiving this paper and opening an account on those books—transcribing this paper to those books—did you have any conversation with S. W. Dorsey about William Smith?

Being one of the names on the memorandum—

A. Yes, sir.

Q. Please state that conversation.—A. The conversation, as near as I can remember it, was this: He asked me if I had charged Brady with a certain amount, naming it. I want to explain why I cannot remember which amount it was. It was one of three amounts, because there were three of them. It was either \$5,000, \$6,500, or \$7,000. My impression is, though I will not be positive about it at all, that it was \$7,000. I replied, "No; there is no account against Brady." He said, "Well, damn it, William Smith; I thought you knew who William Smith stood for."

That is Rerdell's statement, that Dorsey gave him that shortly after the opening of the books, about the middle of May. Mr. Dorsey remained here off and on until July, 1879, and then says he left and did not return till August, 1880, save for a single day or two in October or November in the fall. The Congressional investigation was in the spring of 1880. At that time Mr. Rerdell states that he had a conversation with Mr. Brady. I read from page 2268:

A. I had just been subpoenaed to appear before the subcommittee of the Committee on Appropriations of the House, which was then making an investigation into the star-route matters. That was a subpoena *duces tecum*. I went down to the Post-Office Department—

Remember, gentlemen, in the spring of 1880 Dorsey was West and the business had then been transferred in a great measure, so far as its active management was concerned, to Bosler, and Bosler was at Carlisle, Pennsylvania—

and told General Brady that I had been subpoenaed to bring all books and papers. He asked me what was the nature of the books that I had. I told him that I had some account-books. He remarked that Dorsey was a damned fool for keeping books—

More grave-yard principles. Mr. Brady thought business should be conducted upon grave-yard principles—

and says, "What size are they? How much is in a book?" I said, "They are not very voluminous." (This is the purport—I am giving the general substance of the conversation, and the words, so far as I can remember.) "Well," he says, "can they be copied, or are they too long to be copied—too much to be copied?" I said, "No," I thought not. He said, "How long would it take?" I remarked, "Probably a day or two; may be longer."

Q. What else did he say then?—A. "Well," he says, "I think that will be a good idea." That ended our interview.

Q. Did you tell him what was in the books, or what was the general character of what was in the books?

Mr. INGERSOLL. I object to that. What was the conversation?

The COURT. He inquired what was the character of the books, and now he is asking what he said to General Brady in answer.

Mr. MERRICK. [To the witness.] Go on.

The WITNESS. He did ask me as to the nature of the books, and my answer was guarded. I remember very well, because I did not want—I will not give my reason. I said yes, there were some charges that would require explanation—entries.

Q. Was that all?—A. That was all that I can recall now.

Q. What did you do in pursuance of the direction or advice thus given to you by General Brady as to copying the books?

Before I read you what he did in pursuance of that direction, let me recur again to a letter to which I have already called your attention in another connection. It is a letter to Bosler, dated the 22d of May, 1880, and it is on page 2622:

DEAR SIR: Yours of yesterday to hand, with inclosure for \$500 of Steele to start West, and he will go to-night.

I have already called your attention to the fact that it would have been easy for Mr. Dorsey to have put Mr. Bosler on the stand and to have brought here the account with which he settled with Bosler, and shown whether it was true that Mr. Bosler sent that \$500. As far as Steele is concerned Mr. Dorsey stated that he employed him as a traveling agent. He could have put him on the stand and asked him if he received that \$500.

On last night I was subpoenaed to go before the Appropriation Committee to-day at 10.30 a. m., and "to bring all books and papers relating to star mail-route contracts belonging to S. W. Dorsey." I immediately telegraphed you to that effect, asking "what I should do." I am now just in receipt of your reply, saying no harm could come of the books being made public.

Obviously Bosler had not been permitted to see the books at that time.

In this we *all here* think very different, and for the following reasons:

Who was meant by "all here?" Dorsey was not here. Rerdell was here and Brady was here. Who is meant by "all here?"

First. The books would show very large profits—

Is not that true, gentlemen? Have I not shown you that the books would show large profits and that at that time Dorsey's routes alone had been run up to two hundred and fifty-odd thousand dollars? I have shown you that the amounts they paid the subcontractors left them very large profits.

and would be used by the committee as an additional argument that all expedited routes should be readvertised and relet.

2d. There are several entries giving D. credit for large cash payments made to John Smith and Saml. Jones.

Smith and Jones, the men named in this memorandum, and Smith being the person whom Mr. Dorsey with an oath interpreted as being Mr. Brady.

3d. I understand the committee will try to show that he had an interest in mail routes before last April.

Perhaps if they had pursued that investigation a little further than they did a good portion of this trial might have been saved.

I appeared before the committee this morning and got excused until Monday morning; but before doing so I drew up an answer, after getting advice of counsel, that I could not produce the books and papers asked for until I had consulted with Mr.

Dorsey. This answer I shall hand to the committee on Monday, and endeavor by every means to delay any examination until I hear from Dorsey.

Gentlemen, Mr. Dorsey would not let us see these books that he admittedly settled with Bosler by, in order to ascertain whether there was not an item for counsel fees there.

There is much more in this than you think, and I would like to hear from you about it. Genl. B. is very much alarmed, and he and I had a long conversation to-day, during which he made several valuable suggestions, which I shall follow.

I *will not* produce the books until advised by you or Dorsey to do so, as I shall claim that I am his attorney, and as such am not required to divulge confidential matters.

Now, that letter, gentlemen, was torn from Dorsey's letter-book, pages 358, 359, and 360. Admittedly those pages are gone from that letter-book. They will not produce the letter-book. They will not even let us look at the index under the letter B to see whether the letter that was on those pages was not a letter to James W. Bosler. Is it not perfectly clear that Mr. Rerdell did at that time write such a letter to Mr. Bosler? Is it not perfectly clear, gentlemen, that he had the conversation which he testifies on the stand here he did have with General Brady? He states in that letter a conversation with General B. He states here on the stand the conversation. Now, are you going to believe that away back in the spring of 1880, Mr. Rerdell, who was the chosen friend, the "upright man," as Mr. Dorsey certified him to be, and whom Dorsey says he left in charge of all his business, and whom he tells you he continued to employ down to the close of the contract term, which was in August, 1882—that this man was at that time engaged in getting up a bogus conversation with Mr. Brady, and that he was engaged in getting up a bogus set of books to be produced at some future time for the purpose of bringing consternation upon Mr. Dorsey and of covering him with disgrace. If Mr. Rerdell had been engaged in that business was there ever so good a time as to have produced those books before that committee? He had the copies made, and he had the genuine books, as he says. We shall show you that he had, and that he got the bogus copies made at that time. Why could he not have produced the genuine books before the committee at that time if he was then conceiving in his breast the idea of making up such a story for the purpose, in some way at some future time, no man knew how nor when, of using it against Mr. Dorsey? Bear in mind, gentlemen, that here was an investigation going actively on. There never was so good a time as then to do a thing of that kind if anybody wanted to betray Mr. Dorsey. And yet all this was done and kept back through one long trial, and produced upon this trial; kept back all that time, Mr. Dorsey still retaining Mr. Rerdell in his employ. They want you to believe that Mr. Rerdell then conceived that scheme; that he then invented a fictitious interview with Mr. Brady, and that he then put that fictitious interview into Dorsey's letter-book, where it was available to him to see whenever he came here, and which letter-book Mr. Dorsey did not dare to produce, although he has had one of the three in court at this trial, as the evidence shows, and as he himself stated on the stand, that he had had the whole pile here in court. He did not give us access to them. He did not dare to produce the letter-book, or even let us see the index. They want you to believe that at that time Rerdell invented a fictitious interview, wrote it in the letter in Mr. Dorsey's letter-book, and left it there certainly for a considerable time, and that then, having done that in pursuance of his process of fathering this job upon Mr. Brady and Mr. Dorsey, he went on and got up the fictitious

set of books. Now, let us see. He says Mr. Brady asked him how large the books were, and how long it would take to copy them, and everything of that sort. Then the testimony goes on:

Q. What did General Brady say to you in reference to copying the books?—A. General Brady did not direct me; I acted upon his suggestion.

Q. Very well; what did you then do, acting upon the suggestion of General Brady, in reference to having the books copied?—A. I then put a man at work upon them; gave him the books, designating such entries as should be left out by drawing a pencil through them in that way (making a X mark), and told him to make up a new set of books, leaving out those entries, but to leave the books so that they would balance, taking the entries that were stricken out, also the same amount that had been carried to profit and loss. There is where Mr. MacVeagh's evidence was mixed. The items that had heretofore been charged to William Smith had, in the mean time, when the books were balanced, been carried to profit and loss.

Mr. INGERSOLL. I object to the contents of the books in that way, without the production of the books.

The COURT. He has testified what instructions were given to the party who copied them.

Mr. INGERSOLL. Very well, then I object to telling what was in the books.

Q. State what instructions you gave.—A. I told him I wanted him to make up a new set of books, and after leaving out those items, to leave the books so that they would balance, and to be as expeditious as possible—getting a new set of books as near like these as I could find them.

Q. Is that all of those instructions?—A. Those were all the instructions that I gave.

He then says he appeared before the committee twelve or fifteen days afterwards and was not asked for the books, though he had the bogus set of books completed at that time. On page 2363 he also testified as to that:

Q. I omitted to ask you to describe with particularity the difference between the bogus set of books which you state you made up to exhibit to the committee and the original set of books, because at the time the question was asked the notice had not matured.

That was a notice to them to produce.

What did you do with the original set in reference to marking or otherwise when you handed them over to be copied?—A. I took the journal and went carefully through it, drawing a heavy cross-mark with a pencil——

Mr. WILSON. [Interposing.] That is a mere repetition of the testimony, your honor.

* * * * *

The COURT. Go on.

Q. You drew the cross marks against what?—A. Against all the charges made against William Smith, and the credits of course to Stephen W. Dorsey, which would be the same thing, and also indicated the same amounts where they had been carried prior to that time to profit and loss, so that the new books would balance.

Q. And in that particular differ from the old ones?—A. Yes, sir.

By the COURT:

Q. Let me ask a question. I do not know whether it is altogether proper to do so, but I have a curiosity to know, and it is in the line now.

That was about whether there was another Smith than William Smith in the books, and he said no. He says that he directed that work to be done in the way here described. Who did it? We come to the testimony of Mr. Donnelly, Mr. Dorsey's trusted friend, who is at the head of a division in the Land Office in this city, and whose personal relations with Mr. Dorsey he says, on page 2636, have been friendly:

Q. Will you state whether or not, in the summer of 1879, you had anything to do with copying a book of accounts for Rerdell?—A. I did not copy any book in 1879.

Q. Did you copy any in 1880?—A. Yes, sir.

Q. What time in 1880?—A. Late in the spring, I think. I am not quite certain about it.

Q. When you received the book to copy did you recognize it as any book you had ever seen before?

It was not a new book brought to him then. It was a book that

Mr. Donnelly, who had been doing writing for Mr. Dorsey, had seen before.

A. Yes, sir.

Q. When had you first seen that book?—A. I think it was some time in the summer of 1879.

Rerdell fixes it as in May, 1879.

Q. Under what circumstances did you see it in the summer of 1879?—A. Mr. Rerdell called me in to examine a set of books for him and straighten them out.

Q. What did you do in consequence of that call from him?—A. I straightened them out—balanced them.

Q. What kind of books were they in appearance?

The WITNESS. Do you mean in size?

Mr. MERRICK. In size and color.

A. They were a small set of books; I should judge about that long [indicating], and about an inch thick, and covered with red morocco leather.

Q. How many were there?—A. Two.

Q. What were they?—A. Journal and ledger.

Q. Did they bear any inscription on the outside?—A. Nothing but journal and ledger.

Q. Did they bear that inscription?—A. Yes, sir.

Q. What were those books about?—A. They related to mail business.

Q. Whose mail business?—A. Well, it seemed to be a firm.

Q. Whose firm?—A. There were a number of names in there.

Q. Whose name?—A. Mr. Dorsey's—

Q. [Interposing.] What Dorsey?—A. S. W. Dorsey, Mr. Rerdell, an account called mail account, an account called expense account, several accounts of the kind.

The memorandum mentioned an account for expenses, an account with Dorsey, and also an account with M. C. R.:

Q. Name over some more accounts.—A. There was a profit and loss account.

Q. Name over some more.—A. There was a William Smith account.

As to which Dorsey said, "Why, damn it, Brady."

Q. Name another one.—A. J. W. Dorsey; there was an account of my own.

Q. Any Joneses in there?—A. I can't remember; I don't remember any Jones.

Q. Did you ever keep those books?—A. I did.

Q. From what time to what time?—A. From early in the fall of 1879 until the spring of 1880, when I made that copy.

Now, gentlemen, stop right here. After that evidence can there be any question that Mr. Rerdell had in his possession in the summer of 1879, and Mr. Donnelly saw and used and made entries in in the summer of 1879 and down to 1880, a red morocco book, journal and ledger, containing these charges that are stated, which agree entirely with the statement in the memorandum? Can there be any question about that? Nobody impugns Mr. Donnelly's straightforwardness and truth. Nobody impugns his inclination to aid Mr. Dorsey all he can. Can there be any question about that? And if that is so, gentlemen, what then do we find? Mr. Dorsey having left Mr. Rerdell here in the summer of 1879, and until August of 1880, in charge of all his mail business, turning everything over to him as he says, Mr. Rerdell goes on and opens just such a set of books as he described on the stand, and which they tried to make out to you never existed. Now, going on further with Donnelly's testimony:

Q. Was it an exact copy of the book?—A. It was not.

Q. In what did it differ from the book you were keeping?—A. There were some items left out.

Q. How did you come to leave out those items?—A. I left them out by direction of Rerdell.

Q. Were there any marks to indicate what was to be left out?—A. There was a pencil-mark drawn through.

Q. What accounts did you leave out?—A. That I don't remember.

Q. Can you name any one?—A. Yes, sir; I left the William Smith account out.

Q. What was the amount of the account?—A. I don't remember the exact amount.

Q. Come as near as you can.—A. Well, I should judge it was something about \$30,000.

Thirty thousand dollars appeared in the books charged to William Smith. Suppose that book had gone to the Congressional committee. The fact that the item was so large would have caused the question at once to arise, who is William Smith? What has he been doing for this firm? What mail business has he been engaged in? Who is he? What is he? Where is he? Let us have him here and find out. The fact that the name was a dummy put there to conceal the name of Mr. Brady would almost necessarily have come out if they had put Mr. Rerdell on the stand and he had told them all about Mr. Brady's action and who William Smith was. The theory that I am stating involves the idea that this man whom they now wish you to believe was getting up this scheme would away back there keep his mouth shut. If he had been getting up any such scheme he certainly would have gone on the stand and said, "Here is a set of books of Mr. Dorsey's. I have been keeping them for months. Here is an entry of \$30,000 to William Smith." "Who is William Smith?" "Thomas J. Brady." But instead of that, acting upon Mr. Brady's suggestion, he went and employed Mr. Donnelly, who was familiar with the book, to make a duplicate copy, omitting those items.

Q. What did you do with that amount in order to balance the books?—A. My recollection is that I carried it to profit and loss.

Q. On the books or on the balance-sheet?—A. On both.

Q. Were there any other accounts transferred in the same way?—A. I rather think there were, but I am not certain. I can't tell what accounts there were. I don't know.

Q. How many were there so transferred?—A. There might have been two or three amounts, and might have been only two; I am not certain.

Q. Two or three accounts?—A. Two or three accounts or amounts; I am not certain.

Q. Did you make the books balance on your copy?—A. Yes, sir.

Q. How long were you working on that copy?—A. I was working on it two evenings and all of one night.

Q. From sundown to sunrise?—A. Yes, sir.

Q. Why did you work so hard?—A. Mr. Rerdell said he wanted them at a certain time.

Q. For what purpose?—A. I don't know; he did not tell me.

Mr. DAVIDGE. We object to that, your honor.

Mr. MERRICK. He says he does not know.

Q. Can you fix the date of that transaction?—A. I cannot.

Q. Can you fix the month?—A. No, sir; I can't fix the month; it was late in the spring, some time; it might have been the latter part of April, or it might have been the forepart of May. I am not certain.

Mr. Rerdell's letter to Bosler is in May.

Q. What did you do with the books when you finished them?—A. Turned them over to Mr. Rerdell.

Q. Both sets?—A. Both sets.

Q. Where did you get the new books into which you transferred the copy?—I bought them at Brad. Adams's book-store.

Q. How did they compare in looks and size with the others?—A. They were not exactly alike, but there was a very close resemblance in size and color.

Q. How came there to be a close resemblance in size and color?—A. Mr. Rerdell told me he wanted them as near alike as possible.

Precisely what Rerdell swore to on the stand.

Q. And you tried to get them as near alike as possible?—A. Yes, sir.

Q. Did you make out any balance-sheets at any time during the period you were book-keeping?—A. Yes, sir.

Q. When did you make out your first balance-sheet?—A. The first balance-sheet I made before I was employed by Mr. Rerdell; it was at the time he got his books into bad condition, some way; I balanced them and made a balance-sheet for him.

He testified that it was in 1879.

Q. Do you recollect by how much these books failed to balance at the time you tried to straighten them?—A. No, sir; I do not.

Q. You do not remember anything about 35 cents being called \$35?—A. No, sir.

Q. When did you make out your second balance-sheet?—A. I think it was about the 30th of September, or probably it was some time in the quarter ending 30th of September.

Q. What year?—A. 1879.

Q. In what month did you make out the other balance-sheet?—A. I think I made another balance-sheet for the quarter ending 31st of December.

Q. Prior to that time?

The WITNESS. You mean the first balance-sheet?

Mr. MERRICK. The first one.

A. That was in August, on work that had been done by Mr. Rerdell on the books.

Q. Did you make any balance-sheet of those books after you had made this so-called copy?—A. I made a balance-sheet for each and turned it over to him with the books.

Q. You made a balance-sheet for each?—A. Yes, sir.

Q. Were you paid for keeping those books?—A. Yes, sir.

Q. How much?—A. Twenty-five dollars a month.

Now, your honor, it is after 1, and I am through with Mr. Donnelly, I believe.

The COURT. We will take our recess.

At this point (1 o'clock and 5 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. [Resuming.] With reference to Mr. Donnelly, I only desire to call your attention to the fact that it appears affirmatively that he has done writing for Mr. Dorsey since the prosecution commenced, and as late as last summer Mr. Dorsey paid him a considerable sum of money. Therefore there cannot be any question that the set of books which Rerdell swore that he opened in May, 1879, were known to Mr. Donnelly; that Mr. Donnelly kept them; that Mr. Donnelly made at least three balance-sheets from them, and that Mr. Donnelly, in May, 1880, when the Congressional investigation was pending, made a copy, leaving out the items which were supposed to be such as would not bear investigation, and that that was done in accordance with what Mr. Rerdell states was the advice of Mr. Brady, and in accordance with what Mr. Rerdell states was the arrangement that he made. So that if the evidence stopped there, there would be no question whatever of the existence of the books. You will bear in mind, gentlemen, that that is the great question—the existence of the books. Did there exist a set of books in which there was charged this \$30,000 as paid to William Smith, and in which there were these other items shown by the memorandum? Did there exist such a set of books in the summer of 1879? That there existed such a set of books I do not think any member of this jury can have any particle of question, on the evidence to which I have already called their attention. If there did exist such a set of books, then their existence is only consistent with one of two theories—either that they correctly stated transactions which had been had and related to entries under Rerdell's knowledge, or which he was directed by Dorsey to make, or Mr. Rerdell as long ago as December, 1879, was for some purpose or other getting up a bogus set of books, a set of books which charged Brady with corruption which did not exist, and a set of books which charged Dorsey with corrupting Brady when he had not done it. There is no other theory possible than those two.

One or the other of those theories, gentlemen, you must adopt. Either the books did exist in 1879 and correctly stated the transactions, or Mr. Rerdell, way back there, was getting up such a system as that, and was manufacturing such a fraud as that, and then was writing a letter to Bosler in which he was setting out a large portion of that fraud and was spreading it upon Stephen W. Dorsey's own letter-book, and so getting up a fraud intended at some future time to be sprung for the purpose of covering Brady and Dorsey with disgrace and confusion and landing them in the penitentiary. He was spreading upon Mr. Dorsey's letter book the evidence that he was engaged in this. Either that is so, or the transaction was a genuine one, the transaction was just what Mr. Rerdell tells you it was, the entry by him in books of charges against Brady under Mr. Dorsey's direction, and the endeavor subsequently, when the Congressional investigation was unexpectedly sprung upon the parties in the spring of 1880, to conceal it by getting up a bogus set of books. But, gentlemen, the evidence as to whether those books existed does not rest there. You had before you Mr. Gibbs, the book-keeper at the Ebbitt House. You heard him testify. You saw by his own statement that he was unwilling to be brought into this case. We gave them the means of contradicting Mr. Gibbs, if there had been any question about it, because we showed that Mrs. Gibbs knew all about this matter, and we explained to you why in view of her recent affliction we did not put her on the stand. It was open to them, if Mr. Gibbs had not told you a truthful story to have called Mrs. Gibbs here and to have questioned her. What does Mr. Gibbs say? Mr. Gibbs says that he has known Rerdell since the fall of 1879.

I read from page 2643 :

Q. Did M. C. Rerdell, at any time, ask you and Mrs. Gibbs to do any work on any books for him?—A. Yes, sir.

Q. When?—A. Between Christmas, 1879, and the 1st of March, 1880.

Q. What did he ask you to do?—A. A variety of writing; sent out a lot of letters and wrote a lot of letters for him, indexed three letter-books—

He indexed the letter-books which they did not dare to produce. He indexed the letter-books which they at first suggested were not indexed. He indexed the letter-books which they did not dare to show you. He indexed the letter-books as to which they would not even produce the index under the letter B—

and Mrs. Gibbs copied a journal.

Q. What sort of a looking book was that which Mrs. Gibbs copied?—A. Probably about that long, and about that thick [indicating].

Q. How many inches long?—A. About ten inches long.

Q. About how thick?—A. Between three-quarters of an inch and an inch thick, and about six inches wide.

Q. What color was the book?—A. Dark, as well as I can remember now; brown, I think; either brown or black.

Q. What was the mark on the back of it, if any?—A. I don't remember seeing any.

Q. What was the character of the accounts in the book?

The WITNESS. Which book?

Mr. MERRICK. In the journal.

A. It was an account of expenditures and receipts.

Q. On what business?—A. On the star-route business.

Q. Did you or Mrs. Gibbs make a copy?—A. Mrs. Gibbs made a copy and I verified it.

Q. Is Mrs. Gibbs in the city?—A. Yes, sir.

Q. In what condition is she?—A. She is in very poor health; she just lost a child about three weeks ago, and her health generally is broken, and she is in very great grief.

Q. Can she conveniently come into court?—A. I would not like to have her come into court in her condition.

Q. You verified the copy she made?—A. Yes, sir.

Q. Can you tell me any accounts that were in that book?—A. I don't understand your question.

Q. Can you give me the names of any individuals who had accounts in that book?—A. Yes, sir.

Q. Give me one, two, three, or four, or as many as you can recollect.—A. M. C. Rerdell, S. W. Dorsey, John Dorsey, Mrs. Steele, Colonel Steele—

Whom Dorsey swore was his traveling agent—

Mr. Smith—

Q. [Interposing.] Mr. who?—A. Smith.

Q. What Smith?—A. I don't remember.

Q. Who else?—A. Jones.

Q. Who else?—A. Mr. Jenkins.

Q. Jenkins?—A. Jennings.

Jennings, it appears by a subcontract, was subcontractor on the Mineral Park and Pioche route.

Q. Do you recollect about what was the size of Mr. Smith's account?—A. No, sir.

Q. Was it large or small?—A. I couldn't tell you.

Q. You do not recollect anything about it?—A. No, sir.

Q. What was the occasion for her making a copy of that book, or do you know?—A. Mr. Rerdell brought the work there and said he wanted to get a copy made to send to S. W. Dorsey, in New York.

Q. What did you do with it when it was done?—A. Returned it to him.

Q. Copy and original?—A. Yes, sir.

Q. Was the copy a precise and accurate copy of the book?—A. Yes, sir.

Q. Did you copy only the journal?—A. One copy of the journal and index to letter-books.

Then, on cross-examination he was asked:

Q. How long did it take Mrs. Gibbs to copy it?—A. We were at it some four or five days.

Q. About how near full was the journal?—A. It was about two-thirds full, as near as I can remember now.

Q. Let me get the date when that was brought there.—Some time between Christmas, 1879, and the 1st of March, 1880; I couldn't say just exactly.

Q. It took four or five days to copy it?—A. Yes, sir.

Q. Do you recollect any item in the book?

The WITNESS. The amount, you mean?

Mr. INGERSOLL. Any item.

The WITNESS. I remember the names.

Mr. INGERSOLL. By "item" I mean an item of account.—A. No, sir.

Q. You do not recollect J. W. Steele—A. [Interposing.] Yes, sir.

Q. J. W. Steele, \$126?—A. No, sir; I don't recollect \$126.

Q. That is what I mean. You do not recollect any item?—A. No, sir.

Q. Did you see Stephen W. Dorsey at that time?

The WITNESS. Did I see him?

Mr. INGERSOLL. Yes.

The WITNESS. Personally?

Mr. INGERSOLL. No; at the time the book was brought.

The WITNESS. Did I see him, or see his name?

Mr. INGERSOLL. Him; in person?—A. No, sir.

Q. Did he ever ask you to copy any books?—A. No, sir.

Q. Did he ever pay you for copying any books?—A. No, sir.

Q. So far as you know, did he know that you ever had any book?—A. No; not that I know of.

Q. Do you recollect Samuel Jones in that book?

Samuel Jones was one of the names upon the memorandum.

A. I don't remember the name of Samuel; I remember the name Jones.

Q. Are you sure there was a Jones in it?—A. Yes, sir.

Q. No doubt on that subject?—A. No, sir.

Q. And you have no doubt on the subject of S. W. Dorsey's name being there?—A. No doubt of that.

Q. Do you recollect the given name of anybody else?—A. M. C. Rerdell. That is all I can think of now.

He was questioned whether Mr. Rerdell came to him at any time dur-

ing the trial or before, and asked him if he recollected the name of William Smith, and he said no.

Q. During the trial?—A. Yes, sir.

Q. Did he ask you if you recollected the name of William Smith?—A. Yes, sir.

Q. Did he tell you anything about Samuel Jones or Jones?—A. He asked me if I remembered the name of Jones.

Q. At the time he came to you did you tell him first that you recollected those names, or did he first tell you the names and then ask you if you did not recollect?—

A. He asked me the names, and asked me if I did not recollect them, and I told him I did not.

Q. When he first came to you he asked you if you remembered the names and you said you did not?—A. Yes; and I have always told him so.

Q. Then he told you the names that he remembered, did he?—A. No, sir.

Q. How did he call your attention to Smith and Jones?—A. He came up and asked me if I could remember any names in the book, and I told him I could remember one or two, or a few of them, and I went over them to him; then he asked me if I remembered the name of Smith, and I said, "No, sir;" then he asked me if I remembered the name of Jones, and I said, "No, sir;" neither did I at that time.

Then on redirect examination:

Q. Your memory being now refreshed, have you any doubt about your recollection of the name of Smith?—A. Not the slightest.

Q. Or Jones?—A. No, sir.

By the COURT:

Q. How do these things come into your mind so recently?—A. Your honor, I tried not to remember anything of this; I didn't want to be called into court if I could possibly help it, and for quite a long time did not mention the fact that I knew anything of the books. But when I was called into court, I thought of all the circumstances connected with the time that I copied the books; and a few days ago, or a week or so ago, in going home one night, and thinking this thing over in my mind, and thinking of everything I could think of, my mind reverted to a conversation I had had at the time, laughing and looking over the books, and I wrote a great many letters, and read a great many names, and was laughing about the peculiarity of the names, and even made the remark "There is even Smith and Jones in it." That is about the only thing.

Q. You made that remark when—at the time the books were copied?—A. After they were finished; before they were turned over to Rerdell.

By the COURT:

Q. These are the circumstances that brought it to your mind—

A. [Interposing.] The fact.

Q. The names of Jones and Smith?—A. Yes, sir.

Q. And you were astonished that Brown and Robinson were not in?—A. I was not astonished. Simply looking over the books and speaking about them, and making remarks in regard to them, and the great number of peculiar names, I said, "Why, there is even Smith and Jones in it."

That is the whole statement of Mr. Gibbs so far as it is pertinent. I have read it upon both sides. You will yourselves remember the honesty of the witness in the way he stated the whole matter, and I think there is no doubt left upon your minds that the man told a truthful story. He made a complete copy of the books, including the accounts of William Smith and Samuel Jones, upon sheets of paper, or rather Mrs. Gibbs copied them and he compared them, just as he was told by Rerdell, to send to Mr. Stephen W. Dorsey. Mr. Rerdell says he did send them to Stephen W. Dorsey; but no matter what may have become of them, the fact is that there was a set of books which Rerdell had in December, 1879; the same set of books by the description that Mr. Donnelly had kept and made balance-sheets from; the same set of books that contained entries to Jones and Smith. This is established beyond all question by the evidence of Gibbs, and it is practically

established by the silence of Mrs. Gibbs. We disclosed to the other side the fact that she was familiar with the whole business, and if there had been any question that she would have testified in the same way she certainly would have been brought here as a witness. But, gentlemen, it is not only true that there was such a set of books, but that there was such a set of books known to Stephen W. Dorsey incidentally crops out, I think, in Mr. Dorsey's own remarks on the stand. Mr. Dorsey was asked upon the stand to give his statement or his version of the telegram which Mr. Rerdell admittedly sent him from Jersey City, in June, 1881, after they had had that interview at the Albemarle Hotel in New York. Mr. Dorsey tells you that was a peaceful, calm, and quiet transaction when Mr. Rerdell, having gone there without any apparent business, according to Mr. Dorsey's view, found Mr. Dorsey in bed and said, "Good morning," and told him everything was serene, and came away. Mr. Rerdell gives an entirely different version of that interview, and says that it was a stormy interview, resulting upon the disclosure of the fact that he had gone over there to tell him what he had done with MacVeagh and James. At any rate he sent a dispatch. Mr. Rerdell read the dispatch from a copy which he kept. Mr. Dorsey on the stand testified, in reply to his own counsel—I read from page 3789:

Q. Do you remember what the telegram contained—have you any memory of it?—

A. I can remember the substance of it, I think.

Q. Well?—A. I think he says: The affidavit story is a lie. Confidence is lost between us. I have been faithful to every trust, but I now resign my place.

Substantially a correct statement of the telegram. Then he added:

Send somebody to take charge of the book.

If Mr. Rerdell was not keeping books for Mr. Dorsey, if Mr. Dorsey did not know that Mr. Rerdell was keeping books for him, why, when he came to give his description of the dispatch Mr. Rerdell sent him from Jersey City, in June, 1881, did he say that Mr. Rerdell sent word to him to send somebody to take charge of the books? What books? Mr. Dorsey was unwilling to admit that Rerdell had any books but the route book.

Send somebody to take charge of the books.

That testimony was called out by his own counsel. On cross-examination it was referred to, page 3977, and he said "something to that effect," and his counsel seeing the bearing of the testimony, and seeing what was involved in that admission, undertook to make out that it was something as to the *business*, not as to the *books*; but the record shows he said something as to the books, and it was then stated that it was a matter that excited the attention of counsel at the time it was uttered, and a memorandum made by them:

Send somebody to take charge of the books.

But there is another piece of unconscious testimony by Dorsey which is worth calling to your attention. Mr. Rerdell testified that Mr. Dorsey left here in May or June, 1879, after having written to Mr. Bosler a letter, to which I shall directly call your attention, and told him, Rerdell, if Mr. Bosler came here to give him certain information. When Dorsey was asked about Mr. Bosler we find this condition of things, on page 3949:

Q. Did he take an interest in May, 1879?—A. I don't think he did until some time afterwards.

Q. How long afterwards?—A. I could not fix that date. After I left here in June

I had no intention of coming back here at all; I became engaged in other business matters.

Q. Did you settle an account with Bosler last fall which showed the dates when he became interested.

The WITNESS. Last fall?

Mr. MERRICK. Yes.

A. We settled last fall, but I don't know that that would show the dates.

Q. Cannot you fix the dates now from your recollection as to when Bosler got an interest?—A. I talked with Bosler the other day about it, and neither of us could agree upon the date; that is, we did not know.

Q. He came in simply to advance money?—A. Yes.

Q. When was that?—A. I said in May. I think it was in May.

Q. Did he get any security for his advances?—A. I think he got drafts.

Q. You gave him drafts?—A. I believe that I did.

Q. Did you inform Bosler of the character of the property and its yield?—A. I suppose I did in talking with him about it at the time.

Q. Explained the routes to him?—A. I presume I did.

Q. How much each one yielded?—A. I presume so.

Q. Did you not direct a statement to be made out showing the character of these routes for the purpose of that transaction?—A. I have no recollection of that.

Q. Did you direct Rerdell to show Bosler the books?—A. I don't remember that.

Q. Could you have informed Bosler of the amount that was coming and due on these respective routes without looking at the books?

The WITNESS. What books?

Mr. MERRICK. Any books that had relation to them.

A. I may have seen Bosler here or in New York and told him about it; I do not know it.

Q. Did you recollect in detail sufficiently to tell Bosler about it?—A. Oh, I don't know about that.

Q. Do you not know that you did not?

Then he goes on and says Rerdell had a statement about the routes pasted on the door of his desk, and he says that he entered into an agreement with Bosler.

Q. Do you not know that you referred him to Rerdell?—A. I don't think I did.

Q. Would it not have been a very natural thing for you to do?—A. Possibly; yes.

Q. What is your best recollection on that?—A. My best recollection is that I would not have sent a man like Bosler to Rerdell for information when I had a business transaction with him.

Q. Why not?—A. Because he looks into things very thoroughly.

Q. Who does?—A. Bosler does before he puts money in.

Gentlemen, there is the condition of things. Mr. Bosler went so far that Mr. Dorsey wrote a letter with reference to the subject to Mr. Bosler. He would not, in the first place, say whether he referred Bosler to Rerdell to see the books, and did not remember anything about it, but he thinks he would not have done it. Mr. Rerdell, on the other hand, says that in point of fact Mr. Bosler came here soon after the letter was written; that Mr. Dorsey was gone, and we assume that Mr. Bosler did make inquiries of him based upon the information contained in the books; and when we called attention to the fact that Mr. Bosler could testify upon that subject, Mr. Bosler, the friend and partner, the associate, whom they had here in this court-room and about these halls for ten days or a fortnight, they did not dare to produce him to contradict in any way or to sustain in any manner that question in connection with the books and the information that Mr. Rerdell then gave to him, although the court, in an argument on the question of the admission of testimony, stated that Mr. Rerdell's testimony in consequence of that letter that Dorsey wrote to Bosler—Rerdell's testimony that Bosler came here and talked with him—was certainly very significant evidence, and entitled to very serious consideration. With all that notice from the facts and from the court they did not dare to produce James W. Bosler here to testify whether it was true or false. Don't you believe, gentlemen, under those circumstances that Mr. Rerdell told the truth; that he had

a set of books known to Mr. Dorsey, and that Mr. Dorsey, having written this letter to Mr. Bosler and then having gone West before Mr. Bosler got here, gave those directions to Rerdell to show Mr. Bosler the books, and that in fact Mr. Bosler came here and got the information, and got it from those books.

Now, I say, gentlemen, beyond all question those books existed. Mr. Donnelly swears to it, Mr. Gibbs swears to it, and Mr. Rerdell swears to it. Beyond all question they existed. They existed for some purpose. They contained the accounts of the mail routes which Mr. Dorsey owned beyond all question; and Mr. Dorsey states, and repeats here, that he turned over everything to Mr. Rerdell and left here leaving him in charge; that he remained here during May, June, and July, while he was getting the expeditions which carried the service up to two hundred and fifty-odd thousand dollars upon the ten routes in this indictment which he had, to say nothing of his interest in the other one hundred and thirty routes; he remained here during that time, and then turned over to Rerdell all of the business, and Mr. Rerdell went on continuing the business. He wrote to Mr. Bosler making arrangements with Bosler to come on here, and Bosler came here and made the examination, and did go into the business, and from that time on Dorsey tells you Mr. Rerdell sent his accounts to Mr. Bosler, and settled with Mr. Bosler, and received money from Mr. Bosler. Yet, when we asked them to produce those balance-sheets, to produce those accounts of Rerdell, to produce the accounts with which Stephen W. Dorsey in November last settled with Mr. Bosler, they were as mum as grave-yards. Grave-yard principles follow there. Grave-yard principles follow them all through. They will disclose nothing whatever that they can avoid disclosing. Those books existed, gentlemen, in the early summer of 1879. They existed down into 1880. That fact, gentlemen, involves: That prior to the summer of 1879 that memorandum which was produced here, half of it in Mr. Dorsey's handwriting was admittedly in the possession of Mr. Rerdell, for those books were made from it. That memorandum was substantially, at that time, in its present condition, because the books were made from it and contained the entries which are in part of the memorandum. Part of the memorandum Kellogg and Hill undertook, in their absurd way, to throw a doubt upon as to its having been written by Stephen W. Dorsey. The memorandum existed before the books were made from it, beyond all question. Why and how did Mr. Rerdell come into possession of it if he was not employed by Dorsey to open books for him relating to the mail service? Did not that come within the general employment which Mr. Dorsey said existed? But, gentlemen, Mr. Rerdell tells you that some of these entries in the books he verified, made them up substantially, as I recollect, from the stubs in the check-books. Why have they not produced those stubs to you? It comes up, gentlemen, at every moment. Like Banquo's ghost—

It will not down.

Those stubs of check-books are in their possession. They could answer half a hundred questions. To answer any one of them adversely to the evidence that we have given would be a most important point in their behalf in this case. They will not produce them. They leave these stubs of check-books unproduced. They pretended to produce all the checks, and yet they failed to do that. They did not give you any information. They got up to a certain point and there they stopped. There was some pretense of an intimation that although Mr. Rerdell might have kept books, Mr. Dorsey did not know anything about them.

In the first place, is not that an absurdity? Is it not an absurdity to suppose that Dorsey would leave Rerdell in charge of his business from July, 1879, to August, 1880, and then on from that time until the close of the contract term in August, 1882; leave all the business in that way, and then through Bosler settle the accounts with Mr. Rerdell and have no knowledge in any way, not only of the entries contained in the books which Rerdell kept, but have no knowledge that he kept any books whatever? Is it not absurd to suppose any such thing? These ten routes represented an income of two hundred and fifty-odd thousand dollars a year, or a total business, including income and outgo, of \$500,000 a year, for three years, going no further than that. These ten routes alone represented transactions amounting to half a million dollars a year. There were one hundred and thirty routes and Mr. Dorsey took one-third in value if not in number. If the value was the same, Mr. Dorsey took not less than forty routes. As ten routes involved a business of \$1,500,000 in that period, the forty routes involved in that proportion transactions amounting to \$6,000,000. And yet Mr. Dorsey wants you to believe that doing business to an extent of \$6,000,000, a business greater than many merchants certainly in any city do, a business of that enormous amount, that it was done without any books! He admittedly kept no books. He wants you to believe that nobody kept any books in his behalf except the fraction of books which Mr. Torrey kept over in New York, and which Mr. Torrey seemed to be in doubt about as to whether they contained anything about the mail accounts! At any rate they could have contained very little about the mail. He was not in any position to know much as to the mail business, and when he did want to know something about the mail business in seeking to balance certain accounts what did he do but write to Mr. Rerdell? He wrote to Mr. Rerdell to find out something about that little item of 25 cents or \$25, and Mr. Rerdell went to Mr. Donnelly and got the statement from him, and by that the error was corrected. The statement was produced here. They want you to believe that there were no books. If Mr. Dorsey did not keep any books, that confirms Mr. Rerdell's statement that he kept books and that these were the books which were used, these were the books which were settled by, and these were the books by which all their business was carried on.

But, gentlemen, Mr. Dorsey is in the same boat apparently so far as books are concerned with that eminently truthful man, that eminently confiding man, Vaile. Vaile hadn't any books. Vaile was in the grave-yard business too. They were all setting up as undertakers and sextons, gentlemen. They did not have any books. Now, take their theory that they did not have any books. When persons are carrying on business to this extent and they do not keep books, why do they not keep books? Certainly because they are in the position that Brady said Dorsey would be in if he kept books, and that Dorsey was a damned fool to keep books. Does not the mere fact of their statement that they kept no books show that they were engaged in a business which in the very nature of the case and the probabilities of the case that they did not dare to put on the books, because if kept the books must balance and must account for all the money received and from whom, and for all the money paid and to whom the money went. They say they did not keep any books. However that may be, gentlemen, just how far the grave-yard business was carried out, I submit to you that the evidence is conclusive that Rerdell kept books, and that Rerdell kept books by the hands of Donnelly. Donnelly was paid \$100 for writing in books, and the claim is that that was paid by Rerdell and that Dorsey did not know anything about it. Mr.

Dorsey had Donnelly's notes for borrowed money for \$100, dated away back to some period prior to 1878. In 1879 Mr. Donnelly did work for Mr. Rerdell and Mr. Rerdell assumed to pay him for it, claiming that he had the right, apparently, by crediting it upon those notes, and told him that he would arrange to give him the notes. The thing went on and the notes were not given up. Nobody ever asked Mr. Donnelly to pay that money again. Nobody said anything to him about it. Mr. Donnelly continued to work for Mr. Dorsey down into last fall some time, and then there was apparently another payment to Mr. Donnelly by Mr. Dorsey direct. All this time, gentlemen, nothing was said about the hundred-dollar notes. Is it not perfectly clear that it was a recognized fact that Mr. Donnelly had done this work and had worked out that debt, and is it not beyond all question that that had been done by work upon these books? When subsequently Mr. Donnelly did additional work there was a further payment to him.

Now, gentlemen, all this question has occupied considerable of your time. The further history of these books is not important save in the sense that it is directed to show that the books went into Mr. Dorsey's hands and that therefore he is presumptively bound to produce them. If he does not produce them he is liable to the presumptions that are to be drawn from withholding them. But the question whether he is liable to any such presumption does not affect in any way the testimony already given affirmatively as to the contents of those books; even if Mr. Dorsey has not got them, if they have been destroyed or lost, the evidence is full and complete that they contained these entries made on the basis of that memorandum in Stephen W. Dorsey's handwriting. That is a tangible and important fact in this case. The only question, the only necessity, the only thing involved in all the testimony in tracing the books from that time on is simply to raise the presumption against Mr. Dorsey from his failure to produce them. We all know that he did not produce them. Bear in mind that the books existed. Bear in mind they existed as late as the spring of 1880 beyond all question. Mr. Rerdell says that after that time they were given to Mr. Dorsey. Bear in mind that when Rerdell went to James and MacVeagh in June, 1881, he told them about the existence of those books. He said that they were in New York, and he said he would go there and get them. He went to New York, and he claims that he did get one or more of those books in New York.

The COURT. One of them.

Mr. BLISS. One of them. When Mr. Rerdell told James and MacVeagh that those books existed there, what necessity was there, if he was telling a lie, and those books were not in Stephen W. Dorsey's possession, or in his office, for his saying that they were there? He could have said the books were here where he could get them. He could have possibly got them at the same depository from which it appears he got the letter-book he took to the house of Mr. MacVeagh, to wit, the house of Mr. Ingersoll. If he were making up a story he could have located them anywhere in Washington. What necessity was there for him to open the door to being caught in a lie, if he was making a story up, and saying the books were in New York and he would go over there after them? Was there any necessity for that? Is any man shrewd enough to get up so extraordinary a story, and a story that hangs together so well with all the facts in the case as this story of Mr. Rerdell's, going to give himself away, as the saying is, by pretending that the books were in New York in the possession of Mr. Dorsey or in Mr. Dorsey's office? Would he not have said, "The books are here and I can get them," and would he

not have run off and got them? Or if he had said that the books were in New York and he was engaged in imposing upon James and MacVeagh, as they want you to believe, would he not have said, on coming back after a few days, "Gentlemen, I have been to New York and I have got the book, and here it is," although he might never have been out of Washington? In point of fact he told James and MacVeagh the books existed. He told them that they were in New York. He told them that he would go and get them. He went to New York beyond all question. It is said that he did not go to that office and did not get that book. In the first place Mr. James said that on the train coming back Mr. Rerdell pointed out to him a bundle he had in his hand, done up, I think, in a newspaper. It looked like a book, and he patted it and said that it was the book. He told Mr. James that he could not go into any further detail there, because there was somebody who acted more or less with Mr. Brady and the star-route people, and he did not want to give himself away. It appeared on the stand that the man who was sitting next to Mr. Rerdell was Chase Andrews, the man whom Walsh tells you was engaged in raising a bribery and corruption fund to get the expedition appropriation through Congress in the spring of 1880. Mr. Rerdell told Mr. James that there was somebody there whom he did not name, but who was connected with these gentlemen. They obligingly put Mr. Chase Andrews on the stand to say that he was the man who was there. He says he did not see the book, but he says he did not see everything that Rerdell had. He saw that he had a bag, but he did not see any book. Mr. Rerdell says that he could not get the book into the bag without wrenching it out of shape, and the book was upon a chair in the drawing-room car. Mr. Rerdell says that he went to that office and got that book. He defines the place and all about it. Mr. Torrey tells you that he was there all that day and that Rerdell did not get anything of the kind. There, gentlemen, is a question of dispute between the parties. All I have to say upon that subject is this: In the first place, if Mr. Rerdell had been lying it would have been the height of fatuity for him to go on the stand and say, "I went to that office and I saw Mr. Torrey there and I got this book." If that had not been the transaction which took place there he would have said, "I went to that office and Mr. Torrey was not there, and I went in and helped myself to the book and brought it away." Mr. Torrey undertakes to say he was there all that day, and that Mr. Rerdell was not there. Mr. Rerdell said that he was there. You will bear in mind, gentlemen, that, saving to themselves, of course, their legal rights, when we sought to prove by a post-office inspector that he saw Mr. Rerdell go into that office on that day, these gentlemen all objected in chorus, and the court ruled that we were too late in making that offer; that we should have supported Rerdell when he was first on the stand, and that we were too late after Mr. Torrey had contradicted Mr. Rerdell to offer the evidence proposed. It was one of those cases which come to all counsel during a long trial. We took a different view of the law from that entertained by the court. We went through the case up to that point with no idea that there was going to be any dispute that Mr. Rerdell was there on that day. We desired, as we have in everything, except in my speech, to save your time, and did not pile up cumulative evidence. We afterwards sought to prove by the chief post-office inspector of the city of New York, in charge of the whole of that region, that he saw Mr. Rerdell go in that office on that day. We were excluded from doing it. They had the right to exclude us and I make no complaint about it; but having done that, what do we find? Mr.

James says Rerdell had something like a book. Rerdell says he had it, and that he brought it to his house here. Having left there in the afternoon, Mr. Dorsey, by his own admission, got a dispatch from Rerdell, in which Rerdell told him he resigned his place, and that all confidence between them was gone. Mr. Dorsey took so much interest in the result of that peaceful interview which occurred at the Albemarle Hotel that he sent Mr. Rerdell two dispatches before he got a hundred miles away from New York to be delivered to him on the train. Those dispatches we made every effort in the world to produce. There certainly was no default on our part. But we met with the trouble that we could not prove the writing of them by Dorsey. We could not prove that by Mr. Dorsey until he went upon the stand, and after he had gone upon the stand the court ruled that it was too late for us to produce them. Therefore we could not show what was in those dispatches. Mr. Rerdell having come back from New York on that day with this book, which he told James was the book, he took it to his house. After writing a letter the same night of that interview Mr. Dorsey appeared here within a few days, and Mr. Rerdell was appealed to to save Mr. Dorsey and his family, under circumstances which he detailed on the stand and of which I shall have occasion to say something directly. He then passed back again into full communion with these gentlemen whom he had been serving and whose corrupt work he had done for a petty salary of \$3,000 a year, while on the ten routes Mr. Stephen W. Dorsey was getting these tremendous profits. The routes first gave him profits annually of, I think, about \$97,000, and they ran up when the routes were increased and expedited to their fullest extent to, I think, \$128,000 a year. Mr. Stephen W. Dorsey getting all that profit and Mr. Rerdell getting the beggarly sum of \$3,000 a year, Rerdell passed back under the influence of Dorsey and Bosler, whom I say again they dare not produce. He passed back again under the influence of Dorsey and Bosler, and under the control of the same men who had debauched him previously. That book, however, before it passed into the control of Mr. Dorsey fortunately left one mark behind it by which we can show its existence. Mrs. Cushman was placed on the stand, and Mrs. Cushman swore that Mr. Rerdell, having gone West in the performance of some business for Mr. Dorsey (this man who wants you to believe that he did not trust Rerdell at all), got anxious about this book, which he had left somewhat exposed in his house, and telegraphed to Mrs. Cushman, who was living in his house—he had taken his wife with him West—to look up the book and see that it was carefully preserved. Mrs. Cushman told you on the stand she did look up that book and did find it, and that she examined it sufficiently to see that it related to the mail business, and that she retained it until Mr. Rerdell returned and gave it over to him. He states that he gave it back to Mr. Dorsey. That is the alleged history of that book. I do not need to go into the alleged history of the Gibbs copy of the book, nor the alleged history of the copy of the book which was made by Donnelly, because the subsequent history of those copies is really of comparatively little importance. I simply say to you that if Rerdell is to be believed all those copies passed into the hands of Mr. Dorsey. If you believe that they are traced into the hands of Mr. Dorsey, then you must draw from the fact that he refuses to produce them, as I submit that the court will tell you, the inference adverse to him in connection with them. If, however, you think those books are not traced into Mr. Dorsey's hands, a thing which I can hardly believe you will think, then, of course, you will not draw from the

testimony, in considering this case in the jury-room, any inference adverse to Mr. Dorsey. But at the same time you will bear in mind that, no matter what has become of the books, or where they have gone, or whether they were in Mr. Dorsey's possession last or not, beyond all question the books existed, and beyond all question they contained the entries which I have spoken of, and beyond all question they contained entries of \$30,000 paid to William Smith, which beyond all question, as I say, stood for Mr. Brady. All those facts, it seems to me, are tangible, and show that this testimony about the books brings out the fact that Mr. Dorsey did pay Mr. Brady that \$30,000 for practically corrupt purposes. Mr. Rerdell says he did. The books say he did, and the books existed beyond all question. The books have disappeared. Whether they have disappeared through Mr. Dorsey's manipulation, or whether through accident, is a matter of comparatively little importance. The one fact of the evidence of the payment of money by Dorsey to Brady remains the same, whether the books were put out of the way by Dorsey or by Rerdell. That is the great central point so far as the books are concerned, and as to that the testimony is absolutely uncontradicted.

Now, gentlemen, passing from the books, let us see a little as to what more of Mr. Rerdell's story upon this subject there is to which I ought to call your attention. You will remember the statement of the letter of Mr. Dorsey. Mr. Rerdell says, on page 2271, that Stephen W. Dorsey wrote a letter to J. W. Bosler on or about the 13th of May, 1879, in relation to this star service now under investigation; that he took a press copy of that letter in a certain letter-book, being the letter-book of Mr. Dorsey containing his own correspondence while he was in the Senate, and which he finished up after he went out of the Senate, about December 15, 1879:

Q. Where is the original letter; do you know?—A. I do not know; I mailed it.

Q. To whom?—A. I mailed it to J. W. Bosler.

Q. Did S. W. Dorsey, at or about the time of writing that letter, have any conversation with you in which he stated the amount of profits on those contracts?

Mr. WILSON. Now, if your honor please, that is very leading.

The COURT. Well, in regard to the amount of profits; modify it.

Mr. MERRICK. I do not know what his answer is going to be, any more than the man in the moon.

A. No, sir; we did not have a conversation in regard to the amount of profits; but he told me to make up a statement showing what the profits were.

Q. Did you make up such a statement?—A. I did.

Q. Where is that statement?—A. That statement was sent [correcting himself in regard to a previous answer]—no, sir; I do not remember whether that statement was mailed or whether I just kept it in the office there. I think, now, that I did keep it in the office for the purpose of showing it to Mr. Bosler when he called on me for that purpose. That is my recollection now.

Q. Kept it in which office?—A. In the office that I was then occupying in the house Mr. Dorsey occupied—the front room, basement.

Q. Do you know what has become of that statement?—A. No, sir; I do not.

Q. Do you know whether you ever handed it or gave it to any one, or whether it still remained in your office until last July?—A. I think I showed it to Mr. Bosler or gave it to him; I don't remember which.

Mr. Bosler could have been produced, gentlemen. The possibility of contradicting Rerdell crops up at every turn, and Mr. Bosler could have been produced to settle that question as to whether Bosler gave it to him or not.

Q. Did Mr. Dorsey give you any specific instructions as to the making up of that statement—as to the gross, the net profits, and the deductions and charges against the proceeds?—A. Mr. Dorsey told me to make up a statement of his entire mail serv-

ice, showing the pay on each route—the amount that was being paid to subcontractors—with a column for profit and a column for loss. I made that statement, and, as I said, my impression is that I kept it to show to Mr. Bosler, Mr. Dorsey telling me that Mr. Bosler would call upon me for that purpose.

Q. Did Dorsey tell you of any deductions to be made from the proceeds on account of anybody?

That is all on that subject at that place. We will pass now to page 2618. After we had given them notice so that we were entitled to go into the question of what was in the papers, we find this, referring to the letter which I have already spoken of:

Q. State, as nearly as you can, the contents of that letter?

That was the letter that Dorsey wrote Bosler in connection with that tabular statement.

A. First, it was proposing to Mr. Bosler to take an interest—

Q. [Interposing.] Take an interest in what?—A. In the mail business. Then that was followed by a statement as to how much he had already paid out.

By Mr. MERRICK:

¶ Q. Who?—A. S. W. Dorsey, the writer of the letter. Then, that was followed by another statement showing what the profits were, and what would yet have to be paid out to make the profits up to a certain amount.

The WITNESS. He wrote that if Bosler could not arrive here before he (Dorsey) left the city, which he expected to do in a few days, for Bosler to call upon me, and that I would exhibit the books and a statement as to how the mail service stood.

Q. Anything else that you remember?—A. I cannot remember anything else.

Q. As to the amounts paid out, what did it state; do you remember any more in detail?—A. Yes, sir; it gave the amount paid to T. J. B., I think, \$20,000 in round numbers.

Mind you, that was in the spring of 1879, just when Mr. Dorsey had commenced in this business.

The COURT. You read \$20,000.

Mr. BLISS. Yes; that is the way it is here.

Also, gave an additional amount that was credited to him, S. W. D., and, I think, that was \$10,000. Then, in the next statement it showed what the profits were at that time in round numbers—\$54,000—and that there would be an additional amount, but I am at a loss to remember what that amount was, whether it was \$10,000 or \$20,000, yet to be paid to T. J. B. There was another amount to be paid to somebody else; I think it was some borrowed money; I can't tell that.

By Mr. MERRICK:

Q. Borrowed money?—A. I think so.

By Mr. WILSON:

Q. State it all.—A. That amount, if I remember right, was \$10,000.

By Mr. BLISS:

Q. I understood you to say that he stated what the profits would be?—A. Well, before the second statement as to the amounts that would yet have to be paid, it stated there that he hoped to get it up within a short time to \$100,000 profits; and then to reach that amount was his second statement.

Q. Anything else that you remember in the letter?—A. No, sir; I cannot remember the substance farther than that.

Q. How long after that letter was written was it until Mr. Dorsey left the city? You say that he referred to the fact of his going away?—A. He left in about a week; he left on either the 19th, 20th, or 21st of that month, if I remember.

Q. How long after that time did you see Mr. Bosler?—A. Mr. Bosler came down a few days after Dorsey left.

Q. At that time was anything said about this letter?

Then there was an objection by Mr. Ingersoll, and on page 2620 the court says:

Certainly; if he swears that a certain letter was written asking Bosler to come down to see him, and there is a failure to prove the receipt of the letter by Bosler,

then the appearance of Bosler in pursuance of the instructions in that letter would go strongly to show the receipt of the letter by Bosler.

If Mr. Bosler did not come there in pursuance of that letter why did they not put him on the stand again and ask him whether he was here, and whether he ever saw that statement or anything of that kind? The difficulty these gentlemen are in, from their endeavor to suppress testimony, their endeavor to suppress books, and endeavor to exclude witnesses, crops out at every turn. The plain truth, gentlemen, is that the grave-yard business will not answer in the court-room, however it may answer in the Senate Chamber, in the Post-Office Department, or in the mail business.

Let me say, gentlemen, as to this letter, that we locate it at a particular point in the letter-book, just at the close. Rerdell says the letter-book closed on the 15th of May. The sheets were there. We called upon them for the press copy of this letter of Dorsey's to Bosler, and they did not produce it. Why not? Why would they not have produced the letter, or if that letter had been torn out, why did they not come in here and show the index to it in order to show that the letter that was at those pages indicated in Rerdell's testimony was not a letter of Dorsey's to Bosler, but was some other kind of a letter? Is not the conclusion irresistible, either that that copy is still in that letter-book, or that, if it was missing, the index of that letter-book, made by Gibbs, would, under the letter B, have shown that upon that page just at the close of the book there was a letter from Dorsey to James W. Bosler? Is there any escape from that irresistible inference?

Now, gentlemen, passing over this business, I want to refer just for a few moments, and at no great length, to a little subsequent history of this matter. I turn first to the interview at the Albemarle Hotel, in June, 1881. Rerdell says, at page 2281, that he went over there about those books:

I went over there to get the original books that I had kept—I and the party who assisted me afterwards in keeping the books.

He saw Mr. James on the train.

A. After getting my breakfast I went to the room of Stephen W. Dorsey, in the Albemarle Hotel.

Q. Did you meet Mr. Dorsey on that occasion?—A. I did.

Q. State what passed between you and Mr. Dorsey on that occasion.

Mr. WILSON. Your honor understands me as objecting to this and saving an exception so far as my client is concerned.

The COURT. Yes.

A. On going up to his room I found Dorsey in bed. As soon as I got in he got up. I saw that he was very much excited as soon as he saw me. He immediately commenced saying that I had turned traitor to him, and that I had been holding interviews with the Postmaster-General and with the Attorney-General. I cannot give all he said, because I became very much excited as well as he. He was furious. I left the room. As I was going out of the room he said to me, "I wish you would come back here as soon as I get dressed, in a little while." Without replying I left and did not return to his room any more.

At page 2287 he goes a little more into detail:

He—

Dorsey—

told me that he was perfectly informed of every step that was being taken in Washington, and that he knew I had been holding interviews with Mr. James and Mr. MacVeagh.

He is cautioned to give the whole conversation, and he says:

After speaking to him, and taking a seat in the front room—there were two rooms—he was in bed, and he got up and came out in his night-clothes. As soon as he got out

he charged me with holding interviews with Mr. James, the Postmaster-General, and the Attorney-General, saying at the same time that he was well posted as to everything that was going on in Washington; that he knew the very day and time that I had the interviews, and asked me what I meant by it. I told him my action was in his behalf; that I had been keeping up with the newspapers, and, knowing the facts in regard to this mail business, what I had done was done in his behalf; that is, for the purpose of saving him, if possible. He cursed me then, and said damn me, he didn't want to be saved by me; that he had nothing to be saved from. That was the principal part of the conversation that I can remember.

Dorsey said he did not want to be saved by Rerdell, but he changed his opinion pretty soon, and sent him two telegrams before he got to Philadelphia, wrote him a letter the same night, and came here immediately himself and set to work with Rerdell to get up an affidavit, which I shall show you, by his own admission, was a lie:

We both got very much excited, and we quarreled awhile until I went to the door to leave, and then he said, "I want you to come back; I want to see you again."

Further on:

I told him that I had been assured by Mr. MacVeagh that if he would come over and make a full and open statement of all his connection with these post-office matters, Mr. MacVeagh would not even use him as a Government witness in the prosecution of anybody else.

That is his statement of the interview. Dorsey's statement of the interview is a little different. I find I have no direct reference to Dorsey's testimony on that point, and therefore I shall have to trust to my memory in stating it. In general terms, I think I may say, without any question, that Mr. Dorsey testifies that the interview between him and Rerdell at that time was by no means a stormy one; that he was somewhat indignant about Mr. Rerdell coming over there and neglecting his business in Washington, but generally that there was nothing such as Mr. Rerdell testified to.

And right here, gentlemen, that suggests to me the query how it should be possible for Mr. Rerdell to undertake to tell Mr. Dorsey that he had deserted his post and gone over there simply for the purpose of having a sort of pleasant good-morning kind of conversation. There seems to be no adequate reason that he could have given him for going over there at that time, unless something had occurred in accordance with what Rerdell states, and unless his motive for seeking an interview with Mr. Dorsey was substantially as he states it. I am very sorry I cannot refer, at the moment, to Mr. Dorsey's testimony in regard to that interview, but I think I have not misstated it.

That interview having occurred, Rerdell saying that they parted in anger, Dorsey saying expressly that they did not part in anger, but parted pleasantly, and Rerdell, not going back, the next thing that occurs is the dispatch from Rerdell written from Jersey City to Mr. Dorsey, and which Mr. Dorsey admits that he received, but which Mr. Dorsey, being full of the books, when he undertook orally to state it on examination by his counsel, did not get quite correct, but added at the end of it:

Send somebody to take the books.

What the dispatch was, beyond all question, was this:

The affidavit story is a lie, but confidence is gone between us. I resign my position, and will turn everything over to any one you designate.

The "affidavit story" refers to the story that Mr. Rerdell had already made an affidavit and given it to the Government. That is on page 2284. Does that look, gentlemen, as if at that interview between Dorsey and Rerdell at the Albemarle everything was peaceful? Does it not indicate that there was something that was wrong—something that

had excited Mr. Dorsey? Here was Mr. Rerdell severing his connection from the man to whom he had been a faithful servant for years, cutting himself off from the only means of living he had in the world, in consequence of that interview which had broken the confidence between them. Does not that show, gentlemen, the confidence which had previously existed? Does it not show that Mr. Rerdell had said substantially, "You have hitherto trusted me; you have known everything that I did; we have acted together—I for a salary, you for the profit; but you have charged me with making an affidavit; you do not believe in the course I am pursuing; confidence is gone, and therefore I resign; I will turn over everything to anybody you send." Yet Mr. Dorsey, when he undertook to repeat that telegram, having in his mind "I will turn everything over to any one you designate," and also having the books in his mind, puts it in this way:

I will turn over the books to anybody you send.

The most tell-tale thing that he could have said as to the existence of the books and of Dorsey's knowledge that Mr. Rerdell had told the truth.

There is another passage about that telegram, at page 2440, but I do not think it substantially changes it; it was simply upon the cross-examination of Mr. Ingersoll, and I do not think makes any difference.

There is the interview, as to which their statements differ; the dispatch from Rerdell to Dorsey, as to the contents of which there is substantially no dispute, and that dispatch consistent only with the general tenor of Mr. Rerdell's statement of the interview. Before Mr. Rerdell could reach Philadelphia by that fast train which gets to Philadelphia in two hours or two and a half, Mr. Dorsey, by his own admission, had sent him two dispatches. He says upon the stand that he got that telegram from Jersey City and he sent Rerdell two dispatches.

What was in those dispatches, gentlemen? We could not show you under the rules of law. Mr. Dorsey interposed under the rules of law to prevent us showing you what was in those dispatches, and Mr. Dorsey did not undertake to tell.

The next thing is that that night Mr. Dorsey writes a letter to Mr. Rerdell. That letter is shown to have been destroyed, and Mr. Dorsey admits, I think, writing the letter. I say "I think," for I have no memorandum of where it can be found, and yet I think it is so. As to that letter Mr. Rerdell says, at page 2285:

A. I received a letter the next morning by mail.

Q. Where is that letter?—A. Stephen W. Dorsey tore it up afterwards.

Q. In whose handwriting was it?—A. In the handwriting of Stephen W. Dorsey.

Q. By whom was it signed?—A. It was signed S. W. Dorsey.

Q. What were its contents?

Mr. INGERSOLL. We object.

Mr. WILSON. I suppose that is not to go as evidence against General Brady.

The COURT. No. It is evidence against nobody but Dorsey.

Of course it was not at that time. After the court ruled subsequently that we had established the conspiracy sufficiently to make the acts of one evidence against the others, of course all this evidence came in as bearing against all the defendants.

The COURT. No; that was not the point of the court in regard to that.

Mr. BLISS. No, I see; it was subsequent to the conspiracy. Therefore, so far as Mr. Brady was concerned, it being a declaration of a conspirator and in the nature of a narration, that is not evidence against anybody except against Dorsey. It did not occur to me that it was a case of narration.

The COURT. Before you pass from that point I want to ask a question. After Dorsey admitted on cross-examination that he sent two dispatches to Rerdell on the train, I do not remember whether you renewed the offer to prove those dispatches by Rerdell.

Mr. BLISS. Yes; that whole evidence was gone into. Our position was this: We did not ask Mr. Dorsey upon the stand as to the contents of those dispatches, because at that time you were—you will excuse the expression—a little strong on the collateral, and we were afraid that you would hold that that was collateral matter and we would be bound by his statement, and therefore we did not question him. After he went off the stand then we sought to prove the contents of the dispatches, after putting all those other witnesses on the stand to prove their loss, but your honor ruled that it was too late.

The COURT. It was in rebuttal. I remember very well canvassing that point in my mind a good deal.

Mr. MERRICK. It lay over and was argued a second time.

The COURT. I considered the point a good deal, whether, after Dorsey had acknowledged that he had sent two dispatches, you might not have proved the contents of those dispatches, but I did not remember that I had ruled upon that point on its merits.

Mr. MERRICK. We offered to prove it by both Rerdell and James.

Mr. BLISS. We put all those telegraph people on the stand to prove the loss of the dispatches.

The COURT. That was in rebuttal.

Mr. BLISS. The point was this: We could not prove the contents of the dispatch until we proved its loss, and we could not prove its loss until we proved that the dispatch was signed by Stephen W. Dorsey. There were no means of proving that it was signed by Stephen W. Dorsey except by his own evidence. When he came on the stand we did not dare to question him as to the contents of the dispatch, because then it might have been said we were bound by his testimony, as collateral matter. We took the alternative of not questioning him about that, thinking we might be allowed to give it in rebuttal, but your honor then ruled that we were too late.

The COURT. It all recurs to me now.

Mr. BLISS. We were in the condition, sir, of the Michigan Congressman whose classics were a little rusty, and who said he was between Silly and Carrybogus. Rerdell said this letter was destroyed——

The COURT. [Interposing.] What I meant was this: I did not want to be understood as ruling as a point of law that you might not have been able to prove the contents of the dispatch after proving that it was sent and was received by the party to whom it was proved to have been sent. But in this case it so happened that you could not prove that the dispatch was sent until on the cross-examination of the party who was the alleged sender.

Mr. BLISS. We could not prove that the dispatches that Rerdell received and showed to Mr. James, purporting to be signed by Mr. Dorsey, were in fact sent by him until Mr. Dorsey came on the stand.

The COURT. If you had been able to prove in your case that a dispatch was sent at a certain time, and that the party to whom the dispatch was sent had received it upon the train, I did not intend to be understood as ruling that you could not give evidence of the contents of that dispatch.

Mr. MERRICK. You said that in your opinion.

Mr. BLISS. Unfortunately that was not our position.

The COURT. The misfortune of your offer was that it was not in its proper place.

Mr. BLISS. And it was not in its proper place because we were afraid of the rock of collateral, and we went on the rock of rebuttal.

Mr. MERRICK. I think your honor is now on the stool of repentance.

The COURT. No; I have had no reason to change my views at all.

Mr. BLISS. We accept the situation. It is a little piece of testimony that we have not got—as to which they exercised their legal rights of preventing us from getting. It is a little piece of testimony we can well dispense with in view of the abundance that we have.

The contents of that letter that Mr. Dorsey wrote to Mr. Rerdell on the very day that he sent these two dispatches, after that Abemarle interview, as stated by Mr. Rerdell, at page 2551, are these:

A. It was dated on the 11th or 12th of June, if my memory is right; at any rate it was dated the night or the day that I left New York, because I got it the next morning. He referred in the letter to what I had stated the day before, and to the fact that I might not get back there, I think, to the hotel; wanted to know if I intended to ruin him and his wife and children; and begged me to take no further steps until he could see me; and he refused to accept my resignation. Now, I never read the letter but once, and laid it on my desk, and that is as near as I can give the substance.

Q. You read it but once?—A. I don't think I read it but once. I read it to my brother or showed it to him; I don't know whether I showed it to him or gave it to him to read—who was here at that time.

And we subsequently, at the wrong time—we made some blunders, gentlemen—offered to examine his brother as to that letter which he said his brother saw, but that offer was, in consonance with the legal rights of the defendants, excluded.

The next thing that occurred in process of time was that Mr. Dorsey two or three days afterwards came over here, and he had here an interview with Mr. Rerdell, who says, at page 2288, that on the Sunday morning following he saw Mr. Dorsey, and I think Mr. Dorsey fixes it on the same day:

Q. Where did you see him?—A. I saw him at his house, 1121 I street, in this city.

Q. How did it happen that you saw him?—A. He telegraphed me to meet him there that morning.

Q. Where— A. [Interposing.] From New York.

I think that was struck out.

Q. Will you state in substance, as nearly as you can recollect, what passed between you and him?—A. I went to his house between 11 and 12 o'clock on Sunday morning—I had forgotten my key and left it at home—and I rang the door-bell.

Q. What key do you mean?—A. The key to the office; to go down in the office. I rang the door-bell; Mr. Dorsey came to the door; he shook me by the hand and says, "Come down-stairs." We walked down in the office together, when he immediately brought up the conversation that we had had over in New York, and what I had done by going to Mr. MacVeagh, and asked me if I intended to ruin him. I said no, I did not; it was not my intention to ruin him; it was my intention to help him out of what I thought to be a bad difficulty.

Q. What did he say?—A. He then asked me if I had done anything further since I had left him; I said no, I had not; I had not been near Mr. MacVeagh. He then says, "Well, how shall we get out of this?" I says, "Mr. Dorsey, I will do anything that I can except to commit perjury." He says, "Damn it, what does that amount to when a friend's fate is at stake?" He says, "I wouldn't hesitate a moment; I have been your friend for long years; I have stood by you here; I took you from the District government when I knew that you would lose your place after I was out of the Senate, and I will be a friend to you from now on." Tears were in his eyes. He took me by both hands and said, "Rerdell, for God's sake, don't ruin me and my children, and particularly at this time; to be torn down from the height I now occupy," he said, "would be death to my wife." I allowed myself to be completely overcome, and committed an act, God knows, that no act of mine will ever cover up.

Q. What act do you refer to?—A. I promised there, and did do it—I made an affidavit retracting all that I had said to Mr. MacVeagh and Mr. James—denying all that I had said.

That testimony was given by Mr. Rerdell on the stand in such a manner and under such circumstances that you must be satisfied that he was either telling the truth or that he was a most finished actor.

On page 2494, on cross-examination, after referring to the fact that Dorsey had stated to him that the Government had no evidence except what Rerdell had furnished, we find this :

Q. What did he say after he said that they had no evidence except what you had furnished?—A. He said “The only way to get out of this is to make a retraction.”

Q. Did you offer to make the retraction, or did he suggest it?—A. He suggested it; I did not offer to make it.

Q. Then what did you say?—A. Then, I think, was the time I said that I would do anything in the world for him I could except commit perjury.

Q. Did you mean by that false swearing?—A. Except false swearing; I did not know what it was then.

If it had been Miner, gentlemen, he would have told you that it was not perjury, as it was not in the eye of the law, and it did not make any difference in the eye of the law as long as it was not perjury. That was Miner’s position on that question.

Q. Then he gave you his view on that crime?—A. He did.

Q. What was that?—A. He says, “Damn it, what does that amount to when a friend’s fate is at stake,” or words to that effect. He said he wouldn’t hesitate a moment in a case of that kind.

Q. What did you say then?—A. He caught me by both hands—

Q. [Interposing.] But what did you say?—A. I don’t remember that I said anything; I probably was thinking over what he had said to me.

Q. Then he caught you by both hands—about the same as MacVeagh did?—A. I did not say that MacVeagh caught me by both hands.

Q. You did not; I forgot that. Go on, then—go on.

The witness then said there was an attempt to put words in his mouth, and afterwards continued :

A. Taking hold of both my hands, he said, “Rerdell, for God’s sake, would you ruin me and ruin my family?” and he referred to the position that he occupied politically at that time; that he had been feeling himself standing very high politically—

Mr. Stephen W. Dorsey did stand high politically down to shortly after the administration of General Garfield came into power, when this interview took place—

and to be hurled down from that it would be the death of his wife. He spoke of his children, the disgrace it would be to them, and said that the retraction of this thing would be the end of it—the retraction of my statement to MacVeagh would be the end of the whole thing.

Q. Did he say anything to you about how it would affect your family?—A. He did not. I don’t suppose he ever let my wife and children cross his mind at any time.

Q. Go on.—A. I promised him then that I would make a retraction.

Q. Then did you write it out?—A. Then the next day I wrote out, at his request—that evening we talked a little as to what would be the course to pursue. He says, “The first thing you do is to sit down and write out a full statement of what you have done and said, and what MacVeagh and James and all of them have done and said.” The next day I did that.

Then, on page 2288, after referring to that same conversation, he says :

Q. Did any one come in before you left there that day?—A. Yes, sir; I think about 2 o’clock that day Mr. Bosler came in.

Mr. Bosler, gentlemen, comes in everywhere, except at the point where, in a critical moment, if the story of Rerdell were not true, he could do some good to the defendants. But he comes into this court-room, and he walks out of this court-room. These gentlemen do not invite him to go upon that stand and give his testimony, which he could give if Mr. Rerdell were not telling the truth.

At some stage here—I have not a reference to it, but my recollection is that Mr. Rerdell again refers to Mr. Bosler in this connection, and

tells something about Mr. Bosler having indicated to him in some kind of a way that he had been instrumental in having somebody get out of a statement that he had made. He says that Mr. Bosler said that when somebody had once made a statement that he wished to get rid of, the arrangement was made that he should say that he was acting as a detective in his original statement, and was trying to draw out the others, and that the statement that he made while acting as detective was false; and that that was adopted as the theory on which this affidavit that Mr. Dorsey got him to make was gotten up. That is his statement as to Mr. Bosler. If that was not true, gentlemen, why was not James W. Bosler brought here and asked to answer? Bear in mind Bosler is one of these confederates, though I do not say a criminal confederate. I use the word "confederate" and not "conspirator."

Bosler shared in these profits. Bosler, from the spring of 1879, was in charge of this business. Bosler is the man who, representing Dorsey and the defendants, received the money that was necessary, carried the business on as Dorsey's representative, and finally, in November last, Bosler is the man who settled with Dorsey down to that time, got his money out from the business, and closed the matter up. And if there were any fragments of it left—the business having ended by the ending of the service on the 1st of July, 1882, and the settling up naturally not being completed until a few weeks afterward—he turned over everything that was left of it to Stephen W. Dorsey. Rerdell says that Bosler, Dorsey's associate, engaged in this business, suggested the theory of playing detective and getting up the affidavit upon that theory. He says that that was his idea. And Mr. Bosler they did not examine. You cannot expect us, gentlemen, to examine Mr. Bosler. You cannot expect us to put Mr. Bosler upon the stand and ask him about this. From the experience we have had of these defendants on the stand there was certainly danger that he might undertake to deny the whole thing. At any rate, we were not called upon to expose ourselves to any such danger, to expose ourselves to having it said, "Why, your own witness told you that that was not so." The burden was upon them, beyond all question, to call Mr. Bosler, if he could contradict Mr. Rerdell; but they did not call him.

As to those affidavits, gentlemen, I have said that I did not propose to go into a detailed examination of them. In the affidavit of June, 1881, Mr. Rerdell starts off by saying, in his direct examination, that yielding to the appeal of S. W. Dorsey he did what he shall ever regret—he did make an affidavit which was false. He says that is so. They want you to believe that that affidavit was true, so Mr. Bosler could have confirmed it at nearly every point; could have confirmed the history of its inception, its manufacture, its issue. They want you to believe it, though the central point around which the affidavit revolves is proved to you beyond all question, so far as the statement of the affidavit is concerned, to be false. The affidavit says no such books ever existed. Yet Donnelly and Gibbs, both of them, swear to you that they did exist. That is the central point around which that affidavit is made to revolve—that no such books existed. Have you any question now, can any of you have any question, that those books did exist? I leave out of question entirely the other point, as to whether Dorsey knew of their existence. Can you have any doubt after the evidence of Donnelly and Gibbs; after the disclosure of the fact that Mrs. Gibbs could have been brought here to contradict it? Was there any question after Mr. Dorsey referred to that telegram, saying that Mr. Rerdell proposed to turn the books over to somebody he should send? As to that affidavit which they want you to believe was true, but which Mr.

Rerdell says was false, and which Mr. Rerdell says was gotten up in the way he details (he having first written out a statement of the true occurrences, and then the contents having been changed and manufactured by Dorsey), take out of that affidavit everything that relates to the existence of the books, and practically the affidavit would cease to be the thing important. And yet when you admit that the books existed, that affidavit, in its real purport, is utterly gone. Mr. Rerdell is correct. He said that, yielding to the influence of Mr. Stephen W. Dorsey, he made an affidavit which was false. He did, beyond all question. Mr. Bosler, as I have said, could settle very much of that. They do not dare to produce him.

As to this affidavit, gentlemen, there is another matter which I, perhaps, ought to have something to say about, but I have left behind me one sheet of my memorandum, and at the risk of consuming a very little time upon that point to-morrow morning, I now pass over it. I am talking about the affidavit of June, 1881. That is a thing important only as showing that Rerdell made contradictory statements, and he begins by saying that he did. He does not deny that he did. He made that affidavit under the influence of Stephen W. Dorsey, and it does not lie in Dorsey's mouth to throw up that affidavit against him; it does not lie in his mouth to undertake to say that it is a true affidavit when in point of fact it is shown to be false so far as the books are concerned, and Rerdell says it is false in a large number of other particulars, when he makes a statement as to the way in which it was gotten up utterly inconsistent with the idea of its truth, and when Mr. Bosler was part and parcel of the getting up in very many particulars, and when he could have been brought here to say whether Mr. Rerdell or Mr. Dorsey is now correct.

But, after all, gentlemen, the question is simply this: whether Mr. Rerdell has told the truth here on the stand. I submit to you, gentlemen, that in everything that is in that affidavit, everything that is sought to be contradicted or alleged to be contradicted by that affidavit, everything essential is proved to be true by the evidence before you—evidence outside of that, evidence outside of Mr. Rerdell, evidence which is in this case and running through it from beginning to end; that there is not any escape from the fact that the books existed, and all that the existence of the books involved I have already called your attention to in connection with the evidence of the corruption of Mr. Brady and in connection with the evidence of the corruption of Stephen W. Dorsey.

Passing, gentlemen, then, from the affidavit—reserving the matter to which I referred a moment ago, as to which I may have something to say in the morning—we come to another branch of this case. Mr. Rerdell said that on one occasion he was present when Mr. Stephen W. Dorsey drew money, which he stated, I think, at \$7,000. I do not think he states that he saw the precise amount of money, though he subsequently learned in some way, I think from the stubs the amount, and he says it was \$7,000; that Mr. Dorsey having drawn that money, whatever it was, went to the Post-Office Department and went into Mr. Brady's room; that he did not go in there with him. There was a good deal of indignation upon that subject when Mr. Rerdell testified, and they undertook to say that by showing all the checks they were going to convince you that that could not be true.

In the first place, Mr. Rerdell did not pretend to say that that was a check upon Middleton's bank. There was at the same time, he thought, some money drawn out of the Citizens' Bank, and he said also that Dorsey was in the habit of getting money upon checks drawn upon New

York and other places, and it appeared affirmatively that Mr. Dorsey kept bank accounts with two bankers in New York. However that may be, they themselves put in a check here for \$7,500, drawn about the time Mr. Rerdell spoke of, the money upon which admittedly went to Stephen W. Dorsey, though there is a question raised as to whether it was drawn in Mr. Rerdell's presence or whether it was not drawn by him. But the money went to Stephen W. Dorsey, and there was a promise made to show you what was done with that \$7,500. But, like many another promise in this case, it remains unfulfilled to-day. No evidence was given as to what Stephen W. Dorsey was wanting just at that time with \$7,500 in bills. Of course all that transaction might have occurred precisely as Mr. Rerdell testified, and there might have involved no corruption on Mr. Brady's part. The drawing of the money and going to Mr. Brady's room might have been a mere accident, as a call thereto attend to some other business. Of course that is not conclusive. It is only a little straw in this case as showing a transaction of that kind involved in connection with all the evidence you have in this case—evidence of Mr. Brady's acts, and particularly as at the time when that occurs evidence in connection with the large increases which Mr. Brady was then ordering; evidence in connection with the books, and the evidence they bear; evidence in connection with the declarations of Brady to Walsh—evidence all consistent. Mr. Dorsey was not taking \$7,500 in bills to the West; he was not doing things of that kind; he could get his checks cashed at the West. Judge Bissell was willing to take Mr. Dorsey's checks for a couple of thousand dollars. He could have taken bills of exchange, certified checks, &c. But just at that time Mr. Dorsey wanted \$7,500 in bills, and he got them. It may have been for a perfectly proper purpose, but in view of the evidence of Mr. Dorsey's acts, of Mr. Brady's acts, and of the relations between Dorsey and Brady, I submit that it is, to say the least, an exceedingly suspicious transaction. With reference to that, gentlemen, bear in mind that they have not accounted for all the checks in that check-book that month. Admittedly there are some of the series gone which they admit did exist. And they have not proved what they were. There was some declaration by counsel here, but there is no evidence in the record. Bear in mind, too, that there is a break; that there seems to be a series of checks running to somewhere about 200 in the numbering, and then there is a break between there and the 500's. They have not proved that they have produced to you or accounted to you for all the checks even drawn upon Middleton & Co. during that month of June, I think it was. They promised that they would prove it, and they got these other checks in on the statement that they would supplement that with the evidence as to what those checks were, but they have not proved it.

I have come back again to the same statement; it is the withholding of testimony; it is the graveyard principle brought into the court-room with the hope that you are stupid enough to be imposed upon by it. There is nothing in it; there cannot be anything. At any rate, there is nothing in it that disposes in any way of Mr. Rerdell's statement. And yet I say to you in entire frankness that his statement as to that transaction is a thing that we look at merely as a straw in the way, and not as anything that we should ask you to make your verdict turn upon.

I think I can say to your honor that, beyond all question, I will close by the recess to-morrow.

The COURT. We have received some light upon the subject. Adjourn the court until to-morrow morning.

Thereupon (at 4 o'clock p. m.) the court adjourned until to-morrow morning at 11 o'clock.

TUESDAY, MAY 8, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. BLISS. [Resuming.] Gentlemen, I congratulate you and myself that I have arrived somewhere near the close of this long address. I desire at the outset to-day to call your attention to a few references as showing how thoroughly and how constantly Mr. James W. Bosler pervades a large portion of this case, and how valuable he would have been as a witness had the other side chosen to favor us with his testimony. They told us, on page 3947, on the authority of no less a person than Stephen W. Dorsey, under oath on the stand:

You will have a chance to ask Mr. Bosler about it. Perhaps he can give you more of the details.

We had that distinct promise that we should have a chance to ask Mr. Bosler. In their anxiety to find out where one of our witnesses had been during the recess they asked him on another day whom he had seen during the recess, and he said he had met Mr. Bosler "out there," as was his expression. Mr. Dorsey also told you that Mr. Bosler had been here nearly every week during this trial, and that he had been constantly at his house. He also told you of Mr. Bosler's interest in the case, and his pecuniary interest in the routes, and how he had been practically interested in them by having for many months a large share of the profits and advancing money. He promised that Mr. Bosler should be produced, and that we should have an opportunity to question him. The evidence that he was here, the evidence that he was weekly or daily at Mr. Dorsey's house, all those facts were in the case, and yet they did not put Mr. Bosler upon the stand. Running through roughly, let me show you the different points as to which Mr. Bosler could have thrown light upon this case. He was present at the interview at Chamberlin's in August, 1880, which Mr. Rerdell said he was told related to the question of fines and remissions. On that very day I have already shown you that applications for the remission of fines were made, which the record shows were subsequently granted. Mr. Dorsey tells you that Mr. Bosler got Mr. Rerdell to make the affidavit of June, 1881—his first affidavit. Mr. Rerdell says that he took these contested books that he kept to New York in the spring of 1880 for a settlement to be had between Stephen W. Dorsey and James W. Bosler. If those books had not existed if those books had not then been shown to Mr. Bosler, would not Mr. Bosler have been brought here and have denied that fact? Rerdell was asked over and over again on the stand if he did not tell Mr. Bosler certain things. He said he did not. They did not bring Mr. Bosler here to contradict him. There was a transaction also into which they went somewhat into detail. There was an allegation that Dorsey came into a room and found Rerdell and Bosler there, and that Rerdell picked out of a scrap-basket certain papers which he alleged he had drawn in imitation of the handwriting of Stephen W. Dorsey. Mr. Rerdell denied it. Mr. Bosler could have told you whether that was true or not. Mr.

Bosler was not produced. Mr. Dorsey tells you that when he came here in June, 1881, after the famous Albemarle Hotel interview, he came expecting to meet Mr. Bosler. He could not say whether he asked him or sent to him to come or not, but he thinks it very probable he did. He requested Bosler to see Rerdell after he came here. He said in the first place, that he had nothing to do with making up the affidavit, and then he said that Bosler may have come to him for suggestions as to the affidavit. With reference to a particular clause, he says Mr. Bosler suggested it. All through with regard to the preparation of that affidavit Mr. Dorsey states one thing and Mr. Rerdell states another. I say Mr. Dorsey states one thing. I think I will show you directly that Mr. Dorsey stated two contradictory things. He constantly contradicted Mr. Rerdell and Mr. Rerdell equally contradicted him. They both of them say that Mr. Bosler, the man whom Dorsey promised we should have a chance to question on the stand; the man who was his partner and friend, and was here at his house constantly during this trial, could have explained those questions. They have not produced him. They did not dare to produce him, gentlemen. When we come down to the affidavit of 1882 Mr. Rerdell says Mr. Dorsey took him from here after court to Willard's Hotel, and Mr. Bosler was there, or came in immediately afterward. Mr. Dorsey says that he did not go there as stated by Rerdell, but that he went there by an appointment to meet Bosler, with Rerdell. He says Bosler was present all that time, and that the affidavit of 1882 was largely gotten up for the protection of Bosler. You remember Bosler's name appears in it several times. He states at one time that it was not the purpose of Bosler and himself to do so and so, and he also goes into reasons why, when Mr. Bosler's name had been left out in a particular place, it was added. All that, gentlemen, shows Mr. Bosler's connection with this case from the Albemarle Hotel interview all the way down through the preparation of both those affidavits, in the Chamberlin interview, and as the owner of or interested in the contracts, and taking a considerable portion of the profits. Though they promised us to produce him, though they led us to believe he would be on the stand, and though we believed that promise would be fulfilled, Mr. Bosler left here just before they closed, and they did not seek to put him on the stand. Now, gentlemen, what inference can be drawn from that? What inference can be drawn, except the inference that Mr. Bosler told them "Here, my friends, if you put me on the stand, I am not going to perjure myself. I settled up my interest in these contracts last November, I have got my money back, and I have got my profits in my pocket, and I am in no danger in any way. I am not going on the stand and going to perjure myself to assist you. I will be glad to help you in any way in my power, but you must not ask me to go to that extent." Is not that the only possible, the only consistent, inference to be drawn? I submit to you that it is.

Now, one word as to the truth of the affidavit of June, 1881. I told you it was not true on its face. It was not true, because it referred to books as not existing, as a central point, while the books existed beyond all question. But there is another thing in it that I want to call to your attention as showing that the affidavit is not true: The statement of what Mr. Rerdell is alleged to have told Mr. James and Mr. MacVeagh is inconsistent with the statement of Mr. James and Mr. MacVeagh here. They say he did not tell them any such things. For instance, without going into details, there is in the affidavit considerable about Jennings, who was a subcontractor on the Mineral Park route, and his claim upon the Government. Mr. James says that

nothing was said to him in any manner at that interview upon that subject. The affidavit cannot be true, and yet, gentlemen, I call your attention to one passage in it which it is worth while for you to know, and which Mr. Dorsey and his counsel here insist is a correct statement, because they insist the affidavit is correct. It is that Mr. Rerdell was acquainted with all of Dorsey's money transactions.

Now, gentlemen, let us take this affidavit of June, 1881, in another point of view, as showing the action of these defendants. Mr. Dorsey tells you, on page 3730, that the affidavit of June, 1881, was not made at his request, and that Rerdell proposed to make an affidavit, or rather to make a statement in writing, or an affidavit. Then Dorsey goes on:

He did make it, and after it was made he brought it, I think, up to my house, to the upper part of the house where I was staying. It is possible that he made it in the office below, but not at my suggestion, not at my request, and not at my direction in any way.

Mr. Rerdell says that he wrote out a statement of the transaction precisely as it had taken place between MacVeagh and James and himself, and that he took it to Mr. Dorsey, and that Mr. Dorsey then took it and altered it over into the affidavit as it now appears, putting in a part, changing a part, and everything of that kind. As to all those questions Mr. Bosler would have been a very valuable witness. Now, on page 3739 of Mr. Dorsey's testimony:

Q. I will ask you if you wrote these words as a part of the statement afterwards sworn to by Mr. Rerdell:

“WASHINGTON, D. C., June 20, 1881.

“MR. PRESIDENT: I think it is my duty to you, the Administration, and common fairness that I should make to you the following statement under oath.”

Did you write that as a part of that statement, or furnish that sentence?

Mr. Dorsey said to that question, “No, sir.” He says, on page 3733, that he neither suggested nor wrote a single word in that affidavit from beginning to end. He repeats that again in various forms, and on page 3792 I find this testimony:

I think I asked you before whether you made or suggested any part of that statement of June 20 or 21, 1881?—A. I did not; any line or word in it. It is barely possible I may have suggested punctuation or something of that sort.

Q. Do you remember that?—A. I do not even remember that.

He says afterwards he does not believe he prepared any part of it. “Bosler may have come to me for suggestions as to it. I don't remember taking the statement from Rerdell and interpolating or adding anything to it.” Then he was asked the troublesome question:

How came it to be addressed to the President?

And his answer was:

Well, I want to confer with my counsel.

The witness on the stand sworn to tell the truth and the whole truth wanted to confer with his counsel before answering a question of that kind, which certainly related to the truth, however the answer may have been. He wanted to consult with his counsel. Of course the court refused him that liberty. Then he went on and said:

My recollection is that after the affidavit was made and sworn to I sent for Colonel Ingersoll and submitted it to him.

That is his recollection. Then he says, later on, at page 3986:

In consequence of that, the affidavit was addressed to the President of the United States.

Having sworn that he had nothing to do with getting it up, having sworn that he had written no word or line in it, he saw very clearly when he came to reflect, that the idea that Mr. Rerdell got up of his own motion this affidavit; that he addressed it to the President; that he interspersed through it references "to your Administration," "to your Cabinet," and "to you, Mr. President,"—that the idea that Rerdell got all that up of his own motion with the idea that Mr. Dorsey was to do as he afterwards did, take that affidavit to the President, and he, the accused, seek to have removed without his standing trial, the sworn officers who in the performance of their duty were seeking to put him on trial—to say that Mr. Rerdell of his own motion, with no suggestion from Stephen W. Dorsey, framed that affidavit in that way and addressed it to the President was too shallow a thing to be imposed upon anybody. When Mr. Dorsey came to reflect upon it and under the crucial cross-examination of Mr. Merrick, first having sworn that he prepared no word or line in it, he says he sent for Colonel Ingersoll after it was made and sworn to, and that in consequence of that, the words "to the President" were inserted. He says the words "to the President" were introduced apparently with the idea of a suggestion of simply adding a heading to the affidavit. It begins:

Mr. PRESIDENT. I think it is my duty to you, the Administration, and common fairness that I should make to you the following statement under oath:

He says after it was made and sworn to those words were introduced, and that it was not originally addressed to the President of the United States. Then we go a little further down and we find this which they say was put in afterwards, the body of it remaining unchanged:

I therefore in my heart and conscience justify myself in the course I have taken in this matter, by deeming it right and proper that I should by every means in my power show to you—

The President—

and to the world the degradation and shame brought upon your Administration by the action of two members of your Cabinet, by attempting to seduce, bribe, and corrupt the confidential agent and clerk of Mr. Dorsey so as to compass his ruin and disgrace.

The intimation is that the words "to the President" were added, and also those words lower down at the end:

Were those words written after you saw Colonel Ingersoll?—A. I think not, sir.

Q. Were they not written after the beginning of the affidavit with the words "Mr. President?"

The WITNESS. There is something that precedes that, is there not?

Mr. MERRICK. There is a good deal that precedes it. I have read you the last clause of the affidavit.

A. Then it must have been written after the beginning, if it was not written at the beginning.

Q. Was it not written after the affidavit had been handed over to you as complete by Mr. Rerdell?—A. I don't think it was.

Q. Were those words in Rerdell's original draft of that affidavit according to your statement of what that draft was?—A. I cannot tell you.

Q. Were they not written in the affidavit after the words "Mr. President" were put at the head of the affidavit?—A. I cannot tell you that.

Q. Have you any recollection about it?—A. No, sir.

Q. Was the original affidavit, as you have described it as written by Mr. Rerdell, intended for the President or for the public?—A. I do not remember that.

Q. Do you not remember that you directed that the affidavit should be addressed to the President of the United States?—A. That is possible. I thought he was the proper man to read it.

Q. Then that part of the affidavit which is addressed to the President of the United States was written under your direction?—A. I presume that before the affidavit was sworn to—

Now, it is before the affidavit was sworn to. On the preceding page his recollection was that after the affidavit was made and sworn to he sent for Colonel Ingersoll. On this page he comes down to his presumption, and he presumes it was before the affidavit was sworn to—

and when the original draft was made, I may have suggested the insertion of the name of the President of the United States, and addressing the affidavit to him. I think that is possible, but I don't remember about that.

Q. Did you not swear in your examination-in-chief that you had neither written nor suggested a single word of that affidavit?—A. That is my recollection now.

He recollects then, after it was made and sworn to, sending for Colonel Ingersoll and those words at the beginning being added. After that he then presumes it was changed in another place before it was sworn to, and now he recollects that he neither made nor suggested a single word in the affidavit.

Q. That you never did write or suggest anything in it?—A. Yes, sir.

Q. Now you say, however, that you presume you may have suggested that.—A. I say it is possible.

Mr. MERRICK. Everything is possible.

The WITNESS. I know it. Even this trial is possible.

Mr. MERRICK. Yes; even this trial. You may forget it in a short time, but I think the jury will give you some reminder of it.

Q. What is your best recollection of your having suggested parts of that affidavit?—

A. I have told you repeatedly over and over again that I have no recollection on that subject.

That is as to the words "Mr. President:"

Well, I say it may be possible. All things are possible. If that suggestion was made, in my belief it was made by Mr. Bosler.

Now we have got Mr. Bosler making suggestions as to the alterations.

Q. Was Mr. Bosler present at your interview with Mr. Ingersoll?—A. No, sir; he was not.

Q. Then what do you mean by saying it was inserted after your interview with Mr. Ingersoll?—A. I have not said that absolutely.

Q. Have you not?—A. I said I thought it was; I think so yet.

He says all that, gentlemen, when you remember he had sworn just before that he never altered nor suggested a word or line in that affidavit, and that he never had anything to do with it. He might have said something about punctuation, but that was all. When he came to the cross-examination that man on the stand saw that it was impossible to make you believe that that affidavit, as originally drawn, was addressed to the President unless it was drawn at his instigation, as he had said all along that the paper was, in its general scope, in its form, and in its contents, the emanation of Mr. Rerdell's brain, and that he had not altered it, while Mr. Rerdell said he had altered it in nearly every respect. He saw, when his attention was directed to its being addressed to the President, it would have been too absurd to try to make you believe that Mr. Rerdell had of his own motion gotten that up, and therefore he was driven to all these makeshifts and all these alterations of his position: first, of not having suggested anything; second, after it was made and sworn to, of sending for Mr. Ingersoll and getting those things put in; third, of presuming that they were put in after it was made and before it was sworn to; and, fourth, of believing that Mr. Bosler made the suggestions. Now, gentlemen, there is a little passage in that affidavit to which Mr. Merrick did not call his attention. Perhaps it is as well that he did not call his attention to it, because he would undoubtedly have felt bound to get up some theory that would account for it. He could account in this way for the

affidavit having the heading to the President added afterwards. He could account in this way for the affidavit having at the end this final clause, this snapper, so to speak, which shows it referred "to your Cabinet" and to your "administration." The affidavit commences right here [indicating] and covers about three pages of print. After passing two pages comes the paragraph which I will read, and after I have read it I will ask you how that came there if Mr. Dorsey was telling the truth when he said that that affidavit was not made under his direction or at his instigation:

He also said that you, Mr. President, had told Mr. Dorsey you could not interfere in this investigation and prosecution; that if you did the public would say that the President and a Secretary, who shall be nameless, but whose name I could guess, had taken the money of the star-route ring while they were in Congress, or the Postmaster-General and Attorney-General had taken it since, and therefore he (Dorsey) must look to the courts for vindication.

That was right in the body of the affidavit. It was said of a famous bill in Congress that there was a stump speech in the belly of the bill. Right there in the belly of that affidavit is that appeal to the President. The whole affidavit was an attack upon the Postmaster-General and the Attorney-General, but was accompanied with a slur, charged to have emanated from Mr. Garfield's own lips, upon another member of his Cabinet, who, the affidavit says, shall be nameless, but whose name he, Rerdell, could guess. I apprehend that nobody could have any doubt as to who it was intended to throw a stigma upon by that paragraph. Right in the body of that affidavit is that statement, showing that the very frame-work of the affidavit was gotten up on the theory of its being addressed to the President, and that the story that the beginning and the end were afterwards added in any one of the four ways which Mr. Dorsey asks you to believe, and which he states upon the stand, is not and cannot be true. The affidavit was made, gentlemen, by somebody who intended to use it with the President, who dictated its form, who dictated the words that are there, who dictated the statements that are there. That affidavit, gentlemen, I think you will believe was so dictated, so framed and so formed by the man who himself did subsequently undertake to use it with the President. There is all the internal evidence on the subject, there is all the evidence derived from the statement of Mr. Dorsey on the stand, and there was only one man who could have saved Mr. Dorsey from the position of contradicting himself, and that was Mr. James W. Bosler. If he had come here and said that he did that, that the last statement of Mr. Dorsey was correct, and that he made the suggestions, that he transformed the affidavit, it might have saved Mr. Dorsey from the position in which he now stands. But even then, gentlemen, it would have been entirely inconsistent with the idea that the affidavit was the production of Mr. Rerdell's brain, because whatever might have been said about the first and last words, that paragraph in the middle shows very clearly that the whole affidavit was a consistent one from beginning to end, intended to make a charge against MacVeagh and James, and to be used with the President as a means of getting them removed.

And yet, gentlemen, it occurs to me that I may as well, before going further, call your attention to one passage in that as showing what Mr. Dorsey's view is. The affidavit says:

His—

MacVeagh's—

urging me repeatedly to obtain these books, substantially by stealing them from Mr. Dorsey's office in New York, alarmed me beyond measure. I could not believe it pos-

sible that the Attorney-General of the United States would advise and urge anybody to commit what, in its very nature, must have been the gravest of felonies, including both larceny and burglary. I however promised I would do so.

Now, that is his statement, and yet, gentlemen, when Mr. Dorsey is afterwards asked what he has to say of that, he says it was true; he says that was just what Mr. MacVeagh was having done—committing burglary and larceny—and yet he was committing burglary or larceny of Mr. Dorsey's books, according to that affidavit, and yet those books were the very books which he tells you on the stand here he never saw or heard of, and they were not his. He complained to the President that the Attorney-General and the Postmaster-General were instigating the stealing of books, and yet those books he says were never heard of, and they were not his; he never heard of them until after this interview. And, gentlemen, Mr. Dorsey dropped out—I neglected to call your attention to it before—a very significant thing when he was asked about the telegram that Mr. Rerdell sent to him from Jersey City. He says Mr. Rerdell sent him the telegram in which he said he had been faithful up to that point, and then Mr. Dorsey could not resist saying, what he knew was the fact, "And yet he had my stolen book under his arm at that time." That is one of those unconscious admissions of the truth of Mr. Rerdell's story, of the truth of the fact that those books existed.

The COURT. Where is that?

Mr. BLISS. I am going to say a word about that, and then I will give you a reference. But it was not until his attention was called to it, that after that, as he says—

Mr. WILSON. [Interposing.] Let us have the reference.

Mr. BLISS. I will give you the reference. It is page 3980. He is under examination by Mr. Merrick:

Q. You say that he told you that all this was false, and you believed it?—A. Yes, sir; his own telegrams show that.

Q. I have not asked you to construe them. His own telegram says that the affidavit story is a lie?—A. Yes, sir; and that he had been faithful to every trust; and yet he had a stolen book under his arm.

Q. He had?—A. According to his statement.

That is the transaction. It was a little slip. No man can go on the stand and stay there under cross-examination without occasionally letting a little truth slip out.

He tells you, gentlemen, also that at the interview at the hotel not a word was said about an affidavit, and yet he acknowledges that Mr. Rerdell, after getting back to Jersey City, sends him a dispatch in which he says:

The affidavit story is a lie.

Mind you, Rerdell had made no affidavit at that time; nobody pretends that he had. Rerdell says that Dorsey told him that he had heard that he had made an affidavit, but Mr. Dorsey says not a word was said about an affidavit, and yet he says, with reference to this same telegram, that he did receive it, and Mr. Rerdell says in that:

The affidavit story is a lie.

Do you believe that Mr. Rerdell would have gone back to Jersey City and written a dispatch and sent it, saying that the affidavit story was a lie, if there had not something passed as to an affidavit?

Now, gentlemen, passing on, with reference to this affidavit he says what I have read to you, about the way the words "To the President"

came in, and all that, and then we find how the gentlemen who constructed this affidavit proposed to use it. He says, on page 3988:

Q. Was it not arranged that this affidavit should be so prepared as to present to the President of the United States serious charges and accusations against MacVeagh and James?—A. The affidavit, if it had come from a worthy source, did present charges of that kind.

Q. I do not understand that answer.—A. I say the affidavit itself on its face, had it come from a worthy source, presents accusations of that kind.

Q. You considered that it did not come from a worthy source?—A. Undoubtedly I did.

Q. Did you give it credit?—A. I gave it credit from the collateral evidence I had.

Q. How did you know what had passed between him and James and MacVeagh?—

A. Well, I had heard from many sources.

Q. You had heard?—A. Yes, sir.

Q. The affidavit accuses James and MacVeagh of having stimulated him, as he says here, to both burglary and larceny in stealing your books.—A. That is the right came for it.

Q. That is the word used in the affidavit. Did you not present that affidavit to the President of the United States, and ask his official action upon it to remove James and MacVeagh?—A. Well, I was in hopes that we would remove them.

It is printed "we"; I do not know whether that is an error or not. It does not make any difference whether it is "we" or "he."

Q. Did you not present the affidavit as a truthful representation of the misconduct of his ministers, and ask him to remove them on account of that misconduct?—A. I presented the affidavit, and General Garfield, in the presence of Governor Foster, of Ohio, and Colonel Ingersoll, stated that James and MacVeagh had made almost the exact statement contained in that affidavit to him—

Do you believe that, gentlemen? Do you believe that James and MacVeagh had told General Garfield that they had proposed to Mr. Rerdell to commit burglary and larceny?

and I considered it his duty—

Says Mr. Dorsey—

And he ought to have removed them right then and there.

Q. Did you not present this affidavit to him and demand their removal upon the face of that affidavit?

It should be "upon the faith of that affidavit" undoubtedly.

A. I never *demand*ed the removal of a Cabinet officer.

Q. Did you not present it to him and say to him that those men had behaved as this affidavit set forth, and they ought to be removed?—A. Well, if I did not say so, my tongue did not know its cunning.

"Did not know its cunning," gentlemen? Of what was Stephen W. Dorsey accused, engaged in an honest business, that he had got to bring in his cunning tongue to bring about the results he wished?

Q. That is what you used it for, is it not?—A. I used it to prevent what I believed to be a most vicious, unlawful, and improper act on the part of two executive officers of this Government.

To instigate a prosecution against men like Stephen W. Dorsey and Thomas J. Brady are shown here to be.

Q. That was what you wanted it for, was it not?—A. That was one of the things.

Q. Your protection consisted in the removal of MacVeagh and James, as you regarded it at that time, did it not?

The WITNESS. My protection?

Mr. MERRICK. Yes.

He had said at an earlier stage that he wanted the affidavit for his protection.

A. Whenever I seek to be protected by men like those, I should prefer to retire from the country.

I hope, gentlemen, you will give him the opportunity.

Q. I did not ask you about being protected by men like those. You said you came on here to protect yourself against Rerdell. Did you not get an affidavit from Rerdell assailing MacVeagh and James, and did you not consider that their removal from the Cabinet was the protection necessary in your case?—A. Oh, I do not know about that. I did not know that a pismire could very much hurt an elephant.

I suppose that he means that Rerdell was the pismire and himself the elephant. There is his statement of what he did. At an earlier stage, at page 3984, he says :

Q. What day was it that you and Colonel Ingersoll went to see the President after this affidavit was made?

The WITNESS. What day of the month?

Mr. MERRICK. Or week.

A. Well, I will not pretend to say what day of the week it was. It was several days after the affidavit was sworn to.

Q. Was it several days after the affidavit got into your hands?—A. I am not sure about that.

Q. Was it not the very next day after it got into your hands?—A. Perhaps it was.

Q. Was it the same day it got into your hands?—A. No, sir; because we made an appointment.

Q. Did you not make an appointment just as soon as you got it into your hands?—

A. I don't remember about that.

Q. Were you anxious to get that affidavit?—A. Well, I thought it was a desirable thing to have.

Q. Was not the getting of that affidavit the means that you were taking to protect yourself against this man?—A. That would appear so after I became acquainted with the character of the man.

Having dodged the question as to its being one of the objects of getting the affidavit and taking it to the President to protect himself, saying, "I don't know about that," here he comes back before the Presidential matter is raised, and says that it was the object to protect himself against this man. Following this along, at page 3989, as bearing upon this matter, he says in reply to a question:

A. If there was anything that I could do that I did not do to get MacVeagh out of office I have forgotten it.

Q. That being so, did you not arrange to get an affidavit from Rerdell charging MacVeagh and James with official delinquency or improper official conduct, in order to lay it before the President as a basis of his official action in removing them?—

A. I did not arrange anything about it. I laid it before the President, and, in my belief, if he had lived a week longer, he would have been removed, as he ought to have been.

I have already commented upon that statement.

Q. Was not that the purpose you had in view when you got the affidavit?—A. I stated some time ago that that was one of the purposes that I intended to use the affidavit for.

Q. Did you communicate that purpose to Rerdell?—A. No, sir; I was not communicating with Rerdell at that time.

Q. You were not?—A. No, sir.

Q. That being your purpose, and as you did not communicate it to Rerdell, can you explain why the affidavit was framed so as to suit that purpose exactly?—A. Well, it stated, as I suppose, as Rerdell said, the facts, and the facts suited the purpose better than anything else I know of.

Q. Had Rerdell stated the facts to you before he wrote this affidavit?—A. No, sir; he had not that I remember of, unless incidentally.

Now, right there, with reference to this affidavit addressed to the President, framed in the way I have called your attention to, he says Mr. Rerdell framed it; that it stated the fact; that he had not told Mr. Rerdell that he wanted an affidavit to use with the President at all. And yet he wants you to believe that he did not instigate anything of that kind; with no knowledge that Mr. Dorsey was going to use this

with the President, though he admits that that was one of his purposes, he did not tell Mr. Rerdell to frame it in that way, because he was not communicating with Mr. Rerdell at that time. Is that consistent, gentlemen, with what Mr. Dorsey has sworn to upon the pages immediately preceding? He then goes on and says as to the affidavit:

Q. Will you please fix the time when you went to Garfield with that affidavit?—

A. I cannot do that accurately.

Q. Who went with you?—A. Colonel Ingersoll.

Q. How often did you go?—A. Oh, well, we dropped up there often.

Q. About that matter?—A. Yes, sir; about that matter. I presume I went there nearly every day.

Q. About this business?—A. About this and other business.

* * * * *

Q. What did you do with the original affidavit?—A. I believe I gave it to Colonel Ingersoll.

Q. Did you not leave it with the President?—A. [After a pause.] My recollection is that we did not. Perhaps we did. I will not say about that.

As far as that indicates then, the original affidavit is still in their possession. Why did they not produce it, and let us see whether these words "To the President" at the beginning, and those at the end are added afterwards; let us see how this passage in the middle of it got in there; and then let us see whether this story is true? The paper, he thinks, he left with Colonel Ingersoll. It was not produced here.

And now, gentlemen, I want to call your attention to one other thing, and that is, that by Rerdell's statement Dorsey took him with him to the White House, left him down-stairs, while Dorsey and Colonel Ingersoll went upstairs to see the President. They went to see the President with an affidavit from this man who he admits that he then believed to be a scoundrel and a liar; that the affidavit did not proceed from a worthy source, though he tries to claim that he believes that the facts stated there were correct, though they proceeded from a man who, according to his opinion then, was a liar and a perjurer, and rested solely upon his authority. And yet Stephen W. Dorsey took that affidavit, resting solely upon the ground that Rerdell had sworn to it, took it to James A. Garfield, and upon that demanded the removal of Wayne MacVeagh and Thomas L. James; defames the memory of Garfield by saying here that he believes that if he had lived a week he would have acted upon that affidavit and removed those two Cabinet officers who were instigating the prosecution against himself and Brady. Can anything exceed the enormity of that transaction? Can anything exceed the audacity of that statement in its reflection upon the memory and upon the judgment of James A. Garfield?

I do not think, gentlemen, that I need to say anything more of Stephen W. Dorsey in connection with that affidavit of 1881. You must believe, gentlemen, Mr. Rerdell's statement of its origin, the way in which it was brought, the shape in which it appears. It is not possible that Mr. Rerdell could have conceived in his own brain the getting up of an affidavit which should be addressed to the President, which should be framed to be used with him, should be framed to be used with nobody else, and let me say, gentlemen, a statement which there is no evidence was ever given to the public (because there could not have been any evidence that it was given to the public) for months afterwards. It first appeared in the New York Sun of the 22d of November, 1881. He went to the President as early as the end of June, 1881. It was not got up for the public; it was got up for the President, to be used with the President, and made a melancholy failure. It comes here now, gentlemen, answering two purposes: one to show the utter want of truth-

fulness of Stephen W. Dorsey, and the other to show his readiness to cast a stigma upon the man with whom he claims to have been upon intimate terms.

As to the affidavit of 1882, I have taken so long a time already that I will only say that I desire to call your attention to the fact that Mr. Dorsey, when accounting for the affidavit of 1882, carefully kept out of view, and carefully undertook to intimate that they had some reason to "suspect" that Mr. Rerdell was thinking of going over to the Government, as he expressed it. And yet some days before that interview there was the letter of Mr. Rerdell to them, dated July 5, 1882, in which he told them that they had used him long enough; that he did not propose to be used any longer, and that he was going to put himself into communication with the Government. That letter is found at page 3733. It is addressed to Dorsey, and he says:

To commence with this, it will be necessary to go back about a year to the time when, looking forward to the inevitable result of the star-route matters, I started to put myself in accord with the Government. At that time I had no thought of being included in any prosecution or indictment, supposing that as an agent I could not be held criminally responsible. Had I for one moment thought it possible nothing could have changed my mind, even anxious as I was to benefit you. The consequence was, I listened to Bosler and did what I will ever regret. First, because of the unenviable notoriety given me in consequence of doing what he persuaded me to do; and second, because, let this case go as it may, I am still left under a cloud, both with your friends and acquaintances and the public generally, and that, too, almost penniless.

* * * * *

I have realized the fact that all you and Bosler desired was to *use me*, and when no longer needed I could go to the devil. Therefore I have concluded to *be used* no longer, and propose to look out for myself.

Having got that notice on the 5th of July, Mr. Bosler and Mr. Dorsey put themselves into communication with Mr. Rerdell, and they get him to Willard's Hotel, and there they have the affidavit constructed under circumstances as to which Mr. Rerdell gives you one statement and Mr. Dorsey gives another, while Mr. Bosler, who was shown to have been there all the time, and has it within his power and within his means to contradict Mr. Rerdell, beyond all question, if Rerdell had not told the truth, is not called upon to testify.

Before passing to another matter, I will call your attention to the fact that as to many of these papers Rerdell stated that they were in his office or in the office in the Corcoran Building, and that while he was in jail, under the conviction at the last trial, when he and Miner were there, his office was broken into and the papers were taken away. As to the office being broken into you can have no doubt, because it is not only testified to by Mrs. Rerdell and Mrs. Cushman, but the janitor of the Corcoran Building states the facts, and states that he made the discovery, I think.

Now, gentlemen, we come next to the division which these parties made of the contracts, the division which they made of their plunder. Instead of going on and leaving their capital in a lump, and dividing the income from their capital, some time in the spring of 1879, immediately after Stephen W. Dorsey went out of the Senate, and when he was at liberty for the first time to appear in his real character as a contractor for the Government, they divided up their capital and decided that thereafter they would have their capital in each one's individual ownership, instead of merely having the profits divided among themselves. So they divided not only the capital, not only the property, not only the means that they obtained by these fraudulent appliances for making money, but they divided also the burglar's tools which they had used in breaking into the Treasury.

As to this division Vaile says the negotiations began on the 6th of March. Dorsey went out of the Senate on the 4th. And he wrote a letter on the 4th to Brady, claiming to be the attorney for Peck and John W. Dorsey. And with reference to that, Mr. Henkle, always amiable, always courteous, always fair, in a way that really astonished me that he should undertake to say so severe a thing, actually tried to show you that Mr. Dorsey was going to kick these other people out of the concern. On the 4th of March, 1879, Mr. Dorsey wrote that letter, claiming to act by power of attorney for Peck and Dorsey. Peck, of course, was dead, but as to John W. Dorsey he could not be persuaded to say that he had given any such power or anything of the kind.

The COURT. Peck was not dead at that time.

Mr. BLISS. No, Peck was not dead at that time, but I say he is dead now. John W. Dorsey, when questioned on the subject of the power of attorney, did not know whether he and Peck gave one or not, seeming to be afraid to say more for fear he was going to bring Mr. S. W. Dorsey in some connection with the business prior to the 4th of March.

Vaile had no such compunctions. He dropped it right out, gentlemen—that he came here as soon as he could after the 4th of March, because he was determined to go on no longer with Stephen W. Dorsey, and he went to Dorsey's house, where he, Miner, and Dorsey—certainly nobody but the three, and I am not sure that Miner was present all the time—they three entered upon negotiations. Without going into details as to those negotiations, though I have a memorandum here of a long series of passages in the testimony, I think I may say that there is a concurrence of testimony on the part of all of them that at some time during the month of March (Miner says after the 4th and before the 29th; Mr. Dorsey says before he went out West in consequence of the sickness of Peck, and he left for the West on the 26th of March) they made an agreement to divide the routes, and at that same meeting when they agreed to divide the routes they drew lots for that purpose and did divide the routes. It is not absolutely clear as to that date, but it was after the 6th of March and before the 26th. It was a division, gentlemen, as of the 1st of April, which was the end of a quarter. From the 1st of April they all agreed that those routes, respectively, should be set off by one to the other, and that thereafter they should be respectively the absolute and uncontrolled property of the party to whom they were set off. The assignment of the proportions of the indebtedness could not be made at once, because they could not tell what money they would get from the Post-Office Department on the 1st of April for the preceding quarter, not knowing what fines and deductions there might be. Neither could they absolutely tell all of the indebtedness. Therefore it was arranged that Vaile should go on and close up that portion of the business, and then the indebtedness should also be arranged, and in the course of the month of April or early in May that was all closed out. But they took the routes, they all agree, as of the 1st of April.

From the 1st of April the profits of twelve of the routes belonged to S. W. Dorsey. He claims that on the trip to New Mexico he bought out Peck, who was out there, and having been in Kansas City on the 9th, he returned here on the 12th of April, and about the 12th of April he employed Rerdell to take charge of his routes. He sent Rerdell West. Rerdell started on the 17th of April, and, as he says, Dorsey sent him West to make subcontracts, and he made subcontracts on the Rosita and the Greenhorn, and some other routes. From that time Stephen W. Dorsey treated those routes as his own, as he had a right to do, and

Vaile and Miner treated as theirs the six routes included in this indictment, which had been assigned to them.

Now, having made the division, what did they do? Mr. John W. Dorsey tells you what was done to some extent. He says, on page 4105 :

Q. At the time you sold out, was there any understanding about your making papers?—A. That was a part of the agreement. I was to sign all the necessary papers to carry on the business.

And then he says he became employed as agent. Then, on page 4123, he says :

A. When I sold out I agreed to sign all the necessary papers.

Q. That was part of the consideration, was it?—A. That was the agreement.

By the COURT :

Q. You agreed to sign what?—A. All the necessary papers to carry on the business.

They “claimed that these affidavits were necessary papers.” Then he is asked if that was his agreement, and he says it was. He transferred his interest with that agreement; he does not know what the agreement was as to the others. Mr. Rerdell was absent at the time, but he says that after he came back he was authorized to sign the names of Miner and the others to papers as to any of the routes on which they had been the contractors, and that that was done for the purpose of carrying out the general arrangement made on the division.

Mr. John W. Dorsey states, as you see, that he was to sign affidavits, and everything of that sort, in connection with the business of carrying it out, and we will show you directly that he did so.

Mr. Stephen W. Dorsey states that on the division he signed on many routes and received postal drafts or orders. He says he does not remember whether he received any blank affidavits or not, but at page 3936, he says :

Q. At the time of this distribution of these routes, in view of this law of Congress which I have just read and the affidavit that was required by the Post-Office Department as the basis of the pro rata calculation, did you not also divide up among you a lot of blank affidavits?—A. I do not remember about that.

Q. Do you know whether you did or not?—A. I do not know.

Q. Do you not know that it was understood between the parties that affidavits should be furnished, if necessary, respectively, by one side to the other?—A. Oh, there may have been some conversation of that sort.

Q. Was it not a fact that you did have for your routes a quantity of blank affidavits?—A. I do not remember whether it was or not.

Q. You cannot say whether you had them or not?—A. No, sir. All those things were turned over to Rerdell; all the papers, everything in relation to the case, he had charge of, and I did not have anything to do with.

Q. You turned them over to Rerdell as your agent?—A. As my employé.

Q. And you say you did everything that you could do to obtain expedition and increase?—A. Everything that was lawful and proper where I thought a route ought to be increased.

Q. Did you not direct Rerdell to get all the increase and expedition that he could?—A. Probably.

Q. Do you not recollect that you did?—A. I don't remember.

Q. Do you remember what instructions you gave to this agent of yours to whose custody you committed this property?—A. I do not remember all the instructions; I suppose I gave such instructions as I thought necessary at that time.

Q. Can you not recall what instructions you gave him?—A. Oh, no, sir; I cannot recall.

Q. Did you leave him in control, management, and manipulation of the business free and undisturbed by any intervention on your part?—A. Left it absolutely to him.

Mr. Rerdell states that he did receive a lot of blank affidavits, and he says that those affidavits were used and that others were also ob-

tained. And bear in mind, gentlemen, in considering this question of blank affidavits, that Mr. Rerdell was dealing not only with the twelve routes which Dorsey took in this assignment, but he dealt with probably thirty more, which were coming to him after the routes had been equally divided among the three people, and therefore there were about forty-two routes as to which the question of affidavits would come up. He says there was a lot of blank affidavits of John W. Dorsey's and a lot of Peck's affidavits which came to him. I have shown you, I think, in my analysis of the affidavits, in the fact of the filling up being in Dorsey's handwriting, the circumstances under which they were sworn to, and Mr. Rerdell's statement upon that subject, that many of those affidavits in blank were subsequently used in connection with the obtaining of orders.

The COURT. Do you claim that those affidavits were sworn to in blank before this date or afterwards?

Mr. BLISS. I claim that many of those affidavits were sworn to in blank in the month of April. The division of the routes was made prior to the 26th of March, and having been made as of the 1st of April, I claim that they were sworn to in blank some time in April. The division as to money matters was not until early in May.

The COURT. It is manifest *upon the face* of some of the affidavits that they were sworn to after the 1st of April.

Mr. BLISS. Yes, sir.

The COURT. But I was at a loss to comprehend the idea you desired to communicate to the jury in regard to these blank affidavits being turned over, whether or not they were absolutely blank, unsworn to altogether.

Mr. BLISS. What I mean is that they were affidavits that had been sworn to, as I have shown already to the jury. Two or three of them were dated away back in December by Peck. The Peck affidavits are dated away back of the division. The affidavits of John W. Dorsey are dated in the month of April. In both cases the oath was taken by Peck or Dorsey, as we claim, when the operative parts of the affidavit were in blank, to wit: the numbers of the route, the number of men and horses required on the existing schedule, and the number of men and horses required on the proposed schedule.

The COURT. I supposed that the certificate of the notary or the officer before whom the affidavit was made bore the true date.

Mr. BLISS. There is no evidence, save as to one, that it was not the true date. One oath was filled up by Stephen W. Dorsey and filed with a letter written on the 23d of April, received at the department on the 24th of April, and that refers to an affidavit the jurat of which is dated the 26th of April. That was sworn to before Kellogg, his clerk here. There is only one as to which there is any discrepancy as to the dates, anything on the face of the papers or on the face of the affidavits themselves, or on the face of any of the papers connected with them, that indicates that the date when the notary affixed his name was not the true date.

The COURT. There is no claim, then, that these country affidavits were falsely dated?

Mr. BLISS. No, sir. Now, let me go one step farther. There are certain affidavits which bear at their head the same date as that of the jurat made in New Mexico, the heading here being in the handwriting of Mr. Miner, who, of course, was not in New Mexico at the date of the jurat. But I think that does not apply to any of the affidavits which were used after the division. It applies to affidavits which were used

earlier. And yet it is just possible that it does apply to an affidavit which was used afterwards. It may have been caused by Miner's estimate of the time it would take in sending the letter to New Mexico to be signed. But the date at the head, in Miner's handwriting, agrees with the date of the jurat, in the handwriting of the notary out in New Mexico.

The COURT. That is a practical impossibility, of course. There must have been some ante-dating or post-dating in some part of it.

Mr. BLISS. Something of that sort. But my recollection is that none of those affidavits with that heading were used after the division. Of the affidavits sworn to by Dorsey in Vermont, one is dated the 11th of March, and four are, I think, dated the 21st of April; then the remainder of Dorsey's affidavits are sworn to here on the 26th. There is no evidence that the affidavits were not in fact signed by Dorsey, and as the clerk in Vermont placed his certificate there on what purports to be the 21st of April, we have no other information on that subject, and therefore it must be presumed to be correct. The evidence is that when they were received back they were in blank, so far as the operative words are concerned.

As to the affidavits sworn to before Kellogg here, there is no evidence to show that the date of the jurat was not the date when Dorsey did actually go before the notary, except in a single case, that one sworn to on the 26th, which was filed by S. W. Dorsey in a letter dated the 23d, and received at the department on the 24th. And yet as to that affidavit it is right to say that it is, I think, indorsed on the back as of the 26th, and so was not actually received at the department in the letter which purported to contain it.

As to the Peck affidavits, there are some of them which bear the handwriting of Miner at the head on the same date which they purport to have been sworn to in New Mexico, which of course is an impossibility, as Miner was never out there, but my recollection is that none of those were used after the division.

Therefore I think we may say as a general thing that there is no evidence that the affidavits were not actually sworn to before the notary on the day when the notary purports to have affixed his name. But it was blank in all cases, as we say, so far as the operative words are concerned, so far as the number of the route and the number of men and horses are concerned.

Going back to the matter of division Miner says that he received on his routes two affidavits sworn to by Peck weeks or months previously, and which were subsequently used in obtaining increases on routes which were in Peck's name as contractor in the first place, and which after the division passed to Vaile and Miner. We think these were two affidavits made by Peck long previous to that time that were used by Vaile and Miner subsequent to that time in obtaining increases. When those affidavits passed to Miner it does not appear—certainly not from his statement—whether they were in blank or all filled up at that time.

Miner says also that when S. W. Dorsey came back from New Mexico he brought back with him postal drafts signed by Peck, and I think he also says he brought back some subcontracts. Mr. Miner says that he himself signed a lot of postal orders in blank upon those routes, and he says he received blank orders upon other routes. And he says that subsequent to that time he signed the name of Peck and Dorsey upon the papers necessary to transact the business upon the routes which had been originally let to Peck and Dorsey, but which had passed to Miner and Vaile.

Now, that is the evidence of these parties as to the arrangement under which the division was made. Having made this arrangement and having divided these routes, they then carried on the business after that.

Mr. John W. Dorsey says that after the 1st of April he had not a cent's worth of interest in the routes, and yet he says that he made affidavits after he had sold out, because it was part of his agreement. He did not think that any of the affidavits were in blank, but he was not prepared to say so absolutely, and did not say so. He says that in pursuance of his agreement he made the affidavit 25 S on the White River route, sworn to on the 26th of April, and which was filled up and filed by S. W. Dorsey with a letter in his handwriting, when Mr. Rerdell was absent, and it was made the basis of an order. There had been an affidavit of Perkins on that route which did not fill the bill, because the affidavit of Perkins looked to a less reduction than was required, and therefore, in the absence of Rerdell, Stephen W. Dorsey takes the affidavit sworn to by John W. Dorsey, and which was all in Rerdell's handwriting, I think—either in Rerdell's or Kellogg's—except the filling up, and filled it up and filed it in the department, and upon that he got an order.

Mr. Rerdell says that in the same way as Mr. Miner signed the names of others upon his route, he signed the names of those others upon the routes which passed to Mr. Dorsey.

Miner says that he swore to the affidavit which was used upon the Greenhorn route, which is dated, I think, on the 17th of April, and which bears in like manner the evidence of having been written at one time and filled out at another, and Mr. Miner says himself that he swore to that affidavit on the 17th of April at the request of Mr. Rerdell, because, though it was one of his routes, that route had passed to Dorsey, and he was carrying out the agreement which they made on division.

Mr. John W. Dorsey swears to having made a number of affidavits in the same way. He even goes so far as to say that the affidavit made by him on the 11th of March was made when he had no interest; that though the thing had not been entirely perfected it was virtually consummated, and at that time when he swore to that affidavit it was an affidavit on a route in which he had no interest. The trade had then been "virtually made" is his language.

He says that he swore to the affidavit on the Ojo Caliente route (20 F) on the 26th of April, and he had no interest there; he swore to it in pursuance of the arrangement.

He swore to 6 E, on the Trinidad and Madison route, on the same day, I think, and he says he had no interest.

He says that he swore to the affidavits 4 C and 5 C, on the Rosita route, dated on the 21st of April, in Vermont, used here on the 6th and 8th of May, and that he had no interest. Those affidavits were used as the basis of an order dated on the 8th of July following—an order, gentlemen, which I shall ask you to take into consideration as one of the overt acts upon this route.

He says that he, in like manner, swore to the oath 4 O, upon the Tres Alamos to Clifton route, sworn to upon the same 21st of April, in Vermont, which affidavit was used on the 8th of May, and was the basis of an order obtained on the 9th of May.

That he swore on the same day in Vermont to the affidavit 6 Q, which was filed on the 6th of May and which was made the basis of an order on the 12th of June, which order we shall ask you to consider as the basis of one of the overt acts in this indictment.

He says also that he swore to 6 E, upon the Trinidad and Madison route, which I have spoken of as having been sworn to, but which was used a little differently from what I stated. It was sworn to on the 21st and was used on the 30th of April, when Rerdell was absent, and was made the basis of an order issued on the 9th of May.

He swore to 25 S, on the White River route, used on the 26th of April, the day it was sworn to, and it was made the basis of an order issued on the 1st of May. On the same 26th of April he swore to 22 F, on the Ojo Caliente route, to which I have not referred. I referred to 20 F. 22 F was filed subsequently. 20 F not being for the requisite number of hours which, in Rerdell's absence, were found desirable, that being for a reduction to eighty hours, and 22 F being for a reduction to fifty hours, he swore to 22 F on the 26th of April, and it was filed on the same day in the department by Stephen W. Dorsey, and made the basis of an order issued on the 29th of April.

Miner swore, on April 17th, as I have said, to the affidavit 5 B, on the Rosita route, that he says was written at Rerdell's request, Rerdell having been here on the 16th or 17th of April. He says he had no interest in it. It was transmitted by Rerdell in a letter dated the 15th of April, but filed with the affidavit on the 18th of April, the oath being dated on the 17th and the letter apparently, therefore, having been written in anticipation of obtaining the affidavit. Miner says that he had two affidavits on hand which were turned over to him at the time of the division. One of them purported to have been signed by Peck on the 30th of December, 1878, and the other on the 1st of February, 1879. One of them was on the Kearney and Kent route, and the other on the Julian and Colton route. The Kearney and Kent affidavit was the one sworn to on the 1st of February. It was filed on the 3d of April, accompanied by a letter written by Miner, and was made the basis of an order on the 10th of July following. That order was based on this affidavit, and upon the altered petition for thirteen hours, which was also, as we claim, altered by Miner. The letter transmitting the affidavit was written by Miner beyond all question, and the oath of Peck was made on the 1st of February preceding, and was turned over to Miner in the division of the routes. The oath on the Julian and Colton route, which was turned over to Miner the same way on the division of the routes, was sworn to on the 30th of December, 1878. It was filed on the 11th of April with a letter written by Miner, and was the basis of an order made on the 24th of June following. The orders on those two routes, gentlemen, I may say we shall ask you to consider as overt acts under this indictment. The last one, the Julian and Colton affidavit, was the basis of an order for expedition which took \$5,346 from the Treasury; at the same time there was \$2,376 paid for additional trips. Mr. Miner states that he attended to all the details of the filing, and there is this about it, gentlemen, that the affidavit on the Julian and Colton route and the letter transmitting it, are both of them altered in precisely the same manner. They were both of them drawn with the idea of thirty-six hours, and both of them were altered on the basis of twenty-six hours. Perhaps I may be excused if I refer to this affidavit for a moment. The affidavit is headed at the top in Miner's handwriting, Chico Springs, New Mexico, December 30, 1878. It was sent from here, and yet it was sworn to at Chico Springs, on December 30, 1878. Therefore this is one of the affidavits as to which there is some evidence upon the question of the correctness of the date of the jurat. The letter which Mr. Miner wrote transmitting it is also dated at Chico Springs, and signed in Peck's name, but admittedly in Miner's handwriting. It is dated on the 30th of December, 1878, in the same way.

Both the letter and the oath were filed in the department on the 11th of April, as appears by the indorsement.

The COURT. It is very plain how that was done.

Mr. BLISS. What I am coming to is this, that the oath reads: "The number necessary to carry said mail on a schedule of thirty-six hours"—and the word thirty was stricken out and twenty written above it. The letter contains the same alteration. The letter refers to thirty-six hours as originally drawn and then it is altered to twenty-six, going to show that the change certainly was not in consequence of an error or accident in drawing it. They drew the affidavit for thirty-six hours as well as the letter, and they altered both the affidavit and the letter. The affidavit was made the 30th of December, or purported to be, and was filed on the 11th of April. All the petitions upon that route asked for thirty-six hours. There is no paper upon that route asking for expedition except an expedition to thirty-six hours. Having those papers and those petitions, and this affidavit and this letter having been drawn on the basis of thirty-six hours, Mr. Brady made an order for twenty-six hours and he made it upon the basis of that letter and that affidavit, altered from thirty-six to twenty-six.

The FOREMAN (Mr. Crane). They must have beat themselves on that. They did not alter the number of men and animals.

Mr. BLISS. That is true; but, you remember, that affected the sub-contractors, not the defendants. They did not alter the number of men and animals. The evidence has already shown you that it was not necessary to alter the number of men and animals, because the number of men and animals stated upon the idea of a thirty-six-hour schedule was grossly excessive. It may be that one of the very reasons why that alteration was made was that they had given for a thirty-six-hour schedule such an excessive number of men and animals that instead of altering the number of men and animals they brought it down to a faster schedule. We do not know anything about it. There is no evidence upon that subject. All I have to say is what appears there. You see that before you.

On the route from Toquerville to Adairville the oath was made by Peck on the 22d of January, 1879. It was filed on the 25th of June, 1879. The oath is in Miner's handwriting. It was transmitted in a letter written by Rerdell. Miner says he wrote the oath. The filling up is Rerdell's. It was written by Miner and sent to Peck, and sworn to on the 22d of January, 1879. It was written and sent at a time when Mr. Miner tells you that Mr. Rerdell had no possible connection with the routes or the business; written and sent at a time when, by the way, Mr. Rerdell was absent from Washington; written and sent in the handwriting of Mr. Miner. It comes onto the files here filled up by Mr. Rerdell, as it would naturally be filled up by Mr. Rerdell if he had, as he told you, blank affidavits, which blank affidavits had been sworn to by Peck long previously and which he used upon such of the routes as passed to Dorsey. The Toquerville route passed to Dorsey, and he naturally took one of those blank affidavits, when they wanted an increase, and filled it up with the number of men and horses and used it. Rerdell says he so filled it up, and the percentage of increase was given to him as from 100 to 250 per cent. by Stephen W. Dorsey. Stephen W. Dorsey substantially fails to contradict that. The affidavit, you will remember, purports to be sworn to on the 22d of January, 1879. It is all in Miner's handwriting except the filling up, the signature of Peck and the notary, and yet it was transmitted to the department in a letter written by Rerdell, who filled up the affidavit, on the 28th of June, and used as the basis of the order made shortly thereafter. Miner says he

does not remember anything about it and cannot account in any way for how it came to be filled up by Rerdell, and yet he seems loath to adopt the very obvious idea that it was a blank affidavit turned over to Rerdell at the time of the division. Dorsey says there were lots of papers turned over to him and he cannot tell whether there were any affidavits among them. This affidavit was turned over to him and then Rerdell filled it up.

8 I, the oath on the Eugene City and Bridge Creek route, was sworn to by Peck in like manner on the same day, the 22d of January, 1879. I may say incidentally here that three oaths were sworn to by Peck on the 18th of September, two oaths were sworn to by Peck on the 22d of January, and four oaths were sworn to by John W. Dorsey on the 21st of April, 1879, and three oaths were sworn to by him on the 26th of April, 1879. As to 6 I, sworn to by Peck on the 22d of January, 1879, all but the filling up is in the handwriting of Miner. Miner says so himself. The filling up is in Rerdell's handwriting. That route passed to Stephen W. Dorsey, and was the only one of the Oregon routes which did so pass. The oath was transmitted by Rerdell to the department in a letter dated the 24th of May, the oath having been sworn to in the preceding January, and was the basis of an order subsequent to the 24th of May. Mr. Miner cannot account or pretend to account for the way in which that oath was filled up. It was written by him and sworn to by Peck in New Mexico on the 22d of January, at a time when Rerdell had nothing to do with the business, and appears on the files on the 24th of May, after the route had passed to Stephen W. Dorsey, with the filling up indisputably in the handwriting of Mr. Rerdell. The presumption as to how that affidavit was filled up is beyond all dispute.

Now, gentlemen, I will give you a few of the papers which were filed by these defendants or used by these defendants after the division was made. You will remember, gentlemen, that there was before you abundant evidence that Mr. Miner sent any quantity of papers broadcast upon the routes which were assigned to him, using Peck's name, sometimes with a capital M after it and sometimes not. I have here, for instance, 42 A, dated the 7th of February, 1880, which is signed J. M. Peck, upon the Kearney and Kent route. There is the notice also upon the Canyon City and Camp McDermitt route, dated February 20, 1880. There is a letter to Carey in which Miner undertakes to employ Carey to bribe Abbott, dated the 15th of April, 1881. I apprehend there will be no dispute that these things were done in that way by these parties after the division. There may be some attempt to say that while they did sign papers upon the routes, which they sent broadcast over the country, there was some hesitation or some backwardness in filing in the department any papers signed after the division. I have here in my hand Steiniger's subcontract, 25 Q, sworn to have been executed by John W. Dorsey, and it is dated on the 25th of November, 1879, of course, after the division. That contract is guaranteed by Stephen W. Dorsey. There is Taylor's subcontract, but that I think is signed by Rerdell as agent. Besides that, gentlemen, we have many papers that were filed in the department. I have here a pile of them. I am not going to go over them in detail, but I will call your attention to a few which are indisputably after the division. For instance, we have here the order of John M. Peck, dated the 1st of June, 1881; I have here 69 G, the order of John M. Peck to pay Bosler the money on route 46247, from Redding to Alturas, for the quarter ending September 30, 1881; I have here 48 I, Peck's order upon route 44140, dated June 4, 1881; 45 D, Peck's order, dated

July 7, 1879, for payments on the Toquerville route for the quarter ending September 30, 1879; 48 D is Peck's order, dated October 7, 1879, to pay Dorsey on the Toquerville and Adairville route; 46 Q is Peck's order, dated June 6, 1881, to pay Bosler on the Eugene City and Bridge Creek route; 40 P is Peck's order to pay Vaile, dated April 15, 1879, the amount due on certain routes, including 46132; 33 I is Peck's order, dated July 7, 1879, to pay Dorsey on the Eugene City and Bridge Creek route; I have here, gentlemen, a series of Peck's orders which I will simply enumerate as I go along: 34 I, 38 I, 42 I, 44 I, 60 D, 63 D, 41 G, 50 G, 57 G, 59 G, and 63 G. I will stop the enumeration of Mr. Peck's orders. All those, gentlemen, are orders, dated after the division, many of them coming away down into 1881, and all of them relating to routes with which Peck had no connection, because he severed his connection with all the routes prior to the 1st of April, or as of the 1st of April, 1879. John W. Dorsey tells you that he signed papers right along, and I have here a series of them. Many of them are orders not in blank. There are among the papers orders signed in blank, but these are dated, and they are witnessed not always by the same person as indicating that they got together and signed a lot of orders at the time of the division. There is every indication that the dates are correct. The witnesses are different at different times.

The COURT. These same orders would have been made if the division had been perfectly honest.

Mr. BLISS. These same orders *might* have been made. I am only calling attention—

The COURT. [Interposing.] They have no tendency to prove a continuing conspiracy.

Mr. BLISS. They have a tendency to prove that these parties having been, as we claim, in a conspiracy, they sold out and made a division. I am going to call your honor's attention after recess to some views that I entertain upon that subject.

The COURT. What I mean to say is that these papers would have been entirely proper if the transaction had been honest.

Mr. BLISS. In form they would have been proper beyond all question.

Mr. DAVIDGE. Let us take our recess.

The COURT. We will take our recess now, if Mr. Bliss is through.

Mr. BLISS. I was not through, but I have got to John W. Dorsey and I would just as soon stop now.

Mr. DAVIDGE. What, for good?

Mr. BLISS. It probably would be for your good if I should stop.

At this point (1 o'clock and 5 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. BLISS. [Resuming.] Gentlemen of the jury, at the recess I was calling your attention—and I will not go over it in detail—to the evidence of what some of these parties did in connection with the business after the division. I have here a pile of papers which I picked out hurriedly, executed by John W. Dorsey, and bearing date down to the year 1881, showing his carrying out of the agreement of the division. I also have here another package of papers signed by Mr. Miner upon the routes which passed from him and Vaile to the other parties.

As to those it is right to say that Mr. Miner claimed that he signed none of them after the 5th of May, 1879, although many of them bear date as of a later day, and although many of them signed by Miner were used without any date whatever. He claims that in some way or other some of them were filed by the parties long after he signed them, and the reason he gives for saying that he signed them within that period is that many if not all of them are certified by Mr. Edmunds, the former postmaster of this city, who died, as he said, about the 1st of January, 1880. You will bear in mind that the division took place some eight months previous to that. However that may be, these papers are all papers which on their faces might be innocent and fair and proper. They are papers which, under ordinary circumstances, might be executed to enable others than the contractor to draw the pay and to be filed with the department, though it appears, I think, by the evidence in this case that no draft could be filed except shortly prior to the quarter as to which it applied. As to these papers all that we have to say is this: they are papers on their face apparently innocent, papers calculated to go through in the ordinary practice as though there was nothing wrong about them. At the same time the evidence shows that they were papers executed by these several parties at the time of or in pursuance of the agreement of the division. They arranged and agreed for a consideration paid to them that the scheme of dishonesty which had existed and of which they had been members up to that time as a whole, having been divided up into fragments, they were to execute these papers, either at that time or subsequently, in pursuance of the agreement made at that time, in order that the scheme of dishonesty might be carried on in its effect and its fruition, so that the several parties might receive, from time to time, from the Treasury of the United States the money which they were to obtain solely through this dishonest scheme which had had its inception and gone on up to a certain point prior to the division, and which continued right along unchanged, save in the fact that the capital having been before as one aggregate from which the parties drew their dividends from time to time, they took this capital and divided it up among themselves and continued the business. It was, gentlemen, precisely as it seems to me like this: Suppose certain persons enter into a scheme and combination to rob three or four safes. Suppose they got the molds from which the keys were to be made and made their keys, and were about to enter, if you choose, into an outer safe, or had entered into the outer safe and were about to break into the inner safes. Suppose they then stopped and made a bargain among themselves, and certain of them said to the rest, "We will sell you all that we expect to get from these safes that we are about to break into for a given sum," and received the money. Suppose they said we will go on. We will assist you all we can in carrying out this scheme and in making this burglary effective. We will assist you in making new keys, if new keys shall turn out to be wanted. We will assist you in every way in this robbery. We will do all this in consideration of your paying the given sum which we now take for selling out our interest. It was, of course, involved in that agreement that each was to help the other to get the money. Although some went out on the receipt of a consideration, they were to help the others to get from the Treasury all the money that was to be paid from it. All that was a scheme deliberately arranged—a division of plunder, a division of the burglar's tools, a division of everything of that kind. The whole case is full, in its later stages, of evidence looking to that end. Mr. Miner's examination on the stand was full of in-

dications that he was foolish enough to believe that the law was so stupid as to allow people to commit the crimes that these parties have committed and then turn round and say to you, "No, we cannot be punished for conspiracy. We have divided up the burglar's tools. We have divided up the proceeds of the burglary, and we are free from punishment." Gentlemen, I think the court will instruct you that the law is guilty of no such stupidity as that. I do not desire to argue to you upon that question.

Now, gentlemen, as to the overt acts in this case, I have here a memorandum of a series of overt acts which we shall ask you to consider. The court will undoubtedly instruct you that in this case there must be the crime, the conspiracy, but that crime must be indicated and carried into some action by an overt act. That overt act must be something which has taken place within three years prior to the 23d of May, 1882. It is unnecessary for me to specify the overt acts. There is hardly a route on which there are not overt acts within that time abundantly proved. For instance, take the overt act on the Ojo Caliente route, the order made by Brady, in pursuance of this conspiracy, in February, 1881, which was a retroactive order—an order declaring that it should take effect back, in violation of the law, before the time it was issued; an order which was a violation of the spirit of the act of April 7, 1880, if it was not a violation of the letter of the law itself, by giving more money than 50 per cent. of the original contract-price for the expedition; an order which was in pursuance of the conspiracy in everything that surrounded it, which was based on altered affidavits, and which was made while there were duplicate affidavits before him showing that the order was utterly improper. The same is true of a series of orders. The same is true of the oath upon the Eugene City and Bridge Creek route; of the oath upon one or two other routes, and of all these series of orders; in fact, of every order made since the 23d of May, 1879. All this, we submit, is abundant evidence to show that these conspirators not only entered into the conspiracy and agreement, but that they went on with their work. They continued their work; You will bear in mind that all that is necessary is some act done by one of them, not an act done by all. They entered into this conspiracy; they continued in this conspiracy; they went on with their work; and every one of these orders made on or since the 23d day of May, 1879, we submit to you, is an overt act abundantly proved and in accordance with the law, as the court will lay it down to you.

Now, gentlemen, my work in this case is substantially done. I have not willingly made this long demand upon your time and your attention. It was the opinion of every one of those who are connected with this prosecution that it was my duty to avail myself of the opportunity, and to unfold to you, as far as any one man could, the array of facts which this large record of five thousand pages of evidence discloses, and to show to you the inferences which, according to our view, inevitably arise from it. This duty it seemed to the prosecution was the more urgent on account of the intimations that have been thrown out here from time to time that the defendants, from some motives which it is not for me to characterize, do not propose to undertake to make to you any argument or any explanation. In view of that possibility the Government was bound to look ahead, and in view also of the possibility that the court might consider it its duty to say that the Government should have no further opportunity to present its views to you. Under those circumstances it has seemed to us all that, even at the risk of exhausting the extraordinary patience and extraordinary attention which you

have given me, it was my duty to go over the case as fully as I have.

Brought into this case, gentlemen, as I was, eighteen months ago, and brought in by the trusted advisers of President Garfield; brought in after I had repeatedly declined to take part in it, because it would take me from my home and my business, I have endeavored to give to it all of the industry and all of the fidelity at my command. In so doing I feel that I have made sacrifices which no one will know, and no one will appreciate except those who know how largely a lawyer suffers when for eighteen months he leaves his home and the business which in a quarter of a century he has built up around him. Still, I felt that having gone into it it was my duty to give it my time, my energy, my industry, and such talent as nature has given me. If, therefore, I have seemed to you at any time, or to the court, to have brought into the case any undue earnestness, I beg you to consider that it was not intentional, but has been begotten of the circumstances which have surrounded me.

In leaving the case now, gentlemen, in your hands, I ask you to remember a few facts in connection with it. I ask you to remember the acts and the declaration of Thomas J. Brady. I ask you to remember his resort to expeditions greatly in excess of anything which had existed before him. I ask you to remember his avowed disregard of law. I ask you to remember his avowed disregard of all considerations of economy. I ask you to remember his disregard of all considerations of productiveness, though the statute directed him to consider productiveness. I ask you to remember that he increased service and expedited it where there was practically no mail matter to be carried, as his own records and his own avowals show. I ask you to remember that he paid large sums for expedition when nothing was gained, either because the mail was already being carried in a less time than that for which he by his orders for expedition directed it to be carried or else while it was carried at greater speed over the routes it lost all its connection by laying over at the end of the routes. I ask you to remember how he paid large sums of money in excess of what his own records showed as necessary to be paid to secure the carrying of the mail even at the speed at which he declared it must be carried. By the subcontracts on file in his own department this was apparent, and the very orders which he made contained in themselves the evidences that it was not necessary to pay any such amount of money to carry the mail, and that he was really paying this large excess, not to the carriers upon the routes for carrying the mail, but he was paying it to these defendants who sat here in Washington reaping the benefit of their plans and contrivances. I ask you to remember how he acted upon affidavits, forged, altered, and erased, and how he acted upon affidavits which a moment's examination would have shown him could not be true, because they led to results absolutely absurd. I ask you to remember how he acted upon affidavits which did not in form conform to that regulation which we all agree had upon him the binding effect of law, and which, when he failed to follow it, involved on his part a violation of law. I ask you to remember that he acted upon the affidavits of those who avowedly knew nothing of the matter as to which they were swearing. I ask you to remember that he acted upon the affidavits of those whom his own records showed to be unreliable, upon affidavits made by those not competent under the very regulation to which I have referred, upon affidavits not in form conforming to the regulation. I ask you to remember how he accepted as the sole, final, and conclusive evidence the statements of the parties who avowedly

were to be benefited by the results of the affidavits, and who were practically allowed by him to say how much money they should take from the Treasury of the United States. I ask you to remember how he went in his orders to the extreme limit allowed by the law, assuming the affidavits to be correct, and exercised no judgment and no discretion and attempted in no sense to protect the interests of the Government. I ask you to remember how he acted without inquiry upon affidavits which are shown by the uncontradicted evidence to have been absolutely false and fraudulent, and took from the Treasury tens and hundreds of thousands of dollars. I ask you to remember how he made orders not in conformity with the statute, because they did not specify the amount of money paid for increase of service, as the statute required. I ask you to remember how he made orders violating the law, because they gave pay from a period anterior to the time when they were made; how he made orders violating the spirit if not the letter of the law of 1880, by which, under the pretense of increase of service, he gave an allowance practically for expedition greatly in excess of the amount allowed under that statute. I ask you to remember how in everything great and little his decision was against the Government—never for it; how post-offices already upon routes were annexed to them by his orders and considerable sums of money allowed for the alleged traveling over the fictitious increase of distance; how schedule time was extended without any change of termini or actual addition of distance, and how expedition was granted in order to make up for the time lost by the fictitious addition of distance and the extension of the time. I ask you to remember how this was done whenever it benefited the contractor and when it was an expense to the Government, and yet when the same class of persons urged him to do the same thing when it would have been a saving to the Government, he said he could not do it, because the statute did not allow it. I ask you to remember how, in all these ways, contracts costing originally \$43,000, when let by public bidding and competition, were by the secret orders of Brady run up to ten times that amount. I ask you to remember how in a brief period, after Stephen W. Dorsey came into their possession, twelve routes, which at that time cost the Government less than \$40,000 a year, and which had originally cost the Government less than \$20,000 a year, were run up by Brady's orders within a brief period of three months to over \$250,000, and that every one of these orders was made when Stephen W. Dorsey was here or in this immediate vicinity, engaged in no other business except the mail business, and that every one of those orders was an order made for the profit of Stephen W. Dorsey. I ask you to remember how as to all the things which I have heretofore stated there is absolutely no contradiction. As to the things to which I have called your attention there is admittedly no contradiction. They are proved almost without exception, I think, by the records under Mr. Brady's control and in Mr. Brady's office. The only things that it is necessary to go outside of that office to find out are the facts as to precisely how many men and horses it did take to go over the routes. I ask you to remember in this connection Brady's statement to Mr. Walsh that he did not make expedition for amusement. I ask you to remember, gentlemen, the sudden wealth which Mr. Brady acquired, coming into the office of Second Assistant Postmaster-General from an office where he had had a salary of \$3,000 a year, and his largest salary having been \$4,000 in a distant port, and that within a brief period afterwards we find him dealing with hundreds of thousands of dollars' worth of his own property. I ask you to remember Mr. Rerdell's statement of his

conversation with Brady—a statement carried into Stephen W. Dorsey's letter-book, and a statement which you must be satisfied from all the circumstances surrounding it is true. I ask you to remember Stephen W. Dorsey's declarations to Rerdell as to the money paid to William Smith, and I ask you to remember that in connection with the history of the books and everything of that kind as going to show that when Mr. Rerdell said that Mr. Dorsey told him that William Smith meant Thomas J. Brady Mr. Rerdell told the truth, and Mr. Dorsey told Mr. Rerdell the truth. I ask you to remember all about these books and their entries. I ask you to remember the tabular statement in Mr. Dorsey's handwriting showing payments to Brady. I ask you to remember the declarations of John W. Dorsey to various persons that Thomas J. Brady, or the Second Assistant Postmaster-General, was interested with them in the scheme they were entering upon. I ask you to remember, gentlemen, the forged and altered petitions, the affidavits filled up after they were signed, filled up by Stephen W. Dorsey and John R. Miner, as I claim, or used by John R. Miner and filled up by Dorsey, and the affidavits filled up by Rerdell under the direction of Stephen W. Dorsey. I ask you to remember, gentlemen, that all these things which Thomas S. Brady did thus loosely, thus extravagantly, and thus corruptly were done for the benefit of these other defendants. I ask you to remember the absurd story of Vaile as to how he came into this business originally, and I ask you to remember the contradiction by his own oath and the contradiction by his letter written to Dorsey as to Mr. Dorsey's relation to the business. I ask you to remember John W. Dorsey's falsehoods upon the stand as to making affidavits at the instigation of a man who was thousands of miles away from the place where they were made and thousands of miles away from the place from which he says he received the instructions. I ask you to remember John W. Dorsey setting himself up as the man to be believed against the oath of Pennell, Lambert, McLellan, Cable, and others. I ask you to remember that this is the statement of the man who by his own admission was engaged in an attempt at fraud with reference to the side post-office on the Bismarck route. I ask you to remember John W. Dorsey's statement that he paid to his brother under a secret and confidential arrangement a considerable sum of money which his brother says he never received or heard of. I ask you to remember Miner's air upon the stand. I ask you to remember his buying off of Abbott. I ask you to remember his letter to Hayes saying that expense had to be incurred in Washington to procure expedition and then the absurd explanation on the stand of what that meant. I ask you to remember his practical admission, for it was an admission, gentlemen, that he forged the name of Hall and the others on the Canyon City petition. I ask you to remember Miner's double affidavits on the Bismarck and Fort Keogh route, one of which has disappeared. I ask you to remember Stephen W. Dorsey's interest in every detail of the business while he was in the Senate; his alteration of bids; his procuring bondsmen; his advancing money; his signing Peck's name; his employment of Boone; his employment of Rerdell; his authorizing Rerdell to draw money in the name of John W. Dorsey & Co., and his freezing out Boone. I ask you to remember his avowed ownership as soon as he came out of the Senate, on the 4th of March, 1879, and his proposal to kick others out as soon as he came out, and how he immediately commenced upon that, and how, immediately after the division, he got the enormous increases to which I have called your attention. I ask you to remember his letter to Haycock and to Clendenning, with the italicized caution that the recipients should let nobody know that he

was writing on the subject. I ask you to remember his sending bonds to Haycock, Clendenning, and the others, with the request that they would violate an express statute of the United States by certifying bids in which the bidder's name had not been inserted. I ask you to remember his declarations to Moore that it took money to keep up his influence with the department. I ask you to remember the enormous increases coincident with his presence here; the filling up of blank affidavits; the arrangement of the form of subcontract, and his direction for the insertion of an unheard-of clause as to expedition. In that connection I will remind you of the testimony of Vaile as to Dorsey's interest, as disclosed in his letter to Dorsey, and in his and Miner's affidavit as to Rerdell's suit. I ask you to remember the unconscious testimony which Vaile gave when he said that he came here on the 6th of March, determined to go on no longer with Stephen W. Dorsey. I ask you to remember all the evidences of prearrangement between these defendants and Brady, which are disclosed in the evidence in this case; for instance, the incurring of large expenses by them in anticipation of an expedition which they said was to come and which did come, as upon the Bismarck and Fort Keogh route. I ask you to remember the arriving at the precise number of hours to which expedition was to be made when it was mentioned nowhere in any of the papers filed in the case save in the affidavit of one or the other of these contractors, made away out in New Mexico or in Vermont long before Brady had acted. I ask you to remember the promising of expedition to the subcontractors and the promising of increase of service to the subcontractors, which promises were fulfilled promptly as stated, and indeed were fulfilled in larger measure. I ask you to remember the evidence of prearrangement to be derived from the letter of the 8th of February, 1881, stating that if the petitions were here before General Garfield came into office and before Mr. Brady was in danger, to say the least, of losing his office, the expedition would be obtained upon the White River route. It was promptly obtained to the amount of \$18,000. That order Mr. Brady was in substance directed to revoke by his superior officer, Mr. James, but he deliberately failed to do it. I ask you to remember the buying off of Abbott, the paying of \$1,500 to Johnson to induce him to ask Delegate Cannon to withdraw the remonstrances against that expedition of service which Brady had put on without there being a single petition for it and there being no indication that anybody wanted it, except the affidavit of the contractor. I ask you to remember the claim that they made that, doing a business of millions of dollars, they did not keep any books. I ask you to remember the withholding of evidence upon which I have had occasion to comment more than once. I ask you to remember the failure to put on the stand witnesses who could have given most important evidence, if not conclusive evidence, in this case, such as Bosler and the others. I ask you to remember how, after a great parade, they failed to call one witness to contradict Walsh, they failed to call one single witness to impugn the character or to contradict the statements of Rerdellor Moore, save the statements of the defendants themselves. I think their bearing on the stand and their evidence, apart from any question of their interest in the case, must satisfy you that their testimony is entirely inadequate to meet the statements of those witnesses. I ask you to remember the thousand and one things which crowd upon my memory, and some of which will certainly have found a lodgment in your minds, and which must satisfy you that these defendants, one and all, were engaged in a conspiracy to defraud the United States. I ask you to keep all these facts in mind, and not allow your-

selves to be diverted by any futile pretense that at some time or other the burglar's tools and the products of the burglary were divided up, and that therefore there is to be no punishment for the burglars.

I ask you, gentlemen, finally, to remember that this is a prosecution intended to protect the Treasury of the United States and intended to punish those who have defrauded it; and that while the prosecution would not have you find a verdict of guilty against any man as to whom, under the instructions of the court, you have an honest and reasonable doubt of his guilt, yet at the same time that it is of the greatest importance that no guilty man should escape. Trials of this nature, intended to protect the Treasury of the country, must, from their general character, in the most important cases, take place in this District, and the eyes of the whole country are looking on to see whether there can be found in the District of Columbia a jury of sufficient—I will not say honesty, gentlemen, for that is assumed—but a jury of sufficient intelligence to understand and appreciate a case of this character, and a jury of sufficient independence to act up to their honest convictions.

Thanking you, gentlemen, for your unprecedented patience during my remarks, which have been unprecedented in their length, I leave the case, so far as I am concerned, in your hands.

Mr. MERRICK. The Government has closed its opening, your honor.

Mr. WILSON. I desire to know whether the Government will claim two arguments in the conclusion.

Mr. MERRICK. I presume, your honor, that the address of the Government counsel should first be answered. In reply to Mr. Wilson's inquiry, however, I respectfully submit, that the Government, in the opinion of the counsel representing the Government, is entitled to two closing arguments, and I beg leave to lay before your honor in that connection, or in support of that proposition, one or two authorities. I premise my remarks, however, by saying that after arguments of such distinguished ability and exhaustive power, if it is a matter purely within the discretion of the court, it is probable that the court will not allow the Government the privilege I now desire. The first case to which I refer your honor is the case of O'Connell, which has already been before the court, when this question was first brought up. The second case, and the probably more important and more nearly parallel case, is the case of Queen Caroline. It was a case, may it please your honor, properly speaking, before a jury. It was a case before the House of Lords, but the Queen was being tried according to the fundamental principles of jury law by her peers. In that case, a copy of which I have before me, your honor will observe that the case was opened on behalf of the bill brought into the House against the Queen by Robert Gifford, the attorney-general, and the government's evidence was then, according to the rules of English practice, introduced. After the introduction of the evidence, Copeley, the solicitor-general, afterwards Lord Lyndhurst, argued the case. Brougham was then heard on the other side, and before the evidence was all in Mr. Williams was heard in reply to Mr. Brougham. Then the defendant's evidence was introduced, and all the evidence being thus in, and the parties having been thus respectively heard by these distinguished gentlemen, the Queen was heard by Mr. Denman and Dr. Lushington, and the government closed by arguments from the attorney-general and the solicitor-general. I do not observe, may it please your honor, in the case that any question was made with reference to the right of the parties to be heard by these respective counsel. On the contrary, the lord chancellor seems to have inquired as each party closed what would be

the next proceeding, and the proceeding was, as I have stated to your honor, in the order in which I have stated it, the government closing by the attorney-general and the solicitor-general. The other case to which I call your honor's attention is the impeachment of Mr. Justice Chase before the Senate of the United States. In that case the opening was made by Mr. Early, who was followed by Mr. Campbell, who was followed by Mr. Clarke. The defendant then opened by Mr. Hopkins, who was followed by Mr. Lee, who was followed by Mr. Martin, and the prosecution closed with three speeches from the managers, a speech from Mr. Nicholson, from Mr. Rodney, and Mr. Randolph. It seems to me, may it please your honor, that these cases are precedents directly in point in support of the proposition I now submit that the Government may have through its special counsel in court and through the Attorney-General of the United States two speeches in the close. I do not know whether it will be more appropriate for me to bring to your honor's attention now a letter that I have from the Attorney-General, or to bring it to your attention when my brothers have replied to the suggestions I have respectfully submitted to your consideration. With your honor's permission, I will read the letter now that my brothers on the other side may understand the position and the desire of the Attorney-General of the United States. The letter is addressed to me:

DEPARTMENT OF JUSTICE,
Washington, April 24, 1883.

UNITED STATES }
vs. }
BRADY ET AL. }

MY DEAR SIR: After your conference with me in the above case as to the order of speaking I have considered the subject. It has been my intention from the beginning of this present trial to take part in the argument after the case was closed. I could not be present at the trial, for my whole time was occupied, without intermission, with official duties such as no one could be deputed to undertake.

To keep watch over the proceedings, and instruct myself in the details of the evidence that was given, I have steadily, day by day, followed the progress of the case and instructed myself in all that passed.

I learn from you and the reported proceedings that there is some hesitation in the mind of the judge as to the order in which counsel may be directed to speak. The arrangement adopted in the former trial, you inform me, has been set aside, it having been declined. I had believed and hoped, till you informed me of this change, that the course pursued then would be adhered to in this instance, and relying upon that I had intended to have appeared in court to conclude this case, as I did before. In the last case, your speech having been made, you were followed by two or more of the defendants' counsel, and when they had ended I concluded the case for the prosecution, responding to whatever those who immediately preceded me said, and expressing such general views as were called for upon the facts and the law. It was my purpose in the last trial, and it is my will and wish now, to show a determination to have these cases thoroughly tried, and to express in person upon behalf of the Government the resolution to pursue these accusations by lawful means to their lawful end, and thus convey a conviction to the public mind that there was a fixed intention to follow these or any other accused men, no matter how high their past position, and expose and punish their frauds by due course of law.

In this trial the judge himself first suggested, in departing from the former arrangement, that the defense might close and then be followed by two speeches upon behalf of the Government, one of them to be delivered by yourself and the other by myself.

That was an intimation made by the court that it could be done before your honor examined the subject thoroughly.

The COURT. I do not remember it.

Mr. MERRICK. [Continuing to read:]

If the judge will do this I would be satisfied. To me it appears to be the proper course in a case like this, complicated as it is, wherein so many defendants are involved, represented by so many different counsel, all of whom being heard in a body

before the closing speech of the prosecution outweigh in numbers and effect that single speech in conclusion made for the Government. This order is the one that I would suggest, and did suggest at the former trial before the order then adopted was thought of or accepted. All lawyers know the order of speaking is wholly within the discretion of the court, and I desire you to urge in this case upon the court the fitness and propriety of this plan.

The recorded authorities that I know of show departures in cases like this from the ordinary courses of litigation, and there are many, no doubt very many, more wherein like departures have been made in the exercise of this judicial discretion to answer the ends of justice that cannot be cited, as such orders are generally made at trials where they are not the subject of record. Let me call your attention to Chase's trial, to the Queen's trial, to O'Connell's case. Those you possess and will use. The text-books contain but one principle upon this subject, an undisputed principle, and that the discretion is exclusively with the court to be exercised according to the circumstances.

In a note like this I do not propose to enlarge in an argumentative way upon the necessities or proprieties of this case demanding the order that two may conclude for the prosecution; that you will do when the question is discussed and submitted to the judge; but I again affirm to you it is my conviction that in this case of all cases that order is the proper one. If the judge determines to rule that there will be but one counsel in conclusion for the prosecution, and declines to adopt the former order of speaking, then of necessity I am excluded, for I think the case requires the knowledge which you have obtained in its prosecution shall be used and expounded by you fully to the jury. It is not only due to the case that you must be heard, but it is due to you; you have borne the brunt of this prolonged and bitter contention, and it is your right, as a point of personal respect, that you shall be heard. I cannot and will not supersede you.

If, however, the judge concludes to readopt the old order, then you will appear as you did, and I will conclude as before. If the judge decides that you may speak in conclusion and I may speak in conclusion, and the counsel for the defendants then refuse to be heard, as one of them has threatened, and they persist in that determination, then I desire to withdraw, for I would not have this or any other case of its magnitude and consequence sent to a jury without giving the accused the benefit of every word that could be said on their behalf; I would not have a verdict tarnished with such an unusual and irregular departure as that which they threatened. Although the defendants would deservedly draw down on themselves the consequences of such contumacious refusal to speak, yet it would be better for the sake of the orderly administration of justice that the Government would waive a right adjudged to it by the court rather than appear to obtain that right at the expense of the defendants who profess to believe that they were wronged and prejudiced by its enforcement.

With great respect, your obedient servant,

BENJAMIN HARRIS BREWSTER,
Attorney-General.

RICHARD T. MERRICK, Esq.,
*Special Assistant United States Attorney-General
in the Star Route Trial, Washington.*

I have read this letter, in the opening suggestions that I have made to the court, in reply to counsel upon the other side, for the reason that my learned brother, Mr. Wilson, in conversation with me said that he desired that this question should be settled before any step was taken by the defense; and he further said to me in private conversation—which I presume I may be allowed to give—that if the Attorney-General insisted upon speaking, and two closing arguments were given to the Government, the defense would not argue. I have, therefore, deemed it proper to make known to your honor and to counsel on the other side that, whilst the Attorney-General claims the right to close this case in conjunction with his Assistant Attorney-General, yet that if the court should grant that right and declare it to be a right or a privilege of the Government, and the other side feel aggrieved by its prospective exercise, the Attorney-General will not assume to exercise it at all.

The COURT. I may say that it appears to me that the Attorney-General is not correctly informed in regard to the course that was taken

at the last trial and to which he refers in his letter. He refers to it as a course prescribed by the court.

Mr. MERRICK. No.

The COURT. I understood the letter in that way.

Mr. MERRICK. I think not, your honor. It was an agreement of counsel acquiesced in by the court.

The COURT. I understood the letter in that way by the reading; possibly I may have misunderstood it. But if I do not misunderstand it, it is an error on the part of the Attorney-General, because the course of the argument at the last trial was a matter of convention between the counsel on both sides. The ordinary course was not pursued in that case.

Mr. MERRICK. He says the arrangement adopted at the former trial has been declined by the other side. I informed him that they had declined.

The COURT. The proper construction of the letter, as I understood it, and as I understand it now in fact, notwithstanding the interpretation put upon it by Mr. Merrick, seems to be that the course of the argument at the last trial was prescribed by the court.

Mr. MERRICK. I can show your honor that he does not so understand it.

Mr. BLISS. I do not think he so states it; I have the letter before me.

Mr. MERRICK. From my consultations with him I can say that he does not so understand it.

The COURT. Whatever the understanding may be on that subject and whatever the letter may show on that subject, that, in fact, was not the case. The court at that time would not enforce the ordinary practice, but it was agreed among counsel, where there were so many, that that practice would be inconvenient probably, and so they mingled their arguments.

Mr. INGERSOLL. If the court please, if I understand the letter, it is a proffer on the part of the Attorney-General, and I suppose I may say on the part of the prosecution, to make an arrangement such as was made at the last trial. It may be proper for us, before the court decides one way or the other, to say whether we will accept such a proffer. I want to know whether that is the proffer.

Mr. MERRICK. That is not the proffer. The letter simply states that the proposition has been declined. The proposition was formally made to the counsel on the other side and declined. Of course two counsel for the Government having already addressed the jury it is too late now to make any such proposition. My proposition to the court now is that the counsel on both sides may be informed as to whether the Government is entitled to two closing speeches.

Mr. INGERSOLL. I understand that that proposition is in the letter.

The COURT. The letter, I observe, is dated the 24th of April, and it speaks from that date, of course. Since that time we have had the Government open in pursuance of the directions of the court. The court directed that the Government might open with two counsel. The case has passed now beyond its condition at the time the letter was written, and the question now simply is whether the counsel propose to go on. The time has arrived for that question to be settled.

Mr. INGERSOLL. The question I understand now is whether the court will allow the Government two closing speeches.

The COURT. Do you object?

Mr. INGERSOLL. I do. I object most emphatically to two closing speeches on the part of the Government.

The COURT. Will you be kind enough to furnish the court with your reasons ?

Mr. INGERSOLL. Yes, sir. I understand that, so far as can be ascertained, it is substantially the universal practice to give to the prosecution the closing argument, and one, as a rule, has been deemed sufficient. It seems that before the House of Lords and in one case before the Senate a different rule has been followed. But I submit that no case has been cited which is applicable here, in a trial before a jury. No case has been cited where the Government ever asked for two closing arguments before a jury. I know of no such case. I presume the prosecution know of no such case, or it would have been cited. In a case like this, a case in which the opening on the part of the Government has consumed fourteen or fifteen days, it seems to me that the Government should be satisfied with one closing argument. The only reason why the Government should have the closing argument at all, is because that on the Government rests the affirmative. They must establish their case. The Government gives to the defendant the last evidence, as a rule, unless there is something in rebuttal. The defendant hears the State's case, and he replies to it in his evidence. The State then opens the case to the jury, the defendant replies, and the prosecution closes. If there is a case in the history of the world where, in a trial before a jury, the prosecution has been allowed two speeches in closing, I want to see that case ; I never heard of it. I have never seen any such case, and consequently I oppose it ; I object to it.

In a case like this, it seems to me that it would be outside of and beyond all precedent. I think that it would not be nearly so bad to allow the defense the last argument. That is a violation of precedent, but so is the other. But that would be a violation of precedent on the side of the defendants instead of on the side of the prosecution, and if precedent is to be violated let it be violated in favor of, not against, a citizen who is put upon his trial. I most seriously object to it, and I deny, *in toto*, that it is within the power of the court to decide whether a man shall be heard or not. I believe that rests upon a surer foundation than the discretion of courts. While I believe that a large majority of judges, even if it rested upon their discretion, would do justice, still I believe that this right rests upon a surer foundation than that. I believe that it is upon the rock of the Constitution ; it is also upon the rock of universal custom ; it is upon the rock of the common law. And the idea that the Government shall have the closing argument is as old, it may be, as Anglo-Saxon trials, but there is no case—and if there is I ask these gentlemen to present it—in any country where the prosecution before a jury have been allowed two closing arguments. I know of no such case, and the fact that it never happened goes far to show that it never ought to happen.

Mr. WILSON. If the court please, I want to say one word in regard to this matter. Before this argument began at all the question as to the order and extent of it was under consideration by the court, and this very question we now have before the court was then considered. The court then announced, as I understood it, that the prosecution would be permitted to have as many opening arguments as they desired under the circumstances ; two, I believe, were mentioned.

The COURT. The understanding, I believe, was that they were to have two.

Mr. WILSON. Yes, sir.

The COURT. The court said "as many as they choose," but only

meant one or two, because the court knew very well that they could have no more than that.

Mr. WILSON. I was going to say that that remark of the court obviously had relation to the circumstances which we all knew existed, to wit: that if there were more than one it would be two. At that time, as I understood, the court also said that the prosecution would be entitled to one argument in closing. I think I was somewhat persistent in reference to this matter at that time. My Brother Merrick has referred to a private conversation that occurred between him and myself, to which I take no exception whatever.

Mr. MERRICK. I thought you would not.

Mr. WILSON. And I have also said to my Brother Merrick several times during the progress of the argument that this question, as to whether or not the defense would argue the case at all, depended upon the question as to whether or not this argument was to take the usual and ordinary course, and be governed by the ordinary and usual rules governing such questions, but that, for one, I would not consent that this Government, which has put forth its greatest energies in this case against my client, should, after the mouths of the defendants were closed, be granted the extraordinary privilege as against the defendants of having not only my Brother Merrick make an argument, but to be followed up by the Attorney-General of the United States. This is a very extraordinary application, your honor. None of us has ever heard one like it before. A good many of us have been in courts and before courts for a good many years, some of us for more than a quarter of a century, I among the number. We have never heard of anything of that kind before. And now they not merely propose to give to the prosecution two closing arguments, but one of them is to be made—much as we may say there is no purpose in it, and much as we may undertake to say there is nothing in it—by the incumbent of one of the highest offices within the gift of this Government, throwing the weight of his position in the scale as against these defendants. That is one of the reasons why I protest against such an innovation upon the law as it has been administered as long as any of us can remember.

I want to take no advantage; I want no sharp practice in this case; and I want none practiced upon me or my client. But I am perfectly willing that this case shall go on in the ordinary way, the Government having one concluding argument, and if my friend, Mr. Merrick, can make anything against my client in the ordinary progress of the case, the Government is entitled to it. But I do not want them to have an advantage in this case that has never, to my knowledge, been granted in any case where the common law is administered. And therefore I present my most earnest protest against it. It was for that reason that I rose to inquire a little while ago as to whether or not the Government intended to demand two closing speeches after the defense had concluded.

When this matter was up before, the court said, at page 4491—Mr. Chandler has just handed me the record:

The COURT. The court has made a ruling as to the order of the arguments. Now, the court cannot make a ruling which is like the laws of the Medes and Persians, never to be revised. As long as this term lasts, any ruling of the court is subject to reconsideration.

Mr. DAVIDGE. I would suppose there might be a ruling which would not be changed, as we have to act upon it.

Mr. MERRICK. Can your honor rule until I bring forward my motion?

The COURT. The thing is settled for the present, certainly. Whether it would be

opened on motion is another question ; and I cannot make a ruling now that counsel shall be prohibited forever from making a motion.

Mr. DAVIDGE. I did not ask anything of the kind. I only desired to know whether the point was settled. I understand that there might be peculiar and remarkable circumstances to induce the court to modify the ruling somewhat. But I understand that ruling to be absolute, with the light now before the court.

The COURT. Oh, yes ; I would not change it unless for good cause shown hereafter.

What has occurred since that time to change the ruling as then laid down by the court ? What is there in this case that should induce the court to change its ruling ? I cannot conceive of anything, unless it is that the prosecution have for fourteen days argued this case without the defendants having had an opportunity of opening their mouths. If fourteen days of argument on behalf of the Government is a sufficient reason for changing the rule as laid down by the court, then, I suppose, as a matter of course, the court will change it. The rule that the court laid down was this :

The COURT. I will say, then, that the Government in this case will be entitled to have as many counsel speak in the opening as they choose, but they will be limited to one reply.

That was the rule laid down by the court. Now, what has occurred to induce a change of that rule ? Nobody is sick, nobody has become disqualified, nothing of that kind has happened in this case. Why then is this rule to be changed after we have sat here and listened to arguments against our clients by two counsel in this manner for fourteen days ?

The COURT. I have heard, as yet, nothing to satisfy my mind that it would be proper to change the practice of the court.

It is very true that, however the court might rule upon this question, the ruling would not be error in a higher court, because it is a matter of practice left to the discretion of the court below. But these matters of discretion are not matters of mere whim or caprice. It is an old proverb that "the course of the court is the law of the court," even in regard to matters of practice. And, although the court will hold this mere exercise of discretion somewhat less rigidly than it would a statute or the decision of a higher court, yet when the course of the court for years has become established it would be an unbecoming thing, it seems to me, upon the part of the court to depart from that course without some reason. If sickness should take place, or necessary absence should break in upon the closing argument of counsel, so as to render that argument incomplete, the court, of course, would allow the other counsel to take his place. But according to my knowledge of the practice in this court ; according to what information I have of the practice in other courts, two replies on the part of the Government are not the practice.

It is said that on the trial of Judge Chase there were several arguments in reply. That was an impeachment trial before the Senate. The Senate is not a common-law tribunal. It makes its own rules for itself, has its own custom and its own practice. Because the Senate chose to adopt a certain course with reference to the arguments on a trial, this court would not feel itself obliged to follow that precedent in trying a criminal case here.

The O'Connell case was for conspiracy against seven defendants, six of whom, I believe, were convicted, in a certain way. Each of those defendants took his own separate writ of error to the House of Lords, and when the argument was reached before the House of Lords the question came up as to how the argument was to be conducted. The attorney-general, on behalf of the government, claimed that it had

the opening and closing; but that was not yielded. The plaintiffs in error were held to be entitled to the opening and the closing. So they were heard by two arguments in the opening of that case; then the government followed on the other side, and two arguments were heard on behalf of the defendants in conclusion.

There was another reason given by the judges in that case: that, inasmuch as each defendant had his own counsel, and they were not obliged to have common counsel, several (more than the usual number of counsel) were allowed to be heard on the part of the defense; and for that reason two counsel were heard on the part of the defendants in conclusion, in order to meet the arguments of the counsel for the Government.

But we do not follow the practice of the House of Lords, and that is a sufficient answer to that.

It is very seldom that we meet with authority in regard to a question of this nature, but I found a case the other day, *The Commonwealth vs. Knapp*, in 9 Pickering, I believe, which was a famous case tried before all the judges of the highest court in the State of Massachusetts. It was a case in which Mr. Webster was employed to assist the attorney-general. A very important question arose in the case as to the admissibility of some evidence of the confession of an accomplice in the crime. The attorney-general opened the argument for the State, and Mr. Webster closed it—I believe that was the order—and then the attorney-general suggested to the court that the solicitor-general had looked into the question and would be glad to be heard. But the court decided that he could not be heard; that there could be but one reply. So the solicitor-general was not heard, and there was but one reply. It is very true that in that case a reference was made to the statute of Massachusetts of 1785. But the court does not put its decision upon that statute; the statute is merely referred to. On looking at that statute it will be seen that it declares simply that every man accused of crime shall be entitled to a speedy trial, to be confronted by the witnesses, to hear the charges against him, and to be entitled to be heard by counsel, provided his counsel should not exceed two in number. That was a statute which related plainly and solely to accused persons, and not to the Government. Still, the court in that case decided that there could be but one reply on behalf of the Government.

I think it would be the most proper course—it would seem to be so—and it would appear better for the court in this instance—to make no departure from its ordinary practice. I have seen no imperative reason for changing the practice. I believe the practice here has been uniform, and, I think, uniform throughout this country in the criminal courts, that the Government shall have but one reply.

I should be very much pleased, if I could do so consistently with my sense of duty, to listen to a closing argument from the Attorney-General. His reputation, position, and character would all claim such a privilege—if he should regard it as a privilege—if he wished to exercise it. But we cannot give way to a feeling of that kind at the expense of rules of practice which have uniformly controlled us.

The motion is therefore overruled.

* [Some moments were here spent in consultation between counsel for the defendants.]

Mr. HENKLE. If the court please, it is only twenty minutes until the usual time of adjournment, and we would like to have some consultation among ourselves in order to determine what we shall do.

Mr. BLISS. Your honor, with reference to that, I think we may fairly

ask this afternoon what the gentlemen on the other side are intending to do. I, perhaps, feel the more strongly upon the subject, because I was forced by the necessities of this case to forego an engagement made long since in which many others were involved, and I have postponed it on the theory that we should know to-day at least precisely what the other side would do. I have people waiting for me at the other end of the wire to know precisely what information I can give them. Inasmuch as the defense have had notice that I expected to close before the recess, I think we may fairly be entitled to know whether they are in the position that Mr. Henkle stated they were at one time, of not saying anything, or whether they are ready to go on. If they do not, we have the burden upon us to go on in the morning with prayers to the court, and we are entitled to know their decision, beyond all question, it seems to me.

Mr. INGERSOLL. [Facetiously.] We were taken by surprise, of course, about Mr. Bliss's closing to-day.

Mr. BLISS. That is probably as true as a good deal else that had been said by them in this case.

Mr. INGERSOLL. That is about as true as any part of your speech. We only ask about twenty minutes, which is only about a minute a day for the time they have spent in opening.

The COURT. But you had notice that Mr. Bliss would close to-day.

Mr. INGERSOLL. So we had notice last Wednesday about his closing, and he has kept it up day after day.

Mr. MERRICK. If your honor please, may I be permitted to make a single suggestion? Whilst, of course, it is always most agreeable to us to extend every courtsey that may be asked by the other side, and concurred in specially by the court, I shall to-morrow, if Mr. Bliss keeps an engagement obligatory upon him, be left alone with my brother Ker. The attitude in which matters will be placed when we know the determination of the other side will be such as to make it very desirable to have a full consultation between counsel on behalf of the Government.

The COURT. Suppose they were to announce this afternoon that it was their purpose to go on, and then in the morning come in and say they had changed their mind; the court could not make them go on.

Mr. MERRICK. No, your honor; but, of course, if they announced their purpose to go on in a case of this vast magnitude and importance, it certainly would be a very definite purpose, for the subject has been under consideration by them.

The COURT. I assume that they might, after consultation during the night, change their minds.

Mr. MERRICK. It is possible; but I hardly think that gentlemen whose minds are so used to grasping large subjects as theirs would be apt to change in so short a time.

Mr. INGERSOLL. We are exceedingly anxious to make a place for the Attorney-General. We hate to see him leave the case without an opportunity to present his views, and it may be that we can come to a conclusion that will allow the Attorney-General either to close the case or to make an intermediate speech. We have been talking it over a little among ourselves. We do not want to put ourselves in the attitude of depriving the Government of the services of one of its highest officers.

Mr. BLISS. You have changed your views from those of Mr. Dorsey, as expressed to General Garfield.

Mr. INGERSOLL. It is not the same one.

Mr. MERRICK. In reply to that I say that I have made no proposition of any kind to counsel upon the other side in reference to the order of

proceeding. Those propositions were made some time since and declined; I make none now, and I shall consider none. From this time we will proceed, as we have thus far proceeded in the argument, according to the rules of law.

Mr. INGERSOLL. All I wanted was to make them responsible for keeping the Attorney-General out.

Mr. MERRICK. According to his letter the Attorney-General is responsible himself.

The COURT. The Attorney-General can close if he chooses.

Mr. MERRICK. The Attorney-General can close if he chooses; as a matter of course I bow to his authority and distinguished reputation, and I would be extremely glad if he would relieve me from the duty which, according to his letter, he has imposed upon me. I am not making arrangements with the other side.

Mr. INGERSOLL. Nevertheless, I suppose we could allow the Attorney-General to speak.

Mr. MERRICK. If twenty minutes for consultation are wanted, let us take a recess for twenty minutes.

The COURT. That would be equivalent to an adjournment.

Mr. MERRICK. I want to know this evening.

The COURT. Let us know, gentlemen, what you think about it.

Mr. HENKLE. It seems to me, your honor, that it is hardly fair to require us to determine that matter this evening. The court has several times adjourned over before the usual time in order to accommodate counsel for the Government, without any objection on our part. I have heard no reason suggested by counsel why our request should not be granted.

The COURT. I think on that point favors are about equally balanced.

Mr. HENKLE. I am making no complaint to the court.

Mr. MERRICK. I told you my reason.

Mr. HENKLE. My Brother Merrick is prepared to go on, and I do not suppose he will add anything to his preparation during the night. Mr. Bliss has completed his argument, and I presume he intends to go home to-night.

Mr. BLISS. I want to go home to-night and return to-morrow night, but it depends entirely upon the course of procedure.

Mr. HENKLE. I cannot conceive how the interest of the Government will suffer by an adjournment now.

The COURT. He has not taken you into his confidence.

Mr. HENKLE. No, and he has not suggested anything, it seems to me, which the court can regard as any good reason why our request should not be granted. We represent different clients, and we have not decided what we will do. I have a decided opinion about it, but I may not find myself in exact accord with my colleagues. I do not know whether I will or not. But if I should have my way about it this argument would be very much abridged. I think the court ought to indulge us with an adjournment now, in order to give us an opportunity for consultation. It only lacks fifteen minutes of the regular time for adjournment.

Mr. MERRICK. I have no other reason for objecting than that stated, but that reason is a very serious one.

The COURT. Mr. Henkle, I will give you the time. Adjourn the court

Thereupon (at 3 o'clock and 46 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

WEDNESDAY, MAY 9, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. MERRICK. If your honor please, before Mr. Wilson proceeds I wish to say that I have thought it would not be out of place, with a view to the assistance of counsel on either side, as well as to the jury, to suggest to my brothers that we now place our prayers in the hands of the court.

The COURT. That is a matter that you may agree upon if you choose.

Mr. WILSON. Well, if your honor please, we had not anticipated anything of that kind.

Mr. MERRICK. Probably I ought to have spoken of it in private.

Mr. WILSON. Oh, no; there is nothing improper in your proposition. If it had been suggested to us last night I should have been ready this morning to present our prayers. I supposed from what has heretofore transpired in the presence of the court that that feature of the case was to be reserved until the arguments to the jury were concluded.

Mr. MERRICK. That was what the court said.

Mr. DAVIDGE. The court suggested that. We offered to present our prayers, and, indeed, we desired to present them and to argue them in advance; but I understood it would be more agreeable to the court to have the law argument either follow the argument of the facts, or at the discretion of those representing either side to be interpolated in the argument of the facts.

Mr. MERRICK. I so understood it myself, and therefore thinking it possible some of these gentlemen might desire to exercise that discretion and so interpolate, I thought they would like probably to have the prayers of the Government. I shall interpolate my prayers in my argument.

Mr. DAVIDGE. I do not know that we care particularly about it.

Mr. WILSON. We do not care anything about it.

Mr. DAVIDGE. I take it that the law of the case is very simple.

Mr. WILSON. It would have been a relief to me if the matter had been disposed of before the argument began, but as it has gone thus far I am not prepared this morning with my prayers.

Mr. DAVIDGE. I shall be perfectly willing, in the progress of the argument which will necessarily take some days, to deliver to your honor our prayers and Mr. Merrick can hand you the prayers of the prosecution. In that way each side will be on a par.

The COURT. The difficulty about that is simply this: That counsel have a right to submit prayers on any points of law that may occur to them with regard to the issue at any time before the jury retires, and ask the instructions of the court. If you were to submit your prayers at this stage, or if you had submitted them at an earlier stage, you still would have had that right up to the last minute.

Mr. DAVIDGE. At the same time notice would be given to each side by the other of the different legal propositions maintained. We are perfectly willing to give that notice in the course of the argument.

The COURT. I think there cannot be any misunderstanding between counsel as to the questions of law involved in the case. They know what the questions of law are now just as well as though they had put them into manuscript form.

Mr. MERRICK. I will say further—

The COURT. [Interposing.] I say this, that counsel have the right to submit any prayers for instructions up to the minute before the jury

retires. Probably prayers prepared in advance of an argument would contain much superfluous matter. That is one reason why I prefer to have the prayers after the arguments on both sides are closed. Then you will see precisely to what points of fact and of law the case has been narrowed. The prayers for instructions on questions of law, if delivered to the court in advance of the argument to the jury, might contain much superfluous matter. Counsel can only determine that question for themselves after the argument is over. Still, the court is prepared to adopt any course counsel may suggest.

Mr. MERRICK. I do not care. I thought it was fair to my learned brothers to make the suggestion, and I wanted to be fair. It makes no difference to me. I will say further, may it please your honor, with a view to the regulation of my movements, that I understand from my Brother Wilson that the several counsel propose to address the jury and will occupy some time.

Mr. WILSON. That is my present understanding. The arrangement may be varied.

Mr. MERRICK. Of course.

Mr. DAVIDGE. We will stop on our side when we think we have said enough.

Mr. MERRICK. There was no occasion for that bluff and almost ungentlemanly remark, for the reason that I asked Mr. Wilson in private just now what was the arrangement in order that I might regulate my movements, and stated to the court my information in order that the court might understand it.

The COURT. I understand the defense are going on, and they will stop when they think they have exhausted their case.

Mr. DAVIDGE. Yes; we will stop when we think we have said enough. We will not take seven days apiece either.

The COURT. Are you sure of that?

Mr. DAVIDGE. Very sure of that.

The COURT. The court will hold you to that promise, then. Proceed, Mr. Wilson.

HON. JEREMIAH M. WILSON

then addressed the jury on behalf of the defense, as follows:

If your honor please, and gentlemen of the jury: In the celebrated trial of the impeachment of President Andrew Johnson, Mr. Manager Bingham, referring to the argument of Mr. Evarts, said that he had sought to make it immortal by making it eternal. Some malicious newspaper paragrapher, referring to the opening, for that is what lawyers call the preliminary argument before the jury in a case, was mean enough to say that there was nothing on earth to which it could be compared unless it was to the crater of Vesuvius. If length of speech will give a lawyer fame, certainly the learned gentlemen who have preceded me have made their names immortal. But those arguments have not been too long, gentlemen, if the purpose is, I will not say to misrepresent and distort the evidence in the case, but to mislead jurors as to the facts of the case. If this be the purpose these arguments have not been too long.

I say to you, gentlemen, at the outset, that but for the fact, as it seemed to me, that the testimony in this case has been grossly distorted and perverted for the purpose of misleading this jury in the end, I should not have felt called upon to say one word to this jury. On the contrary, I should have insisted that this case should go to the jury

without argument, so far as my client is concerned. And now, for your comfort and encouragement, gentlemen of the jury, I beg to assure you, in the beginning, that I shall not seek immortality in the length of what I have to say, although I may not be as brief as I hope to be in the discussion of this case. Having given patient attention for so long a time to the dry details of this case, and having been entertained for fourteen long days by argument on behalf of the Government, I feel, gentlemen, that I ought to extend to you my most profound sympathy, in that you have now to listen to me, and I hope that I may have your sympathy while I discharge, as best I can, in a plain way, the duty that is imposed upon me. I am, gentlemen of the jury, the pioneer, so to speak, on behalf of the defense in the argument of the case. I have no flowers to strew. If I can cut down some of the brush that has grown up in this wilderness and let in some light my task will be done. The flowers and the fruit will come in due time hereafter. When you feel a little nervous and restive over what you must endure from me I beg you to look down the line of those who are to come after me, and take comfort from the anticipation of pleasures that are to be yours. I know I can promise you that when you reach the further end of that line occupied by my distinguished friend, Mr. Merrick, your vexed ears will be soothed and your souls will be charmed with rhetorical periods such as only can come from his fertile imagination and his oily and agile tongue.

Gentlemen, I had supposed, in a case like this, which has been loudly proclaimed and widely advertised as being a case so overwhelming against these defendants, that after all these months of listening to the evidence, and that within the four volumes comprising the testimony that has been brought before you there could have been enough found to occupy the attention of counsel for the Government and furnish material for argument, and that a weary, a long-suffering, and overtaxed, though a patient jury, would not be called upon to listen to, nor would counsel for the defense be called upon to answer, matters neither in the evidence nor having any bearing whatever upon the issues being tried before you. I presume, for the purpose of arousing some prejudice in somebody's mind against somebody, Mr. Ker took occasion to tell you how much, in the way of fees, the several attorneys for these defendants had exacted from their clients. He told you that he had got this valuable information from a newspaper. I may say to you that its first appearance, so far as I know, was in a Philadelphia newspaper. Mr. Ker lives in Philadelphia, and if I were to apply to that the same kind of logic that these gentlemen are applying to this case, I might possibly convince you that he either inserted it or inspired it as the foundation of an argument against these defendants, or possibly to break the force of the developments by a certain Senator in open Senate as to the fees and perquisites that are being paid to counsel on the other side. By the same kind of evidence I could show you that the Government has expended more than \$600,000 in the prosecution of this case. But I do not see how that would shed any light on the guilt or innocence of these accused parties. The point he seemed to make was that the defendants had robbed the Government, and therefore it was right that their attorneys should in turn rob them. He assumed the first and proved the second of these assertions by the newspapers. Now, gentlemen, I am not going to believe that chaff such as this blown into your ears by the wind of long-winded oratory is going to prejudice your minds or affect your judgments in this case. I only mention it as a specimen of the extremes to which the prosecu-

tion will go in this case, and to say, as I think I ought to say, that so far as I am concerned this statement is not true. I have received no such fees from my client, and if it will be any comfort to him in his other tribulations, I will say that I expect no such fees from my client. What I do get is no concern of this prosecution or anybody else, nor is it any of my business what is paid to them or what incidentals they get, great or small.

Now, gentlemen, I want to bring your attention to another feature of this fourteen days of argument to which you have listened. It is the dealing with petty, trivial, insignificant, inconsequential things instead of coming squarely up to the very issue in this case. Let me illustrate by one or two references. Mr. Stephen W. Dorsey, as you will remember, said in his testimony in chief that he never exchanged three words with Moore in his life. Of course everybody knew that that was a mere figurative expression, but Mr. Ker read it to you with awful solemnity and recurred to it over and over again, and Mr. Bliss renewed it, I will not undertake to say how many times, and then Mr. Ker turned over to an answer that was made by Mr. Dorsey in which it appeared that a remark that he made to Moore could not possibly have been given in less than six words. He held that up to you as a self-contradiction by Mr. Dorsey in respect of his testimony in this case. Another illustration: My Brother Ker, in trying to find something to say against General Brady, in hunting around for circumstances and indications of guilt on the part of my client, most bravely and solemnly told you that one of the strong evidences of his guilt was that in the hot summer months of June and July he was here in the city of Washington at his official post. The President and his Cabinet and all the high officers of this Government were away in the mountains or at the seashore; Brady alone was at his post, and therefore he must have been concocting some sort of devilment with Stephen W. Dorsey or somebody else. To such things as these, over and over again, your attention has been invited in this case. How much that kind of argument has cost the Government of the United States I am unable to say. I am not as good in mathematics as my Brother Ker and my Brother Bliss, but if I were to enter into a neat calculation I think we would find that the presentation of just such things as these has cost this Government a great many thousands of dollars and this jury a great deal of valuable time. Mr. Bliss, after spending two years of hard labor, two years of valuable time in this case, and after incubating during the seven days of my Brother Ker's speech, comes to you with a whole brood of bantams, the united crowing of all of which never can disturb the atmosphere of this case. Why, he has spoken to you by the hour about a matter of this kind. He took up that famous memorandum and he said to you, "Here is Turner's name on it under an alias and Brady's name under an alias. John H. Mitchell's name is there, too. Why did not these gentlemen of the defense summon John H. Mitchell and prove that he never received any money from Stephen W. Dorsey?" Suppose, gentlemen of the jury, that Stephen W. Dorsey had stolen every dollar out of the Treasury of the United States and paid it to John H. Mitchell. How much would that affect this case? What bearing would it have upon this case? Don't you know, gentlemen of the jury, that when Mr. Turner was upon the stand we wanted to prove that although his name figured there under an alias, as they say, no farthing of money had ever come to him. The court said that was not competent testimony. Do you not know that when Belford, whose name had been used under the initials J. B. B. by the witness Rerdell, was on the stand, and we offered to prove that there was no word of truth in it, the court said "No;

it is not material in this case?" Yet these gentlemen have the unblushing audacity to come here and say to this jury that because we did not repeat that attempt with Mitchell, whom they say was in the court-house, it was an indication of our guilt, although the court had ruled that the testimony was not competent. How many times did they come back upon us and say, "Why didn't you put Pelham on the stand?" You asked a great many questions as to Pelham, and you were answered in the negative. Why did you not put Pelham on the stand and prove that the answers were not true?" Why, gentlemen of the jury, you know as well as I know that the same class of questions precisely that were put in respect of Pelham were put in respect of Betts. We brought Betts upon the stand and the court said, "Gentlemen of the defense, this is not material to the case." And yet, because we did not repeat it with Pelham, Colonel Bliss comes here and by the hour dins into your ears that it is an evidence of guilt upon the part of these defendants. The gentlemen of the prosecution have been heaping up adjectives in order to impress your minds with the enormous magnitude of these defendants as offenders against the law. For one, I do not believe that my Brother Bliss or my Brother Ker can, by fishing in this ocean with pin-hooks, catch any whales, and therefore as I go forward I shall not stop to vex your minds in answering these trivial things further than will be necessary to properly characterize this prosecution as I understand it.

Let me give you another illustration now of the manner in which these gentlemen have distorted and perverted this testimony, I may say misrepresented this testimony. How many times did these gentlemen say to you, although knowing that you had heard the testimony in this case and must have some familiarity with it, that General Brady had cut all the service down one trip. Mr. Ker said that that was a move by which he bribed Congress, that is to say that he cut it down one trip all over the country and thereupon he forced members of Congress into passing a certain bill of which I will have occasion to speak before I get through. Now, gentlemen, was there ever any such order as that made? None has been produced in evidence before you, not one. Gentlemen, there can be no pretense from the evidence that any such order was ever made. I mention it to show you how weak and shallow is the foundation upon which this case rests. What was the foundation for that argument, gentlemen of the jury? It was this, and nothing more: Mr. Miner, it seems, wrote a letter or circular and sent it out to the subcontractors upon the routes that he represented; and what does he say? He says:

DEAR SIR: By a general order of the Postmaster-General issued to-day, all mail service, except railway and steamboat, will be reduced to one trip per week, commencing March 1, 1880. [Page 669.]

An order of the Postmaster-General, and that one thing alone is the foundation for all this assertion that my client had cut down this service to one trip a week over all of the ten thousand star routes in this country. These gentlemen say to you that General Brady cut it down to one trip a week in order to force Congress into the passage of the law, and the only foundation for it is just what I have read, and there is not a syllable of testimony beyond that. And because Mr. Miner wrote that the Postmaster-General had made an order, they say to you that General Brady did make an order, and they ask you upon that to infer that he had been violating the law.

I give you another illustration, gentlemen, in just this connection. Mr. Bliss said to you, in talking and arguing to you about these books, that Mr. Dorsey had contradicted himself in his testimony, because,

while he was all along denying that there were any such books as Rerdell had spoken of, yet Mr. Dorsey, to use his expression, by an inadvertence admitted that there were such books. That attracted the attention of the court, you remember. Let us see what it is, and see how they twist, torture, and distort this testimony. He says, at page 3980:

Q. You say that he told you that all this was false and you believed it?—A. Yes, sir; his own telegrams show that.

Q. I have not asked you to construe them. His own telegram says that the affidavit story is a lie?—A. Yes, sir; and that he had been faithful to every trust.

That is what the telegram said:

And yet he had a stolen book under his arm.

Q. He had?

Says Mr. Merrick.

A. According to his statement.

You will perceive that Mr. Dorsey was simply expressing the character of this statement of Rerdell's. He was simply saying to Mr. Merrick that when Mr. Rerdell sent that telegram, that he had been faithful to every trust, according to his own statement he had a stolen book of Dorsey's under his arm. And yet Colonel Bliss stands here and argues to you for half an hour that Dorsey has admitted that he had that book, and that Rerdell had stolen it and carried it away.

Gentlemen, I pass from these things, and I am going to take it for granted that stuff such as this is not going to control your judgments in coming to a conclusion in respect of the guilt or innocence of these defendants. It will be my purpose in what I say to you to address myself to the substance of this case as the Government has made it by this indictment. My client wants to meet this charge in a manly way. He wants me to meet it, if I can, in a manly way. He asks nothing from you that any citizen may not ask, namely, that when he is charged with an offense against the law he may be tried for that offense according to the law, and be judged impartially. Beyond that he makes no appeal to you. Beyond that I make no appeal to you for him. Beyond that he makes no demand of you. Beyond that I make no demand of you for him or any other of these defendants. As to the others, of course, I have no right to speak. While everything that is dear to him on earth—home, family, reputation, ay, liberty itself—is involved in this issue, he is willing to abide by the coldest of the cold steel of the law. If that condemns him, let him be condemned, but not otherwise.

I would, gentlemen of the jury, that I could persuade myself that such is the spirit of this prosecution. Mr. Ker, in the beginning of his argument, said when addressing you, and I repeat his precise words, "You"—you jurors he means—"you have been selected from the mass of the people to represent them, and you"—you jurors—"have been brought here, the representatives of the entire community," and so on for quantity. Gentlemen, that is not my understanding of your position in this case. You represent nobody. You are here because you represent neither the Government nor the people—which is but another name for the Government—nor any community, nor the defendants. You represent nobody. Justice is painted blind. "Blind Justice" is an expressive phrase. Painters and sculptors have represented it in the form of a woman—modesty and purity—blindfolded, seeing neither the one party nor the other, indifferent between them; seeing neither the strong nor the weak, the exalted nor the lowly; holding in her hands the scales balanced with exact evenness, in which to weigh with scru-

pulous nicety the evidence pro and con. Such is your position, and not that of representatives.

And what, gentlemen, are you permitted to cast into these scales which you hold in your hands? Anything but evidence? I trust not. In the beginning you said you would try this cause according to the law and the evidence. Anything more? No. Is popular clamor to be cast into the scales? No. Are the irresponsible utterances of editors and correspondents to be placed in this balance? No.

I beg, gentlemen of the jury, to read something that seems to be very instructive upon this subject, and I refer to the charge of Judge Dillon in a celebrated case (*The United States vs. Babcock*), which is to be found at page 622 of 3 Dillon:

No popular or partisan clamors, no extraneous wishes or considerations, no thoughts other than those which pertain to strictly impartial justice, can be permitted to invade the sanctity of the jury-room, to bias or warp or even shade its deliberations, without destruction of the safeguard to life, liberty, and property furnished through trial by jury. It has been often and forcibly said, that so long as trials by jury retain their full force, impartiality, and purity, the liberty and rights of the citizens are alike safe against despotism and anarchy.

Suggestive words in this case.

If popular clamor usurp the judgment seat, the era of Marats and Robespierres will return, and frenzied faction sweep away all justice and right. So will justice be gradually undermined if outside influences are suffered insidiously to enter within that threshold where naught should be known save the sworn evidence in the case, and the rules of law as pronounced by the court—rules which the experience and wisdom of ages have demonstrated to be essential to the ascertainment of truth and the due administration of justice.

It will be a sad and shameful day for this country when courts and juries, having lost their independence, shall sit simply to register the edict of popular opinion to acquit this man or convict that one.

So, I say, gentlemen, it would be a sad and shameful day if this jury should sit here as representatives of somebody or should allow to creep into their minds to affect their judgment aught save the sworn testimony that has been delivered in your presence.

Mr. Bliss, in conclusion, said that "the eyes of the country are concentrated upon you." What care you, independent jurors, for the eyes of the country? The ears of the country have not heard this testimony. They have heard garbled extracts. They know nothing of its details. They know nothing of the spirit, the essence of this case. And are you to be affected by the fact that the eyes of the country are concentrated upon you? I will not believe it, gentlemen of the jury.

Gentlemen, does this prosecution appeal to you to stand with stern impartiality between this great and powerful Government and these its citizens, whom it has accused? Let me read to you what kind of an appeal the Government has made to you. Mr. Ker, in the conclusion of his speech, at page 4748, said to you:

Stand up like men, fearlessly and faithfully, and assist the Government in the effort it is now making to bring these guilty men to punishment.

"Assist the Government!" That is the Government's appeal to you. Gentlemen, I appeal to you to be jurors, twelve separate, independent men, not here to assist either the claimant or prosecution, but to weigh and sift this evidence, and each for himself, as it is your duty to do, to make up the verdict upon this issue.

I say to you that the Government has made a charge against these defendants; that they are presumed to be innocent of that charge; that the burden rests upon the Government to prove them guilty of that charge; and I only appeal to you to allow nothing but the evidence to touch your minds in forming your judgment upon that charge.

Now, gentlemen, I proceed a step further, and I assert affirmatively that the Government does not want and has not sought a fair and impartial trial of this case. On the trial there has been disclosed, right here in your presence, a trick, a fraud, a conspiracy—the most base and wicked that ever disgraced any judicial proceeding—to injure these accused parties. The story can be briefly told, gentlemen. One of the parties, whose testimony I shall have occasion to speak of hereafter, ostensibly entered upon the defense along with the other defendants in this case. At the former trial his honor had ruled that each of these defendants was entitled to four challenges, and the Government to four only. Nobody supposed that any other rule would prevail on this trial, and we find that a bargain was made with this man that he should sit with the defendants, apparently one of them, and that he should challenge from the jury four persons in the interest of the Government, and thus give to the Government, by this most infamous device, eight challenges instead of four, and thus keep the defendants out of four to which they were entitled under the law. Oh, talk about jury-fixers! Jury fixers! There is a specimen of jury-fixing that ought to put everybody to shame.

Mr. KER. I ask counsel to give the page upon which that testimony is found.

Mr. DAVIDGE. It is in Rerdell's testimony.

The COURT. I should like to see that.

Mr. DAVIDGE. It is in the record.

Mr. INGERSOLL. I will show it. I will show that they made such a bargain. On page 2521, if the court please:

Q. Had you any agreement with Mr. Woodward, or with any other person acting on behalf of the prosecution, covering the question as to what you would do in the matter of challenging jurors?—A. No, sir; I never had a conversation on that subject with Mr. Woodward in my life.

Q. Had you agreed that if the court allowed each defendant to challenge four, you would challenge any four the Government might select for you to challenge?—A. I sent word myself, or at least I told Mr. Blackmar, I was willing to do that, to show my good faith to the Government.

Q. At the same time that you were sitting with the defendants as a codefendant?—A. Yes, sir.

Q. You told Mr. Blackmar you were willing, if the court allowed you, to challenge four men; to challenge the four that the Government should suggest?—A. No, sir; not that the Government would suggest; that Mr. Blackmar would give me.

Q. You understood that he was on the side of the prosecution?—A. Oh, certainly.

Q. Do you now tell the jury that you at that time made that proposition?—A. I think I did.

Q. Did you afterwards endeavor to carry it out?—A. I did.

Q. Did you while sitting with the other defendants tell them that you would in good faith try to challenge four men that you thought might be friendly to the defendants?—A. I did.

Q. When did you first have a conversation with Mr. Blackmar?—A. About the commencement of the trial. [Correcting himself.] No, sir; he was present with Mr. Woodward, at the Hamilton House, in September.

Q. After you got out of jail?—A. Yes, sir.

Q. After the court decided that the defendants were not entitled to four challenges each, did you endeavor to carry out your contract and challenge one of the four that you had agreed to challenge for the prosecution?—A. I did.

Q. Did you not at that time insist in open court upon having your challenge to that man?—A. My attorney did.

Q. Did you not say that particular man that you wished to challenge was a personal enemy of yours?—A. I did not. In court? No, sir, for I said not a word in court except to my counsel.

Q. Did you go into consultation with the defendants upon the subject of challenges?—A. I did.

* * * * *

Q. After making that bargain, or that proposition, and carrying it out the best you could, did you have another conversation with Mr. Blackmar?—A. I did.

Q. On the subject of your testifying?—A. No, sir.

Q. Did you have a conversation with him in which you said that you thought it would be much better for you to sit with the defendants until the trial was nearly over and then go over to the Government?—A. I don't remember any such conversation with Mr. Blackmar at all.

Q. Do you say now that you did not tell him so?—A. I don't think I did; I don't remember it.

I think that is all.

The COURT. I remember something to that general purport.

Mr. INGERSOLL. It is the bargain he made to sit with the defendants and challenge their friends on the jury.

Mr. KER. Unlike my friend, Mr. Davidge, I have not objected to Mr. Ingersoll reading it; but, when reading it, I think he should read the whole of it. Inasmuch as the counsel has read those portions in which, of course, the prosecuting officers are concerned, I think he ought to read the whole testimony upon that subject, in fairness, without leaving out that part of it which is not favorable to himself.

Mr. INGERSOLL. I was told that that was all of it. I have not read it myself for a long time.

The COURT. If any omission has been made you can supply it.

Mr. DAVIDGE. We are perfectly willing.

Mr. KER. The next question is——

Mr. INGERSOLL. [Interposing.] What page?

Mr. KER. 2522, the same page where you were reading:

Q. Did you have a conversation with him in which he said that he thought it would be much better for you to sit with the defendants until the trial was nearly over and then go over to the Government?

Mr. INGERSOLL. I read that.

Mr. KER. You read that portion?

Mr. INGERSOLL. I did, and the answer.

Mr. WILSON. Read on.

Mr. DAVIDGE. Read right on and you will come to something, may be.

The COURT. It is not worth while to read it if it has been read.

Mr. KER. [Reading:]

Q. Did you tell any other person connected with the prosecution in any way?—A. I did not; I don't remember of ever saying that to any one of them. I had no communication whatever except with Mr. Blackmar and with Mr. Woodward; I met him once or twice.

Q. Did you communicate with the Government through Mr. Blackmar?—A. I did not.

Q. You only communicated with him?—A. That is all.

Q. You do not know whether it went any further than to him?—A. I have not the remotest idea what he did with it.

Q. How many times did you meet Mr. Woodward in relation to this business during the progress of this trial, before you went on the stand?—A. Two or three times.

Q. Where?—A. I met him at 214 G street, northwest, in this city.

Q. Did Mr. Woodward know that you had made an agreement to challenge the four jurors that might be mentioned by the Government?—A. Never, to my knowledge.

The WITNESS. I want to correct that number: 224 G street, I think, is the number, instead of 214.

Q. Whose room?—A. Mr. Blackmar's room.

Q. Were Blackmar and Woodward together there?—A. They were not.

Q. You never saw them together there?—A. Not that I remember. They may have been together there at one time for a few minutes.

Q. Is that where Mr. Blackmar resides?—A. I think so.

Then it goes on in the same way. He makes a clear distinction between what is said in September to Blackmar, and his interview with Woodward which was for the purpose of taking his testimony.

Mr. CARPENTER. Not at all in September; it was after the trial began.

The COURT. I understood that it related to some period after this trial began.

Mr. DAVIDGE. Certainly it did.

Mr. INGERSOLL. While the trial was going on.

The COURT. Proceed.

Mr. WILSON. [Resuming.] Gentlemen of the jury, you will observe that I did not say that that bargain was made with the learned attorneys for the Government. I said that that bargain was a bargain with the Government that is prosecuting this case. But I have been listening here ever since that testimony came out for these learned gentlemen to disclaim any knowledge of that thing, and I have not heard it yet.

Mr. INGERSOLL. They did not call Mr. Blackmar, either.

Mr. WILSON. I watched for Mr. Blackmar to come upon the stand to explain about this matter, but he was not brought upon the stand. And I want to say that the responsibility of this thing does not rest upon Mr. Blackmar, in my judgment. There are other Government officials in this town, plenty of them, who could make this infamous bargain without these attorneys even knowing anything about it.

Now, gentlemen, I say that that was a piece of unparalleled infamy. He tried to carry out that wicked scheme, and when the court ruled that all the defendants together could only have four challenges, and the Government could have the like number, under this agreement he sought to give and the Government to take one of the defendants' challenges, and thereby to give to the defendants but three, depriving them of one by fraud, and giving the Government five by this despicable and desperately wicked combination.

The COURT. I want to understand now about that. He made but one challenge.

Mr. DAVIDGE. You understand the first part of it, that he undertook to use four challenges in the interest of the Government. Now, your honor ruled that each defendant had not four challenges, but that they all counted as one. Then the impaneling of the jury went on, and after that ruling he sought to have against the other defendants the benefit of one challenge. He openly, through his counsel, challenged a party called as a juror, but that challenge was overruled upon the ground that he could not exercise the right without acting in concert with his codefendants.

Mr. WILSON. He said he tried to carry out the bargain.

The COURT. The amount of it is this: That he exercised no effective challenge in the case.

Mr. INGERSOLL. No.

Mr. DAVIDGE. No, sir.

The COURT. He attempted to exercise the challenge in one instance, but the court prohibited him from using that challenge.

Mr. INGERSOLL. Yes, sir.

The COURT. My mind is somewhat relieved as to the constitution of the jury by that fact.

Mr. INGERSOLL. The point was exactly this, if the court please: at the last trial the court, I think, gave each of the defendants four challenges.

The COURT. Yes.

Mr. INGERSOLL. Supposing that that would be the holding of the court at this trial, the bargain was made with him that he would sit with the defendants and use his four challenges for the Government, but after hearing argument the court concluded that it was impossible to harmonize those statutes and give to each defendant four challenges,

and so you said you would consider all the defendants one party and give them four challenges. He then endeavored to challenge off one man, not imagining that all the defendants had to agree, whereas the court held that they had to agree in challenging.

The COURT. Very well; then he attempted to exercise his right of challenge for cause in one instance.

Mr. INGERSOLL. Yes; he did not do any harm.

The COURT. His cause was overruled.

Mr. CARPENTER. It was a peremptory challenge.

The COURT. My impression was that he thought that the juror challenged by him had some personal ill-will towards him, and that he said so.

Mr. INGERSOLL. Nothing of that kind was brought out.

The COURT. Whether it was the one or the other, the challenge was not effectual.

Mr. DAVIDGE. That is so.

The COURT. So that if it was conspiracy, it was conspiracy without the overt act.

Mr. INGERSOLL. It was a bargain as foolish as it was wicked.

The COURT. It was an ineffectual thing; it was not very creditable to Rerdell.

Mr. INGERSOLL. Nor to the Government.

The COURT. To the agent of the Government, or whoever it was.

Mr. INGERSOLL. The Government acts through its agents.

The COURT. He has not produced any Government commission here, and he may have gone beyond the line of his authority. I certainly do not think that any man in the employ of the Government would be authorized to attempt an act of that sort. I am a good deal relieved by the explanation that the attempt was unsuccessful.

Mr. CARPENTER. We are not complaining about the construction of the jury.

Mr. WILSON. No.

Now, gentlemen of the jury, understand me. I have not said that this scheme was accomplished. I have not said that that infamous crime that was attempted was completed. I have not said nor intimated, and I know it is not so. I happen to know that it is not so, because I sat at the table when the jury was being made up, and when that very thing was going on.

But that was not my point at all. My point is that the Government has not been seeking a fair and impartial trial of this case, and that some of its agents—they can clear their skirts when they will—made this bargain to pack this jury against these defendants. That was my point. Now, talk about conspiracy. Here is one, brazen-faced, unparalleled in its iniquity—a conspiracy to deprive a citizen of his legal rights when accused of a grave crime; a conspiracy against the character, the liberty of accused citizens; a conspiracy against justice; a conspiracy against the Constitution of this country, which guarantees to every man who is accused of crime the right of trial before twelve impartial men. And this great Government conspires to deprive a citizen of these constitutional rights. It is a conspiracy to which the attention of the proper officer of the Government might well be attracted with great profit to the good name of American justice.

Mr. KER. I presume from your honor's knowledge—

The COURT. [Interposing.] The Government will have the right to answer this in conclusion.

Mr. KER. I want to call the attention of the court to the misinterpre-

tation of the evidence. I presume from your honor's knowledge of the gentlemen engaged in the prosecution there would be no disclaimer required. But I say now, on my own behalf and on behalf of the other gentlemen associated with me, that we never knew of such a conversation, good, bad, or indifferent. And if the counsel will still not draw the line of distinction that the evidence points out, I warn him now that he shall receive from that counsel for the Government who shall reply a rejoinder such as he shall deserve. It will be unmerciful.

Mr. WILSON. I will endeavor, gentlemen, to bear whatever is in store for me in the future. And yet I want to say right here, that I have never said that these counsel had anything to do with it or knew anything about it.

The COURT. But, Mr. Wilson, you did say a few minutes ago that you had not heard any disclaimer from the Government counsel.

Mr. WILSON. Neither had I at that time, and I was just now going to say, if I had not been interrupted, that I am much gratified to hear the counsel disclaim it now.

Mr. KER. It will be more gratifying not to believe it.

Mr. WILSON. If I had not been interrupted I was going to say that I am glad it is now disclaimed, and though I expected to hear them disclaim it at the time the evidence came out, I did not.

The COURT. The re-examination disproved it.

Mr. INGERSOLL. It does not appear for whom Blackmar was acting.

The COURT. The evidence confines the conversation to Blackmar, and does not even extend to Woodward. [To Mr. Wilson.] Go on.

Mr. WILSON. Rerdell said he did not know anything about where it went after the arrangement was made between him and Blackmar, and that is the way it was left by the testimony. I have never said or intimated that these counsel for the prosecution knew anything about it.

Now, gentlemen, I ask you does that look to you as though the Government was seeking in this case the fair and impartial administration of the law? Does that indicate to you a desire on the part of the Government to vindicate the law? On the contrary, as it seems to me, it has placed an indelible stamp of wickedness upon this prosecution. And now, finding upon it this foul and ineffaceable blot, they ask you to assist them. They ask you to tie yourselves to this putrid and polluted carcass, and to gloss over this shame by a verdict against these defendants.

I am not arguing, gentlemen, that because of this you should find these defendants not guilty, if the evidence proves them guilty; not at all. But I do argue that it should induce you to scrutinize every feature of this case as presented by the Government, with a view to the protection of the defendants against any violations of their rights under the law. I do argue that not only you are not in any case to assist the prosecution, but especially in this case, where you know there is a disposition on the part of the Government to resort to means so base in order to secure a conviction. Knowing, as you do, this disposition on the part of the prosecution, may I not ask you—while I know I cannot entertain you—to listen to me while I go through with this case and attempt to prove to you that the charge against the defendants, and especially against my client, is wholly unsupported by proof?

But before I proceed with this, indulge me, please, in one further observation. We have reached a stage of this case where you are supreme. Here is a domain into which none can enter but you. You are the judges of what the evidence proves. You are the exclusive judges; and

there is no power on this earth that may rightfully invade that domain. It is said by one that you are the judges of both the law and the evidence. Others say that you must take the law as the court gives it to you. And while I am inclined to the first proposition, yet I shall not now either affirm or deny either of these propositions. But I do affirm, and so long as I can be permitted to participate in legal affairs I shall contend, that as to the facts you, and you alone, are the judges. Each of you, as to those, must judge for himself. It takes the concurrence of twelve independent minds to make a verdict. That is the life and spirit, the soul and body, of the jury system.

While his honor may claim to guide you as to the law, he cannot claim and will not claim the right to control you in the slightest degree as to what the evidence in this case proves. Whether he will assume the right to comment upon the evidence I do not know. But if he does, your individual judgments are superior to his. You are in no sense bound to accept his judgment or adopt his suggestions in this respect; and I ask you, as I have a right to do, that you shall each in this case assert and exercise this supreme right of a juror.

Now, gentlemen, in order to make clear the matters that I shall have occasion to present to you, it is necessary that I shall make one or two preliminary statements on two different subjects.

First. A great deal of testimony has been admitted before you in this case, as has been stated by the court from time to time, for the purpose of showing the association of these parties with each other. You will bear in mind that the star-route service comprehends at least ten thousand mail routes, running in all directions throughout the country. You have learned enough in this case to know that the carrying of mails on these routes is something which men engage in as a business; that firms or copartnerships are organized for the purpose of carrying on this business of transporting the mails; that single individuals also engage in it as a regular business, as, for example, in the case of Mr. Vaile, who, it appears from the testimony in this case, has been thus engaged for perhaps twenty years. These firms and individuals thus making this a business bid on a large number of routes at the lettings by the department, and procure sometimes a very large number of contracts at such lettings; as, for example, you find that Mr. Boone had at one time a thousand or eleven hundred of these routes.

By the way, I might say here in passing, that they have said to you that Boone never had one route expedited. Boone's routes were in the old, settled regions of the country, where the service was established and fixed.

The routes that they thus acquire contracts for they either perform themselves or sublet them to others, just as any other business is conducted, and upon the same principles and for the same purpose, to wit, to make money. There is nothing in this business of carrying the mails that is reprehensible. It is just as honorable as any other; it is a business into which any man in this country may enter. It is a business necessary to be conducted for the general welfare and business interests of the country. It is just as legitimate a business as any other, and no inference is to be drawn against any man because of his engaging in it; nor any inference to be drawn against any number of men who may associate themselves together as partners for the purpose of engaging in this, a legitimate business.

The first we know of any of these gentlemen coming together—to go to the very beginning of it—is early in 1877. Miner spoke to Peck, or Peck to Miner, in relation to joining for the purpose of engaging in this

occupation. From all that appears in the testimony in this case it was a mere casual conversation. It also seems that Peck and John W. Dorsey had likewise had a conversation on the same subject; and it further appears that Peck and John W. Dorsey came to the conclusion that they would engage in this business, and that they communicated with Stephen W. Dorsey (then a Senator of the United States) on the subject. And unless you absolutely disbelieve Stephen W. Dorsey and John W. Dorsey, and that, too, without a word of testimony to contradict either of them on this subject, Stephen W. Dorsey was opposed to their engaging in this business. But, notwithstanding his opposition, they determined to proceed, as they had a right to proceed, and they requested him to secure the services of some one who understood and was competent to do all the work that was necessary to be done preliminary to making proposals, taking contracts, and so on. Stephen W. Dorsey recommended them to secure the co-operation of Mr. Miner, and in some way or other communicated with Miner, on behalf of John W. Dorsey and Mr. Peck, and pursuant to that Miner came to Washington.

Prior to Miner's coming here, and pursuant to a request made by a letter from John W. Dorsey for Mr. Peck, Stephen W. Dorsey had procured the services of Mr. Boone. Boone was an experienced contractor. Boone had for a long time been in the service of the department. He was familiar with the details of all this business, and his services were procured by Mr. Stephen W. Dorsey for John Dorsey and Peck, at the instance and request of either the one or the other of them.

Mr. DAVIDGE. Peck.

Mr. WILSON. Boone, of his own motion—mark you, tells you, not at the suggestion of Stephen W. Dorsey, but knowing, himself, from experience, and observation as well, what was needed to bid intelligently—prepared and had printed and sent out circulars addressed to postmasters throughout the region of country where the routes were located upon which bids were to be made, seeking information as to the character of the country, the roads, prices of grain, and so on, just such information, mark you, gentlemen, as business men would need to acquire in order to make proposals for carrying the mails. Proposals were prepared, sureties were procured, and the proposals were filed in the department in the usual way. Precautions were taken, just as they are taken by all bidders for such service, to prevent other bidders from knowing the amounts that were to be bid by these parties. Do you remember what Boone told you in regard to that, that it was the practice of all these bidders upon all these various routes to keep their bids separate from each other, so that no one could know what another was doing? Unless it is unusual for men to associate themselves together in business enterprises, and unless there is something unusual in bidders keeping secret the amount of their bids, there is nothing unusual or suspicious in all this. It seems to me to be impossible that thus far anything can be found from which an unlawful combination can be inferred. They made bids on more than a thousand of these routes. They were the lowest bidders on about one hundred and thirty. The bids were made as was usual in such cases, in the names of the several individuals composing this business firm or combination; the contracts were awarded to them, and the service on these contracts was to begin on the 1st of July, 1878. Now, gentlemen, I am not going to stop at this point to comment upon all that has been testified to in regard to Miner's having a room in Dorsey's house; in regard to Dorsey's getting bonds for these parties, and so on, and so forth. Other counsel, who will come after me, will discuss those questions so far as they have any bearing upon this case. I have

given you thus a brief statement, but I think a very accurate one, of the main features of this business up to the awarding of the contracts? I beg you now to review in your minds the entire field of this testimony from the beginning to the point which we have reached, and look into every nook and corner of it and see if you can find anywhere in it all the slightest shade or shadow of proof to indicate that General Brady had any knowledge or intimation whatever that John W. Dorsey, John R. Miner, John M. Peck, and Boone were engaged in this enterprise; were making, or proposing to make, any proposal; were sending out any circulars for information, or doing any one of the things, small or great, which were done by these gentlemen during the period to which I have just alluded. I beg you also, gentlemen, to search and scrutinize this testimony throughout all its length and breadth and see if you can find any trace anywhere of General Brady's having any knowledge whatever that Stephen W. Dorsey had any relations to or with the transactions and the parties of whom I have spoken in connection with this business. I assert, and I am sure that you will entirely agree with me, that there is not a shadow of proof that he had the slightest knowledge or information that these parties were thus engaged and proposed to bid for these contracts.

Now, I pass to my second preliminary statement, which it seems to me it is necessary to make in order that you may clearly comprehend this case, because after all, gentlemen, I hope to show you before we get through that this is really a very simple case and that much that has been put into the case is only befogging it and of no usefulness in it. The Post-Office Department is a branch of the Executive department of this Government. It has charge and control of the postal affairs of the entire country. It will be well for you to remember that the business of the Post-Office Department is not simply the matter of carrying the mails over separate and distinct mail routes, but that the mails are to be carried as a system. It is not like the case of individuals running stage lines or express lines for accommodation in the different sections of the country. It is not like a contractor building a house here and another house there, a mill yonder and something else somewhere else, each one a separate and distinct enterprise and each one having no special relation to the others. It is a vast system intended to be, and to be efficient necessary to be, a harmonious whole, every part working in absolute harmony with every other part, railroad service, steamboat service and star service, all working in unison, running in every conceivable direction in the most remote parts of the country. If the service is efficient, working as one harmonious whole, a letter starting from Washington, New York, Philadelphia, or anywhere, from city or hamlet, goes speedily, certainly, promptly, and securely to its destination, wherever that destination may be. The center of this vast system is the Post-Office Department, which is, as I have said, a branch of the Executive department of this Government. From the Post-Office Department the business of this vast system is managed. Through it all contracts are made for carrying the service, all contracts for supplies connected with the service, and all matters regulating the arrivals and departures of the mails of this great and complicated network are arranged and conducted. Post-offices are established, the supply of mail service to such post-offices provided for, and so on in endless detail. One of the branches of this vast department is what is known as the contract office, and that is presided over by the Second Assistant Postmaster-General. The contract office is charged with the business of making contracts for all the service in the entire country, steamboat,

railroad, and star. It is charged with the business of seeing that the contracts are performed, and of imposing the necessary fines and deductions in case of the non-performance of the service by any contractor, no matter where his route may be or how great or insignificant it may be. This contract office is divided up into divisions and sections. It has its heads of divisions who are responsible for the proper performance of the various duties that are to be performed in each particular division. There is as you know a division of the country into sections, and there is in this contract office a section corresponding to or having charge of the routes in each particular section of the country. These sections in this contract office are presided over by an official known as a corresponding clerk who has charge of the details of the various matters pertaining to the service in his particular section. There is also in this office what is known as the inspection division, and this division has charge of the matters of fines and deductions. In other words, the postmasters throughout the country at the terminal offices—that is to say, the offices at each end of the route—are required month by month to make reports to the inspection division of the arrivals and departures of the mails, to the end that if any of the mails shall fail to depart at the proper time or to arrive at the proper time deductions shall be made from the pay of the contractor correspondingly. Don't you see, gentlemen of the jury, when you come to look into the structure and the organization of this office how it bears out just what I said a moment ago? Here are these routes all connected with each other. It is intended that they shall be a harmonious system. If any contractor fails to carry the mail according to his contract, according to the schedule that has been laid down for him, the result of it is a disarrangement of the mails, and the consequence is that the regulations of the department provide, and every contractor expects, that if he does not start promptly and arrive promptly he is to suffer a pecuniary penalty for that failure. Likewise, gentlemen, the postmasters report to this division any failure on the part of a contractor to properly care for the mail; and for any injuries done, or permitted to be done, fines are imposed. These reports from the postmasters are directed to this division, as you already know, and about which there is no dispute. I want to fix in your mind the fact that these reports as to the arrivals and departures, and as to failure on the part of contractors, go directly not to the Second Assistant, but to this inspection division, and are never seen by the Second Assistant Postmaster-General until the head of that inspection division has reported to him some case of delinquency on the part of some contractor. Whatever may be presented in the way of an application for the remission of fines and deductions that have been made also goes not to the Second Assistant Postmaster-General, but directly to the head of this inspection division, and is never seen by the Second Assistant until carried to him by the head of that division; and in no case is a fine or deduction imposed until it has been recommended to the Second Assistant by the head of that inspection division by a written order prepared by the head of that inspection division upon the data which he has received from these postmasters in the manner that I have stated, and which written order is for the first time seen by the Second Assistant when it is brought to him for his signature. That is the first that he ever knows of it. After these postmasters in the far-off regions of the country have made their reports to this inspection division, and after the inspection division has gone through those reports, they make up a written order for the signature

of the Second Assistant, and then for the first time these things come to his knowledge. The same is true precisely, gentlemen, as to applications for the remission of such fines and deductions. Let me go back a little in this case to the duties of the corresponding clerk and the mode of conducting this business so far as his part of it is concerned. The corresponding clerk prepares advertisements for the various lettings. In the advertisement the terminal points of the routes are named, the time of starting, the time of arriving is fixed, and the number of miles in length of the route is named; but the bidder is expressly notified that as to the accuracy of the length as stated he must be his own judge and must act upon his own responsibility. If it proves to be shorter than advertised that is his gain. If it proves to be longer than advertised that is his loss, and that risk as to length is assumed by him. If changes are made in the service on any route a circular is sent out by the corresponding clerk to the postmasters at the terminal points.

Now, I want to get that fixed in your minds, because we will have something to do with that hereafter. A new post-office is put on a route, for example, causing a deflection and an increase of distance. When that is done, the next thing is to send out what they call a distance circular. That is sent out by the corresponding clerk. It goes to every postmaster along the entire route. Each postmaster gives the distance from his office to the next office, and so on through. When it comes back to the Post-Office Department the corresponding clerk therefore knows the extent of the increase in the length of the route occasioned by this change in the service, and the corresponding clerk having this data before him, which is furnished him thus by the postmasters, makes up a formal order on the subject, and carries it to the Second Assistant Postmaster-General for his signature. First, however, it goes, I should say, to the chief clerk, who checks it, and whose check-mark is a guarantee to the Second Assistant that it is right. The Second Assistant then *pro forma* signs the order. When a new post-office is created, that is done by the First Assistant Postmaster-General, and not by the Second Assistant, who has nothing to do with the creation of new offices. Upon notice of the establishment of a new office to the Second Assistant, he makes the order that is necessary to supply that office with mail. The supply may be in one of two ways, either by placing that office on some route, which is done by an order to embrace it upon the route, or to supply it by a special supply, which is by employing some one to carry the mail from the office to some point on an established route. Please remember that as we go along. If the distance is increased, the contractor, by the terms of the contract, is to have an increase of compensation in proportion to the increased distance. If the other mode is adopted, that is to say, of having a special supply, then the party who makes that special supply is to be paid not exceeding two-thirds the salary received by the postmaster at the office which is thus to be supplied. This particular point will be further illustrated hereafter, when I come to speak of a special case, namely, the supply of the post-office at Raton, which, you will remember, was placed upon the route from Trinidad to Madison.

Mr. DAVIDGE. Your honor, this is a suitable time to stop for recess.

The COURT. We will take our recess now.

At this point (1 o'clock p. m.) the court took its usual recess.

AFTER RECESS.

Mr. WILSON. [Resuming.] Gentlemen of the jury, I said to you before recess that when it became necessary to make any change as to arrivals and departures the postmasters were consulted by means of circulars addressed to them. This you will readily see is because it would be impossible in any other way to make the carriage of the mails throughout the country a systematic and harmonious whole. The postmasters, knowing the arrivals and departures of mails on other routes at their respective offices, can arrange this matter of arrivals and departures so as to make the whole system harmonious, which could not be done by the Post-Office Department direct. You will understand, gentlemen, that this is a part and parcel of a great system. Some means must be devised by which all this vast net-work can be run in harmony. You will readily see that if here in Washington they were to undertake to do that, there would be inextricable and endless confusion. How is that result accomplished, gentlemen? I want you to bear this in mind, because you will see after awhile that it is important. How is it accomplished? They send out what they call these distance circulars. The corresponding clerk sends them out to the postmasters, and the postmasters and the contractors fix up the schedules of arrivals and departures on the various routes. Having done that on a given route, the distance circular is returned to the department and then a formal order is entered upon the record fixing the arrival and departure in accordance with this distance circular. Those orders are signed *pro forma* by the Second Assistant. Of course no gentleman on this jury, no sensible man anywhere would have any expectation that the Second Assistant Postmaster-General could carry in his mind and arrange all the arrivals and departures, not only on these ten thousand star routes, but this great number of railroad routes and steamboat routes in connection with which this star-route system is operated. Before going into the details of this case allow me to go back to the beginning of this business, so far as the department is concerned. Please note that the very first thing that occurred, so far as the department is concerned, is the advertisement pursuant to which these routes were let. You will remember that at that time Major Ray P. Eaton was the corresponding clerk having in charge the section in which most of these routes lay. You will also remember that Mr. Brewer was the corresponding clerk in charge of the section in which some of the routes named in this indictment lay. Mr. Eaton prepared the advertisement for his section. Mr. Brewer prepared the advertisement for his section. The advertisement which was prepared by Major Eaton had been sent to the printer and was in process of being printed at the time when Major Eaton was transferred to another position and Mr. Turner became the corresponding clerk. Mr. Turner, after he became corresponding clerk, read the proof of the advertisement that had been prepared by Eaton. Mr. Brewer, as I have said, prepared the advertisement for his section. Although General Brady was at the head of that contract office as Second Assistant Postmaster-General, the preparation of these advertisements was the distinct duty of the corresponding clerks, and there is no pretense, so far as I can discover in this case, that there was anything improper or unusual in respect of these advertisements. Nobody has claimed that either Major Eaton or Mr. Turner or Mr. Brewer did anything that was improper in connection with these advertisements, nor is there any pretense that General Brady had anything to do with

them. On the contrary, it appears that these advertisements were prepared after the usual method of doing that business. They were distributed everywhere to everybody that wanted to bid on this mail service. They were published in pamphlet form. You have had them here before you, making quite a volume. They were published for the express purpose of inviting the enterprising people of this country to come in and take part in this bidding; to come in and engage in this legitimate business. After they had been thus prepared and given out to the world for all bidders alike, the proposals that were made by these defendants, as well as those that were made by all other bidders, were filed in the regular way in the department, sealed up. Will you please bear in mind, gentlemen of the jury, that in the regular way these proposals, along with the thousands of other proposals that were made for the service were sealed up and filed in the department. Nobody knew who were the bidders on these routes. Nobody had any means of knowing by whom these bids were made until they were finally opened. I beg you to remember that the Second Assistant does not even open the bids. They are opened by a committee appointed for that purpose by the Postmaster-General, due care being taken that no bidder shall have any advantage over any other bidder. After examination and classification, it is ascertained by this committee who of all the bidders is the lowest. A careful record of each bid is kept, and the lowest bidder is informed of the fact that he is such. Then follows the preparation of the contracts. Now, how is that done, gentlemen? As I go along I want you to observe that in all this business there is no departure from the regular order of affairs in the department. How are the contracts prepared? The Government has the blank forms of contracts prepared by the law officer of the Post-Office Department. I may say just here that these forms of contracts that were used during this particular contract period or term are precisely the same as have been used in the department for a great many years, certainly for twenty years before General Brady became Second Assistant Postmaster-General. The contracts are made out on these blank forms. After they are made out they are signed by the Postmaster-General, or, if you please, by the Second Assistant and by the contractor or contractors. Then, for the first time in the progress of the business, does the Second Assistant Postmaster-General know who are the contracting parties other than the Government itself. I pause right here, gentlemen of the jury, to ask you once more to take a survey of this entire field to the point I have reached and ask you to indicate if you can where, up to the time of the execution of the contracts, there is a particle of evidence showing that General Brady knew that these parties who thus bid, had bid, or had anything to do with this proposed service. I assert that there is not one syllable of testimony to indicate that he had the slightest knowledge of it whatever. I do not as yet know when the Government will claim this conspiracy was entered into which is the subject of the indictment. We are left in the air as to that. Certainly you will agree with me that through all the details of this case to which I have thus far alluded and up until the 1st of July, 1878, there is not the slightest particle of testimony to indicate that General Brady had any relation to these parties of any kind or character whatever in connection with this business, and more than that, up to and after the 1st of July, 1878, there is not the slightest particle of testimony that he had any knowledge that Mr. Vaile proposed to become associated with any of these parties in connection with this business.

Now, let me pass on to another stage of this history. I know it is

tedious to you, gentlemen, but it is essential to do it in order to have a proper understanding of this case. The parties to whom these one hundred and thirty contracts were awarded entered into their respective contracts, as the indictment says, on the 15th of March, 1878. For the purposes of this case and for the purposes of my argument, I will assume that all these contracts were entered into upon that day. In point of fact, some of them were not signed by the parties on that day and not until sometime afterwards; but that is immaterial to the point that I make. Remember that these contracts stipulated for putting the service on these routes on the 1st day of July, 1878. The service was being carried on under other contracts prior to that time. The department had no concern about these new contracts until the time when the service was to commence under the new contracts. Under the old contracts it would be carried up to the 1st of July, 1878, and then under the new contracts the service was to be continued. Now, on that day it was the duty of the contractor to start the mails on these various routes, and it appears from the testimony that as to some of them there was a failure on the part of the contractors to start the service. Just here I want to bring to your attention another fact. The failure to start this service as to several of these routes grew out of the failure of subcontractors. You remember, gentlemen of the jury, that the testimony shows that they made subcontracts with a man whose name was Hutchinson for putting on service upon several routes in Oregon. The Dalles and Baker City route was one of them. These subcontracts were not confined to the particular routes named in this indictment. These parties had other contracts in that same locality, and they made their subcontracts for putting on the service on the 1st of July, 1878. They expected that service to start, but the subcontractors failed to put on the service. I may just as well, gentlemen of the jury, now, as at any other time, point out to you the difference between a subcontractor and a contractor, and the relations of the two to the Government. A subcontractor has no contract with the Government whatever. A contractor makes his contract to carry the mail for a period of four years. He gives a bond, with security approved by the Government, that he will carry that mail four years. He is liable in damages if he fails to perform that contract. The contract provides that, rain or shine, hot or cold, summer or winter, for four years he will carry that mail. The subcontractor stands in an entirely different position. When he takes his subcontract, if it does not suit his convenience to carry the mail, if the weather becomes too cold or too hot, or it costs him more than he thought it would and he is not making as much money as he thought he would make out of it, right in the middle of the route, right in the middle of the night, he can throw that mail down. The contractor must at once pick it up and re-establish that service, or failing to do that he is declared a failing contractor. Now, you see the difference between the two. Here is the contractor bound hand and foot by the most rigid contract that the most astute lawyers in the employ of the Government can draw up, held in a vise by a contract drawn for the purpose of enforcing upon him the performance of that service during a period of four years. His sureties are bound in the same way, because they are careful to say in that contract and in that obligation to carry the mail that every surety is made a principal. The subcontractor, as I said before, can throw it down whenever it does not suit his convenience to carry it. I am not confining what I now say to the nineteen routes in this indictment. The parties having the contracts proceeded and sublet the service. One conspicuous case was in Oregon, where several routes were let to one sub-

tractor, to whom I have already alluded. He failed to put on his service, and the failure of this subcontractor of course brought the contractors in default. Under the practice and the law regulating the department, a contractor who is declared a failing contractor is, as I have said, subjected to serious pecuniary responsibilities. This subcontractor having failed to put on the service, it was necessary for the contractors themselves to proceed to put the service on or find other subcontractors to do it. This required delay. The contractors expected the service to start on the 1st day of July. They had proceeded just as any business man would proceed and let the contracts, and, relying upon the subcontractors, they expected to have the mail started on the 1st of July. But a subcontractor failed, and there they were. Finding themselves in that position they made application to General Brady for time. He was about to declare them failing contractors, the consequences of which I have just mentioned. Gentlemen, do you not remember that testimony? He was about to declare them failing contractors. How is that consistent with the idea of a conspiracy between him and them? Do you not remember how the testimony has disclosed the fact that Miner was seeking some way by which he could extricate himself from this difficulty which threatened him of being declared a failing contractor? Do you suppose that if he was then in a conspiracy with Brady, and Dorsey, and Vaile, and Peck, he would have had that trouble? Do you suppose if he had then been in a conspiracy to defraud the Government by means of these very contracts he would have had to be shinning around Washington or anywhere else to get time? I say that that in and of itself condemns the whole theory of the Government's case. At this point Mr. Miner for the first time invoked the good offices, and afterwards the active assistance pecuniarily, of Mr. Vaile. Then for the first time we hear of Vaile in connection with this business. A great deal has been said during the course of this argument in the way of criticism of Mr. Vaile's conduct and appealing to you to draw from his conduct motives other than motives of integrity. It seemed to be utterly impossible for these gentlemen to conceive that a business man in this age of the world could do a kind act for his fellow man. They seem to think that if a man does a decent, generous thing, helps his fellow-man when he is in trouble, that he must be prompted to do it by some wicked and corrupt motive. I decline to believe that human nature had fallen so low as that. I believe that there are yet men in this world, and I am glad to say that I have met many of them, who are willing to put themselves to some inconvenience, and even to loss at times for the purpose of helping their fellows. I never want to see the day, so far as I am concerned, when, from a generous motive; when, from a generous act, nothing can be extracted but the evidence of a criminal purpose. Well, Mr. Vaile first makes his appearance at this stage of the case. Mr. Vaile had been a contractor for twenty years. General Brady has said he was one of the best that the department had. Naturally, Mr. Miner would turn to a man like Mr. Vaile for help in an hour of emergency. Mr. Vaile tells you, and he tells it with more modesty than I thought was necessary, that he could at that time if he had been disposed to do so, seeing the straits into which Miner had fallen, and seeing that unless he got assistance he would be declared a failing contractor, have made a combination with others of these large and experienced contractors, so that just as soon as Miner and his associates were declared failing contractors they could pick that service up at an increased price over what Miner and his associates were getting. As you know these bids were all arranged in the order of amounts. The

man to whom a contract is awarded is the lowest bidder, his name being down at the bottom of the list. In the event of his being declared a failing contractor they start up the list, and the next bidder above him takes the service. Mr. Vaile, as he tells you, could have combined with these other contractors and have allowed Mr. Miner to become a failing contractor and then take this service wholly independent of him. Because he did not choose to do that mean thing; because, on the contrary, he was willing to embark with Mr. Miner in putting the service upon these routes and carrying out these contracts, the gentlemen of the prosecution ask you to say that that can be attributed to no other motives than that he was engaged in a conspiracy to defraud the Government of the United States. You may believe it, gentlemen; but when I can attribute to a man either a motive high-minded and honorable or a motive base and disreputable, if it will bear the one rather than the other, I am willing to give him the benefit of saying that he has some feeling of humanity in his heart.

At the instance of Mr. Miner—I am now talking about matters as to which there is no dispute—Mr. Vaile sought for an extension of time to put on this service. He went to General Brady and asked him to give these men a chance; not to crush them out, but to give them a chance. A brief extension of time was granted for the reasons given to you in the testimony, and about which there is no dispute. They were reasonable reasons, if I may use such a form of expression. They were first that if the contractors could put the service on they could put it on quicker than any new contractor could do it. Is not that reasonable? Suppose you were Second Assistant Postmaster-General, and a man came to you and said, "These men have been disappointed in their subcontractors. They have done all that they could reasonably be expected to do. They went ahead and made their subcontracts, and the subcontractors have failed. Give them time." "Why?" "Because if you don't give them time, if you make a new contract with somebody else, that man will have to have time to put the service on the route. He will have to get his horses there, he will have to get his men there, and he will have to get his supplies there? It will take time. If you kill these men off, if you destroy them, you injure them, and yet get the service no sooner and do the Government no good. Therefore I urge it upon you, Mr. Second Assistant Postmaster-General, to give these men a little time. You will get the service just as soon and you will harm nobody. You will not harm the Government, because the Government never pays for service that is not rendered." That is one reason. The next reason is because, if they were declared failing contractors, under another practice of the department the next bidder, as I have before said, would get the contract, which would involve an additional cost to the Government. It is, however, proper that I should say the Government would have a right to recover from a failing contractor by a suit on his bond; but how would that benefit the Government. The Government would get the money back, to be sure. It would not lose anything. It would recover the damages on the bond, but would get no more than what the original contract gave to it, and it would suffer a loss in that it would bring harm to one of its citizens. There was a brief extension granted. Mr. Vaile induced General Brady not to declare them failing contractors, and suggested that in the event additional time was given he might consent to assist them in respect of putting on this service and carrying out these contracts if they were not able to do it themselves. Upon that, as all the testimony shows, and

as to which there is no dispute, General Brady granted additional time, and Mr. Vaile went to his home, in Independence, Missouri.

Now, gentlemen, I venture to say right here—I can't put you in the position of Second Assistant, for that would hardly be proper—but I venture to say that if you will take nine hundred and ninety-nine out of a thousand of the business men of the country and put them in precisely the same position they would do precisely the same thing. After Mr. Vaile went to his home, in Independence, Missouri, complaint having come to the department that the service had not been started on The Dalles and Baker City route, General Brady telegraphed to Mr. Vaile to know what of the service of Miner, Peck, Dorsey, and Watts he would put on. I want to read that telegram to you, for it seems to me to be exceedingly significant in this case. It shows right upon its face that there was no such combination between these parties as the Government is seeking to make you believe. Here is the telegram:

WASHINGTON, August 20, 1878.

To H. M. VAILE,
Independence, Missouri:

What service of Miner, Peck, Dorsey & Watts do you expect to put in operation? Postmaster at Dalles, Oregon, says routes from there not carried and mails lying in office. This cannot be permitted longer.

THOMAS J. BRADY,
2d Ass't P. M. General.

He had given them time for the reasons I have named, and when it became known that the subcontractor had failed Mr. Vaile had gone to him, as this very telegram shows. This telegram confirms every word that Mr. Vaile has said, that Mr. Miner has said, and that General Brady has said. General Brady having given them time and Mr. Vaile having gone away, these complaints came in and General Brady telegraphed to Vaile:

Postmaster at Dalles, Oregon, says routes from there not carried and mails lying in office. This cannot be permitted longer.

Now, to that, gentlemen of the jury, Mr. Vaile responded in substance that he would put on certain of this service, and that the service of Watts he would not put on. Then Mr. Vaile proceeded and did put on that service, either himself or by means of subcontractors. In that way Mr. Vaile became connected with this business. I am not now, gentlemen, going into minute details. Some of them will come hereafter, possibly by me, certainly by others who will follow me. In putting on this service Mr. Vaile expended a large amount of money, and became largely involved in the business in a pecuniary way. Now, gentlemen, you recollect that General Brady telegraphed him—

This cannot be permitted longer—

and he proceeded promptly to put the service on. Recollect, gentlemen, that they were not dealing simply with the nineteen routes in this indictment. This action embraced one hundred and thirty routes all told that these parties had, and it was with the whole one hundred and thirty that these parties were dealing. Don't forget that. Now, having gone on and put on the service as expeditiously as he could, the parties were afterwards to come together and fix up an agreement. That had been talked over and arranged for before Vaile went West. Do not forget that, if you please. You will remember Miner did not know whether Brady was going to accept this arrangement or not. He could not tell what was going to happen to them, and therefore they made

all the preliminary arrangements in the way of Vaile leaving here proposals to take the service in the event that Brady should declare them failing contractors. How is that consistent with the idea that there was a conspiracy between these parties? They were in doubt as to what Brady would do in regard to this matter, and therefore fearing the worst, and not knowing what would happen in regard to it, they made all the preliminary arrangements before Mr. Vaile went away, Vaile leaving proposals here to take the service if these other parties were declared failing contractors, and by that means to go on. But Brady concluded to do the other thing, and Vaile did go on and put on the service. Then what happened? After this had been done, Mr. Vaile came here, and they entered into a formal written agreement perfecting the arrangements that were contemplated between them. What was that, gentlemen? As simple, plain, and straightforward a business agreement as ever was made by two or more men in the world about any legitimate business.

This agreement, dated the 16th of August, 1878, by and between H. M. Vaile, of Independence, Missouri; John R. Miner, of Sandusky, Ohio; John M. Peck, of Colfax County, New Mexico; and John W. Dorsey, of Middlebury, Vermont, witnesseth as follows:

There was something said about this agreement not being signed until some time in September. It had to be sent out to Peck and these other parties to sign.

1st. A copartnership is hereby formed by and between the above-mentioned parties, for the purpose of managing certain mail routes in the Western States and Territories. Said routes are all those which have been awarded to said Miner, Peck, and Dorsey for the contract term from July 1st, 1878, to June 30, 1882.

All of the gentlemen, not simply these nineteen. They entered into a partnership for the purpose of carrying the mail on all these one hundred and thirty routes.

2nd. Said H. M. Vaile is hereby made treasurer of said copartnership.

Why? Because H. M. Vaile had put in the money that was carrying on the business. Is there anything suspicious about that? Is there anything in that that any discreet man would not do? Is there anything in that from which any one of you, gentlemen, would infer that this man was engaged in some rascality?

And the other parties hereby agree, by suitable powers of attorney or drafts on the Auditor of the Treasury for the Post-Office Department, to authorize the said Vaile to demand and receive all mail pay on said routes—

Why? Is there anything unusual about it? Anything wrong about it? Any indication of fraud in it? As he had put his money in there, they simply agreed that he should be the treasurer, and that they, by suitable powers of attorney, would enable him to draw the money that was received from these routes. Let us go a little further:

and with said mail pay to pay, first, all subcontractors the amounts due them—

They were not going to cheat any subcontractors.

second, the expenses necessary and incident to the proper doing of the business; third, to divide the profits remaining among the parties hereto each quarter, as hereinafter specified.

3rd. Said J. R. Miner is hereby made secretary of the said copartnership, and shall keep an accurate record of the receipts and expenses of the company, and of correspondence with subcontractors and others.

I have read so much of that paper to show to you the character of the arrangement that these parties made. Here were Miner, Peck, and Dorsey who were unable to carry out their contracts. They had to

have assistance. They brought to their aid Mr. Vaile, just as any other firm might bring in a man of substance to help them out. They made a partnership agreement for the purpose of carrying on this legitimate business. Gentlemen, is not that a fair statement of this history? Can any of the notes which these gentlemen have set floating in the atmosphere of this case make it other than as I have stated it to be?

Now let us go back a little and take up this history from another point. When John W. Dorsey, Miner, and Peck engaged in this business, if there is any truth in man, and if we may at all rely upon the testimony of these defendants where there is absolutely nothing to contradict it, Stephen W. Dorsey advanced to them money from time to time and indorsed notes for them upon which they procured money, and thus they became very largely indebted to him. In order to secure himself for the repayment of these moneys and to protect himself against these indorsements that he had thus given to them, they drew in his favor certain postal drafts, as they are called, as collateral security for the loans and indorsements. I wish you to understand particularly and clearly, gentlemen, what these postal drafts are, and at the expense of being tedious I must bring your attention to them. All these things, as you will presently see, cut a figure in this case. Let us see what these postal drafts are. They have been recognized and sanctioned by the Treasury Department. You may remember that they are not drafts of the United States or of any officer of the United States. They are simply orders given by the contractor upon his pay for a particular quarter. It is precisely the same as one private individual giving an order on another individual to a third party for money that is due or is to become due to the party who gives the order. These orders are given in blank. They are filed in the office of the Auditor of the Treasury for the Post-Office Department, which office for convenience is located in the Post-Office Department building, because that particular office has relation to payments out of the Treasury for the mail service. These orders are drawn in blank. There is nothing unusual about it. It is a common thing in the department. They are recognized by the Sixth Auditor's office, and payments are made on them to the parties in whose favor they are drawn. Remember, I beg you, gentlemen of the jury, in this case, that those orders are never filed in the office of the Second Assistant Postmaster-General. They are filed in the Sixth Auditor's office. The Second Assistant Postmaster-General does not know anything about them. The Postmaster-General knows nothing about them. Nobody in the Post-Office Department knows anything about them. They are filed in the Sixth Auditor's office. The orders are drawn in blank, because it is not possible for the contractor to know how much will be due on any given contract in any given quarter; because for every failure to carry the mail according to contract there is a deduction, and for every delinquency in the matter of the proper care of the mail there is a fine imposed. Not until the end of the quarter and the report from the inspection division of the Second Assistant's office can the Sixth Auditor know what will be the amount to be paid to the contractor for a particular quarter. Until this is done the contractor cannot know what amount will be due him for any particular quarter. Hence these orders are drawn in blank. They are drawn by the contractor and recognized by the Sixth Auditor's office, for the purpose of enabling the contractor to raise money by their hypothecation to carry on the service. Stephen W. Dorsey having thus advanced money to these parties, they executed to him these post-office orders as security to him for the money which he had advanced and the

indorsements he had given. So you will see that the execution of these orders was in the direct line of their recognition by the Treasury Department. There was nothing novel, unusual, or suspicious in respect of them. They were just such orders as all other contractors all over the country were issuing day by day for the purpose of raising money to perform this most important service to the Government. Thus Stephen W. Dorsey became connected with this business before Vaile became connected with it in the manner which I have stated before.

Now, mark you, and please put a pin down here, will you? After Mr. Stephen W. Dorsey had made these advancements and taken his security he went away from the city of Washington to his home in Arkansas; was away four months; was not here at all; knew nothing at all about the difficulties these parties were having with reference to putting this service on; knew nothing of Miner's tribulations and the means that he was resorting to for the purpose of relieving himself from those responsibilities and difficulties; had no knowledge that Miner, acting under the authority that he had from Peck and John W. Dorsey, &c., &c., had made this arrangement which it was necessary for him to make in order to save all these parties from loss; and had no knowledge that Miner had made that arrangement with Mr. Vaile.

About the 1st of December Senator Dorsey comes back here, because Vaile, having become connected with it, as I have stated, they having made an agreement with him, by virtue of which he was to collect all this money that was to be derived from these mail routes, he having taken subcontracts and other papers that authorized him to collect all the money that was to be paid on account of these contracts, a perfectly proper thing for him to do and a thing that any business man would have done—Stephen W. Dorsey came back to the city of Washington and to the Senate in December, and he found this changed condition of things. He found that Mr. Vaile had filed these subcontracts in the department, and the filing of those subcontracts had the effect to have the payments for the service upon those routes made directly to Mr. Vaile, and the result of that would be to cut out and make absolutely worthless the postal drafts which had been given to Stephen W. Dorsey as his security for the money he had advanced and the liabilities he had incurred through his indorsements for these parties.

I want you to bear in mind, in addition to this, the fact that during the period of these negotiations with Mr. Vaile Stephen W. Dorsey was not in Washington, as I have said, and was not cognizant of them, as I have said, in any manner, form, or shape whatever. He had left Washington in the spring of 1878, and did not return until he came to the Senate in December of that year. In the mean time all these negotiations and transactions, so far as Mr. Vaile was concerned, had transpired, and of them he knew absolutely nothing. I challenge you, gentlemen of the jury; I challenge the counsel for the Government; I challenge anybody to point to any testimony to the contrary of what I have just said. So that when Stephen W. Dorsey came back to Washington he found this whole business had changed. He found that the security for the moneys he had advanced and the liabilities he had incurred had all been wiped out of existence, and was absolutely worthless.

Now, gentlemen, if there had been a conspiracy between these parties would these complications ever have arisen? If these parties were acting in harmony with each other, in concert with each other, pursuant to a mutual understanding and agreement as to how this business

should be conducted, do you suppose that those complications ever would have occurred? And even if they had occurred, why, they were occurring among themselves, and there would have been no occasion for any disturbance among them, but they would have said, "Gentlemen, this is all in the family of us conspirators; we have got it all cut and dried; we are going to rob the Treasury of the United States; why should we trouble ourselves in regard to it? These things are mere matters of form, and in the end we will pocket the spoils, and there is no occasion for having any disturbance among ourselves about it." If there had been a conspiracy, a combination, a confederation, such as these gentlemen say there was, these troubles between those parties never would have arisen.

Naturally enough, Mr. Stephen W. Dorsey—and this is consistent with our theory that there was no conspiracy, and utterly inconsistent with the theory of the Government that there was a conspiracy—was exceedingly dissatisfied with what had occurred. This large amount of money and this large responsibility was likely to be a total loss to him. The result was a controversy between the parties in respect of these matters, and that dragged along in an unsettled condition, the parties at war with each other, hostile to each other, quarreling about it, quarreling because Stephen W. Dorsey said "I have loaned my money, and you gave me security, and now you have made an arrangement which deprives me of my security;" Vaile saying, "You are a lot of contractors, about to be declared failing contractors; you are on the brink of ruin; you invited me in here to assist you out of the difficulty, and I have put my money into it, and I have protected myself, as I had a right to do." I do not know what Vaile did say to Mr. Dorsey, but I can imagine what I would say or what you would say under such circumstances: "Mr. Dorsey, you did embark your money in that enterprise, you did advance money to these people, you did loan them the money with security, and don't you see, Mr. Dorsey, that they were about to be declared failing contractors? Now, if they had been declared failing contractors would not you have lost all your money? And when I stepped in and saved them from being declared failing contractors where was there anything wrong in my taking care of myself in respect of moneys that I put into the business?" Vaile could well have said that to him. But Mr. Dorsey felt aggrieved. He thought the parties whom he had assisted ought not to have done this thing without taking care of him as to this large amount of money and liability. And the war waxed hot, and it went on furiously between these parties. They were at daggers' points, hostile as they could be in respect of these matters. Is that consistent with the idea that there was a conspiracy?

Thus this thing dragged along until S. W. Dorsey went out of the Senate of the United States. Then what happened? You recollect that the very moment he got out of the Senate he commenced to protect himself, as I claim, in respect of these matters. These gentlemen say that he commenced to show himself as an original conspirator; as a party originally, essentially, inherently interested in the whole business from the beginning. They say that he was a secret party to all the contracts, while we say and he says—and there is no evidence to the contrary—that he was in this just as many men have gotten into trouble by becoming security for others or by loaning money to others who were not able to return the loan. After his retirement from the Senate the parties got together to settle this trouble. They divided this route. S. W. Dorsey bought out John W. Dorsey and Peck.

Now recollect, gentlemen, that these routes were the stock in trade, the assets, of this concern. Miner took certain routes and Vaile took certain routes, and S. W. Dorsey took certain of them, and it was agreed that the indebtedness of the parties in respect of these several routes should be divided in certain ways and taken care of, and that each should thereafter go his own way. The division was made. All these parties testified to it. Nobody disputes it. Even Mr. Bliss, on the last day of his argument, conceded it, as I understood it.

To place this beyond all sort of question, we have the testimony of Mr. Turner in addition to the testimony of the parties themselves, that a list of the routes that Mr. Dorsey took and a list of those taken by Miner and Vaile were given to Mr. Turner, the corresponding clerk, so that he should know exactly what routes belonged respectively to Miner and Vaile, and to Dorsey. Miner and Vaile united their respective routes under the common ownership of Vaile and Miner. Turner tells you that those lists were given to him by these respective parties—this occurred in March, 1879—and that thereafter each party attended to his own routes, and neither had anything whatever to do with the routes held by the other. Each got the pay appertaining to his own routes. Here was an absolute, direct, distinct, unmistakable division of these assets between these respective parties, and thenceforward neither had anything to do with the routes of the others. Each was responsible for the performance of the service on his own routes. Each drew the money payable on account of his own routes wholly irrespective and independent of the other. As to this, it seems to me, there can be no possibility of dispute if there is any faith whatever to be put in human testimony.

I want to get your attention now, because I think what I am going to say will help you to get rid of a great deal of stuff in this case. To effect this separation, inasmuch as the law does not allow the assignment of a contract with the Government, the parties made to each other, respectively, subcontracts, by means of which subcontracts the party who acquired a particular route was authorized to receive the entire pay upon that route. In other words, the law, not recognizing assignments, but recognizing subcontracts, each made to another a subcontract covering the contract period for the full amount of the pay to be made by the Government to the contractor under the original contract, and the subcontractor became practically the owner of the route, although the Government, on its records, only knew the contractor, and as such looked to him for the performance of the service.

Right at the beginning of this case, in the very earliest stages of the testimony, two witnesses were brought here from the city post-office to prove to you who had lock-boxes 706 and 714. The purpose was to show, of course, the association of these parties with each other, the commingling, the common receiving of their mail matter from the department in respect of these routes. Whenever the Government makes a contract with a man, it wants to know where he lives, and where it can reach him, and it is especially so in regard to Post-Office Department matters. They want to know, because, you see, this business is subcontracted, like any other. They know that these contractors make subcontracts; that not one in a thousand of all the routes is carried by the original contractor himself, but by subcontractors. But the Government does not recognize anybody but the contractor; it does not recognize the subcontractor at all; it holds the contractor all the time; it never lets him get out of its grip, and, therefore, it wants to know where he lives, so that if any complaint comes in from anywhere that he is not properly performing the service, they

may know just how to reach him ; and so that if there is any change to be made in the service they may know just where to notify him. One of the features of this business is to keep the run of the contractors. You see a great many orders entered up in this case. My Brother Ker has, I think, spent about twelve months of his valuable time in hunting up orders directing a change of the address of the contractor. Whenever the contractor changes his address in any way he notifies the department of that fact, so that the department can always know exactly where to find him. When Vaile and Miner and John W. and Stephen W. Dorsey made this arrangement by which they divided these routes they arranged also for this change of address, and that which one was to be responsible for was to be sent to a particular address, and that which the other was to be responsible for was to go to another particular address. Stephen W. Dorsey right at that time employed Rer-dell to look after his business, and they gave the directions to the Post-Office Department that the address would be so and so as to those routes, and asked to have all communications of the department sent to that address. The Post-Office Department thereupon, as is always done, invariably—a refusal was never heard of—made the order on the jackets to change the address according to request. Out of that mere matter of changing the address, just for the convenience of the department and for the interest of the department, they got, I do not know how many—not a ton, nor half a ton, nor a thousand—but a great many orders of that kind, merely changing the address, put in here to swell these volumes of testimony, when they had no more relation to this case, gentlemen of the jury, than what is happening in England to-day.

Now, the subcontractor became practically the owner of the route, although the Government on its records only knew the contractor as such and looked to him. Thus, I repeat, these parties became absolutely separated from each other, and thenceforward had nothing to do with each other in the management of the business, except in so far as it might be necessary to use the name of the contractor in order to carry out the requirements of the law and the rules and practice of the department. And this is further confirmed, if further confirmation is necessary, by the fact—and which fact will hereafter come to be an exceedingly important one—and it is verified by the records of the department, namely, that these parties from that time forward, as I repeat, respectively drew their money from the department according to their several respective routes.

Again, gentlemen, I ask you to take a survey of this entire field and see what there is, if anything, in all this, other than a simple, straightforward business transaction, not at all out of the usual and ordinary affairs of men. They were just such transactions and such controversies as occur in the usual business affairs of life, and just such transactions and controversies as are inconsistent absolutely with any theory of a combination between these parties to defraud the Government. For, if there had been such a combination—of which I will hereafter speak—then it is inconceivable that such a separation, such a division, such a parting and keeping apart and going in their several ways, should have occurred. We claim that such a combination as that charged would have kept the parties together. And again I ask you to take a survey of this entire field and to point to me, if you can, a solitary circumstance anywhere indicating that General Brady was at all cognizant of the relations between these parties or had anything to do whatever with these transactions that were occurring between them. There is no evidence of that character.

So that, from the inception of this business, away back in 1877, when Peck spoke to Miner, or Miner to Peck (which is the first we know of these parties having any relation to each other), down to the period when the final separation occurred in the spring of 1879, there is not anything whatever to indicate that General Brady knew anything about any of these affairs, or that he ever knew of them until disclosed before this court, except the circumstances to which I have alluded; that is to say, that Vaile asked him to grant them further time, and that he telegraphed Vaile to ascertain what service he (Vaile) would put on, and his (Vaile's) answer to Brady, informing him what service he would put on or attend to. That is the whole of it, and if you can find anything else than that I would be glad to have you mention it now.

This brings us, gentlemen, up to May, 1879, in this history. And now I turn from this to bring your attention to the charge that is made against these defendants in this indictment. This indictment was found on the 20th day of May, 1882. It charges that on the 23d of May, 1879, these defendants (John W. Dorsey, Stephen W. Dorsey, Vaile, Miner, Peck, Turner, and Brady) conspired, confederated, and agreed together to defraud the United States. Mr. Ker stopped to tell you who were on trial and who were not. He said to you that Peck was not on trial, and he gave you the reason, because he was dead. He said Turner was not on trial, but he would not stop to give you the reason why he was not on trial. He need not have been modest on that subject. He knew the reason, and he knew that you knew the reason that Turner was not on trial, because, although they charged him with having agreed to make false entries upon jackets and thereby to deceive the Postmaster-General, yet there was nothing against him and a jury had so said. You have heard all this case, gentlemen, and it is perhaps not out of place for me to say that you know now how much reason there was for all the anxiety and injury that was cast upon Mr. Turner by this transaction.

This indictment charges that these parties were mutually interested in these contracts when they entered into the conspiracy. If the conspiracy was entered into prior to August, 1879, as these gentlemen would have you believe (if they mean anything by the testimony of those drivers that were brought here, who testified as to what John W. Dorsey said to them around that camp-fire out in Dakota, by which testimony they seemed to try to make the impression upon your minds that even then, prior to July, 1878, this unholy combination existed), if that is their theory of this case, if they are trying to convince you that that is the time when this conspiracy was formed, then at that time Mr. Vaile was not interested mutually with these parties, because you know from this testimony that not until in August did he have any relations whatever to them.

Mr. KER. We do not charge that they were all mutually interested.

Mr. WILSON. Mr. Ker says he does not charge that they were all mutually interested.

Mr. DAVIDGE. The indictment does.

Mr. WILSON. The indictment says that all the parties were mutually interested, excepting Brady and Turner, in all these contracts. Now, I say if they locate their conspiracy back there where that testimony I have just alluded to would indicate that they are seeking to locate it, then it is not true, because Vaile was not interested at that time, as everybody knows who has paid any attention to this case. If they locate this conspiracy at the time they say in the indictment that they locate it (to wit, on the 17th day of April), that will not do, because you know, and I

know, and they know that these parties had separated and each had gone his own way in March, and they were not mutually interested then. If they locate this conspiracy after that, then it was not a conspiracy for the mutual benefit of these parties, because we know that Dorsey had some routes independent of Miner and Vaile, and Miner and Vaile had other routes wholly independent of Dorsey. So that if they locate the conspiracy after that date, then we are simply in this position—a position that the law never allows the prosecution to put the defendant in—that “it is this thing or that thing, and we will take our chances as to which it is.” A defendant is always entitled to notice of what he is called upon to defend against. But thus we are out in the air, so to speak, with reference to this charge. It avers that they were to accomplish this conspiracy to defraud the United States by means of false communications, false petitions, and false affidavits to be procured and made and filed by the defendants other than Turner or Brady; and by means of Turner making false indorsements upon jackets for increase and expedition of service; and by means of Brady making orders for increase and expedition of service as to routes named in the indictment; and by means of his granting to them a month’s extra pay for service dispensed with; and by means of his refusing—and I will come to this more particularly after a while—to impose fines and make deductions. That is to say, that although they did not carry the mail, and although they did not take care of the mail, yet a part of the bargain with Brady was that when they did fail to carry or care for the mail he was to refuse to make fines and deductions, and thereby money would go into the pockets of these parties that they ought not to have. That was one of the means that they were to resort to. Now, these are some of the means—and there are others which I will speak of hereafter, perhaps—by which, as they say, this fraud was to be perpetrated upon the Government.

Now, gentlemen, we come, after this somewhat lengthy preliminary statement in respect of this case, to the consideration of the offense with which these defendants are charged. A moment ago I spoke, in a very brief way, of what the indictment sets forth. It is an indictment for conspiracy. Will you please remember that? That is the first question which it is important to determine, and that you have to determine, for that is the offense with which these defendants are charged. They must be found guilty of that or they cannot be found guilty under this indictment.

The Constitution and the laws of this Government have provided that a party shall be advised by an indictment of the offense with which he is charged. He can only be tried for the particular offense that is set forth in that indictment. And no matter what other offense he may have committed, until he is charged with it he cannot be tried for it, and that charge must be made by an indictment. These defendants, therefore, have come here at the instance of the Government (the Government having selected an offense which it says they have committed) to answer to this specific charge, and they cannot be required, nor will you require of them, that they shall here before you answer for anything other than that which has been charged against them in this particular indictment.

As I have said, the charge is conspiracy. It is a charge made either under section 5440 of the Revised Statutes, or it is a charge made under the act of May 17, 1879; and whether it is the one or the other, so far as the character of the offense is concerned, it is immaterial, because the offense created by those two sections is precisely the same in all essential particulars. Gentlemen, this statute has been read severa-

times in your hearing, but I will read it again, because upon this is predicated this indictment:

If two or more persons conspire either to commit any offense against the United States—

Mark the language—

either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty, &c.

That is the statute. If two or more parties shall conspire to either commit an offense against the United States or to defraud the United States, and do an overt act, they shall be deemed guilty and punished, &c. This indictment charges that these defendants have offended against the provisions of this statute. It charges that these parties conspired, confederated, and agreed together to do the particular thing named, to wit, to defraud the United States.

If you will allow me to revert to that statute you will see that there are two offenses named in it; one is a conspiracy to commit an offense against the United States, the other is a conspiracy to defraud the United States, and as to these two several offenses I shall have something to say hereafter.

Now, they say that these parties conspired, confederated, and agreed together to do this particular thing; that is to say, to defraud the United States. So that the question that you have to determine is, did these parties conspire, confederate, and agree together? That is the question.

What is a conspiracy, gentlemen? It is where parties agree together to do some forbidden thing. They must agree together. There must be a mutual understanding arrived at between them. Their minds must have come together in agreeing or understanding that they will do the thing which it is alleged they were to accomplish. I cannot state this better, gentlemen, than I find it stated by a very learned judge in the case of the United States *vs.* Goldberg, 7 Bissell, 179, where he says—

Mr. KER. [Interposing.] I hope the rule will be observed of having the law read to the court rather than to the jury. At the last trial your honor said that the counsel should read the law to the court. If the law is to be discussed now before the jury I would like to know it.

The COURT. By way of telling what a conspiracy is, the counsel may be permitted to read from a book. Counsel is not now engaged in discussing any question of law to the court.

Mr. WILSON. Not at all. I do not want to trespass upon the rules of court.

Mr. DAVIDGE. He is simply referring to a definition, that is all.

Mr. WILSON. To describe to the jury what a conspiracy is; that is all that I want. This learned judge says:

A conspiracy is formed when two or more persons agree together to do an unlawful act—in other words, when they combine to accomplish by their united action a criminal or unlawful purpose; and the statutory offense is consummated when such agreement is made, or such combination is entered into, and one or more of the parties does any act to effect the object of such conspiracy. If two or more persons agree together that they will commit a certain offense against the United States, as that they will enter a public office of the United States and take and carry away papers and records there deposited, with intent to steal or destroy them, and one or more of the persons so agreeing does any act to effect the object of such agreement, they are guilty of the offense of conspiracy.

It is not necessary, to constitute a conspiracy, that two or more persons should meet together, and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly by words or in writing, state what the unlawful scheme is to be, and the details of the plan or means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner or through any contrivance, positively or tacitly, come to a mutual understanding to accomplish a common and unlawful design.

Of course a mere discussion between parties about entering into a conspiracy, or as to the means to be adopted for the performance of an unlawful act, does not constitute a conspiracy, unless the scheme or some proposed scheme is in fact assented to—concurred in by the parties in some manner, so that their minds meet for the accomplishment of the proposed unlawful act.

I read that, gentlemen of the jury, for the purpose of calling to your attention what it is that constitutes a conspiracy. A conspiracy can only exist where the parties have agreed together. There must be a mutual understanding between them. Their minds must meet upon the subject, in order to constitute conspiracy. That is what they have charged against these defendants in this case. They say that they came to a mutual understanding and agreement; that they agreed together that by means of fraudulent petitions, fraudulent letters, fraudulent affidavits, and so on, and so on, which I need not repeat, they would defraud the United States. That is the charge, and that is what the Government has to prove. That is the very point and the only point in this case, except the proof of overt acts, to which I will refer hereafter. The first thing and the only thing, with a single exception, which I will mention in a moment, to be determined by you, is, did these parties thus agree together? Did they conspire together for the purpose of accomplishing this object?

Then the Government must not only prove that they did conspire together, but this statute requires that one further step shall be taken by the Government in the way of proof, to wit, that they must prove an overt act; that is to say, that some act was done by some one of the parties to accomplish the object of that conspiracy or that agreement.

Hereafter I shall wish to call attention to what has recently been determined by the Supreme Court of the United States, which I will do, as a matter of course, with submission to the court, in submitting what I have to say to the court on that subject touching the interpretation of this statute.

Before I do that, however, gentlemen, you must understand, and it is important that you shall understand and keep it distinctly in mind, that the offense charged is conspiracy. The overt act comes after the conspiracy. The conspiracy, as you will see after awhile, is the offense. So that the first thing for the Government to do is to show that these parties agreed together; and after that, then the next step is taken, which is the proof of the overt act. The overt act comes after the conspiracy, and each and every overt act laid in this indictment may be proved to have been committed, and each overt act may be as bad as bad can be, as bad as these gentlemen can possibly paint it, and yet it would be of no avail unless the conspiracy is proved.

Mr. DAVIDGE. The language of the statute is that it must be in pursuance of the conspiracy.

Mr. WILSON. The conspiracy is the offense, and not the overt act; and that distinction, gentlemen, I wish to impress upon your minds, in view of what I shall hereafter have to say to you on the subject.

The COURT. Do you mean to contend that conspiracy must first be made out before the overt acts in pursuit of the conspiracy can be entered into?

Mr. WILSON. I mean to say that the Government must establish that fact that there is a conspiracy.

The COURT. Do you mean to say that the overt acts cannot be used for the purpose of proving the conspiracy?

Mr. WILSON. That I want to discuss hereafter. I shall not argue the case upon the theory that they cannot, but I shall argue the case, as I proceed, upon the theory that they may use them for the purpose of establishing a conspiracy.

The COURT. I am inclined to think that overt acts, if they are of a character tending to prove the conspiracy, may be used not only as overt acts, but for the purpose of establishing the conspiracy.

Mr. WILSON. I can see where there could be serious difference of opinion in respect to that matter. But I propose to attempt to show to the jury that there is not an overt act laid in this indictment as having been committed by my client, or by any of the other defendants with which he had anything to do—no overt act, so far as he is concerned, except an official act, and that an official act is an act of such a character that an inference of conspiracy cannot properly be drawn from it. But that is a question which I will discuss only at a later stage.

The COURT. I would like to hear you on that subject.

Mr. WILSON. It is so near the hour of adjournment that I would be glad to stop here for to-day.

The COURT. I shall administer justice with mercy.

Mr. WILSON. I am glad you are merciful to the jury.

Thereupon (at 3 o'clock and 56 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

THURSDAY, MAY 10, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

The COURT. Before Mr. Wilson proceeds I wish to make one remark. I remember that on yesterday when Mr. Wilson referred to the testimony of Rerdell in regard to his proposal to challenge a juror, and after he had made his remarks on that subject, an expression was used by the court, which seemed to imply a censure upon Mr. Blackmar. I think probably that remark was undeserved on the part of Mr. Blackmar. There is no evidence of Rerdell's that Blackmar made any proposition at all. It was wholly the plot and suggestion of Rerdell himself, made to Mr. Blackmar and to which Mr. Blackmar made no answer. So far as his failure to make any answer is concerned, and so far as Rerdell's testimony is concerned there might be some ground of complaint against Mr. Blackmar. But as no such suggestion was made by Blackmar to Rerdell, and the whole thing was Rerdell's own conception, and we have not heard from Mr. Blackmar on the subject, I think it is proper that the court should retract anything like censure in the remark made by the court yesterday. It was a brief remark, but it seemed to imply some censure upon Mr. Blackmar. I do not wish to be understood now in that way. I merely wish to be understood as confining the censure of the court in regard to that matter to Rerdell himself.

Mr. DAVIDGE. Will your honor let me say a word?

The COURT. It is hardly worth while to discuss the question.

Mr. DAVIDGE. You are mistaken with regard to the facts. There is no doubt whatever, assuming the evidence of Rerdell to be true, that there was not a mere proposition made by Rerdell to Blackmar, but there was a positive bargain and compact entered into between Rerdell and Blackmar, a Government agent. The only way in which this matter can be cleared up is for Mr. Blackmar to explain or for the Government to explain. We are perfectly willing that the trial shall be suspended and Mr. Blackmar put on the stand and allowed to testify as to the real facts connected with this matter. It may be that this was a mere voluntary act on the part of Blackmar. It may be that it was done in his superfluous zeal to help the Government, a most unnatural and most improbable thing. It may also be that Mr. Blackmar, an agent and employé of the Government, obtained his instructions from some Government officer. I do not think anybody will assume that Blackmar volunteered in this work of iniquity. It is more likely that he acted as an agent. We are perfectly willing, however, that the argument be suspended and that Mr. Blackmar take the stand and testify whether he acted at his own instance, and whether he voluntarily embarked in this work of iniquity, or on the other hand whether he acted under orders.

Mr. KER. If your honor please, it seems to me that my friend, Mr. Davidge, will have an opportunity before the jury to argue this matter. We have the testimony very fully upon the subject. Rerdell was examined and cross-examined and re-examined. But if it would be any satisfaction to my friend, and if the court thinks it is proper I will certainly not object to Mr. Blackmar's submitting himself to a cross-examination. My friends can have every opportunity to cross-examine him and I assure them that Mr. Blackmar will come out straight in the matter.

Mr. DAVIDGE. It is not for me to do it. I take the record as it stands, and find on the record that a Government officer made this iniquitous bargain. That is enough for me.

The COURT. I do not understand the evidence to show any such thing as that.

Mr. DAVIDGE. I understand it that way.

The COURT. It does not seem so to me; but if Mr. Blackmar is willing he may state the facts on both sides. [To Mr. Blackmar.] Are you willing?

Mr. BLACKMAR. Yes, sir.

The COURT. Administer the oath to him.

CHARLES P. BLACKMAR affirmed.

Mr. KER. Now, Mr. Davidge, proceed with your inquiry.

Mr. DAVIDGE. Mr. Ingersoll will examine Mr. Blackmar.

By Mr. INGERSOLL :

Question. Were you present in court when Mr. Rerdell testified in regard to having made an arrangement with you that he would sit with the defendants and challenge such jurors as the Government might indicate?

Mr. KER. Wait one moment. If your honor please, Mr. Rerdell made no such statement. Mr. Rerdell said he had told Mr. Blackmar what he would do. Let the counsel modify his question.

The COURT. [To the witness.] You can state what you know in regard to Rerdell's testimony.

Q. Were you present in court when Mr. Rerdell testified on this subject?—A. I was going to answer the other question in this way: That I was present in court and heard all that Mr. Rerdell said on the subject, but I did not understand him to state it as you embraced it in your question.

Q. You may state what you wish as to what that arrangement was, if there was an arrangement?—A. I made no arrangement whatever with him.

Q. Did he make any proposition to you?—A. He made a suggestion to me that he was willing to go on the stand and testify.

Q. That I do not want. Did he make a proposition to you that he would sit with the defendants and challenge such men as the Government might suggest?—A. He made a statement like this: That he should claim his right to challenge his proportion of the jurors.

Q. Do what?—A. That he should claim the privilege of challenging his pro rata or proportion of the jurors.

Q. How would he exercise that right, for the Government or against the Government?—A. He wanted me to communicate that fact to the Government—to the counsel for the Government.

Q. Did you give him a list of the names of jurors to be challenged?—A. I did not.

Q. Did he give you a list of the names that he would challenge?—A. He did.

Q. Four names?—A. Whether there were four or more than four I cannot say.

Q. He gave you a list?—A. He gave me a list of the names of the persons he should challenge.

Q. What did you do with the list?—A. I have been trying to think since that testimony of Rerdell's just what I did do with that list. I have got that list in my house now. If I had supposed I was to be examined on that subject I would have brought the original list here. That list, I would say, has never been out of my room.

Q. Did you communicate those names to anybody?—A. I communicated the fact to Mr. Merrick.

Q. When?—A. Immediately; long before the trial began.

Q. What did you tell him?—A. I told him just what Mr. Rerdell said.

Q. Did you give those names to Mr. Merrick?—A. I hardly think I did. I don't think I did.

Q. Will you say you did not?—A. I said I had been trying to think whether I did or not. I will not say that I did not. The original list, however, is in my room, and never has been out of it.

Q. Do you remember the names on that list?—A. No, sir; I do not remember the names.

Q. If you have that list will you furnish it some time?—A. I will. The last time I looked it was on my table, just where it was originally, and I presume it is there now. If it has not been destroyed I will furnish it.

Q. Do you know as a matter of fact whether Mr. Rerdell endeavored to challenge one of the jurors whose name was on that list?—A. I know from the record.

Mr. KER. If your honor please, that is a matter of record.

Q. Was it one whose name was on the list?—A. That I cannot tell you.

Q. Without looking at the list?—A. I could not say even then. I do not know who it was he wanted to challenge. I do not know to-day.

Q. Will you go and get that list?—A. Yes, sir.

Q. Was it understood that Mr. Rerdell was to challenge in favor of the Government?—A. It was not. Now, I would like to be permitted to say what I want to say.

The COURT. You may go on.

A. [Continuing.] I reported this fact to Mr. Merrick, he being the only Government attorney in the city at the time. I had been directed to listen to what might be said to me.

Q. By whom?—A. By the counsel; and cautioned as to what I should say myself. Of course I considered it my duty to report what Mr. Rerdell had said to me. I did so report it, and Mr. Merrick peremptorily ordered me to say to Mr. Rerdell that that proposition could not be entertained; that it would not be proper for the Government counsel to consent to any such proposition; that it would not be honorable towards the defendants' counsel, and that it would not be listened to for a moment.

Q. Then you told Rerdell that, did you?—A. I did. I told him the next time I saw him that it could not be entertained.

Q. Did you have a conversation with S. W. Dorsey on yesterday about this very matter?—A. I had a conversation with him yesterday afternoon on the sidewalk, as I was getting into a car. I do not think it was on this matter, only as I commented on the remarks of Judge Wilson and what was said in regard to it.

Q. Did you in that conversation tell him you did make that arrangement with Rerdell?—A. No, sir.

Q. That you made it?—A. No, sir. Oh, no, sir. I hardly think Mr. Dorsey will say that either.

Q. I will ask you if you did not say to Stephen W. Dorsey yesterday in front of the court-house that you ought not to be blamed for this Rerdell matter, because every step you had taken you took under the direction of Mr. Merrick?—A. I said to Mr. Dorsey with regard to everything I had done in connection with this trial that my hands were clean, and I spread my hands out before him like that [illustrating].

Q. What else did you say?—A. And that the remarks that were made yesterday in connection with it were unfair towards me.

Q. Did you not also say that everything you had done in that connection you had done under advice of the Government counsel?—A. I said perhaps—I did not say it in that way. I said I had not done anything but what I had been instructed to do.

Q. And that you thought the defense was a little hard on you?—A. I did not say it in that way. I said I thought the remarks were unfair towards me.

Q. Did you have a conversation with Mr. Boone yesterday?—A. Mr. Boone was in here and spoke to me.

Q. Did you have any conversation with him anywhere in this building?—A. I had a conversation right here yesterday at recess.

Q. Did you say to him in that conversation that you thought it was unfair to make you bear that load?—A. I said to Mr. Boone just what I said to Mr. Dorsey, and I made the same remark to Mr. Davidge, that it was an unfair reference to me, and it was unkind towards me, and I made the same remark about my hands being clean.

Q. Did you say to him that you did not make the arrangement with Rerdell?—A. I said then and I say now, and shall continue to say to the day of my death, that I made no arrangement with Mr. Rerdell.

Q. Did you tell Mr. Boone so yesterday?

The WITNESS. Did I tell him what?

Mr. INGERSOLL. That you made no such arrangement with Mr. Rerdell?

A. I do not know that I said it. If I said anything on the subject I said it.

Q. Did you say to Mr. Davidge that you made no such arrangement with Mr. Rerdell?—A. I don't think I said so. I could not have said that I made the arrangement with Mr. Rerdell.

Q. You do not seem to understand me. Did you say to them that you did not make the arrangement with Rerdell? Did you deny having made the arrangement with Rerdell?—A. I do not know that I denied it. It was not my place then and there to deny it.

Q. Did you deny it?—A. I do not know that I did.

Q. Did you deny it to Mr. Boone?—A. I do not know that I did. I have not denied it anywhere. I have been very close in my conversation about this matter. I have not allowed myself to be interviewed or questioned on the subject.

Q. Did you not at that time urge as your defense, and as your only defense, that you were acting under orders?—A. I say that now.

Q. At the time you told them you were acting under orders, did you deny that you had made this arrangement with Rerdell?—A. I do not know that I did. I was not under obligation to inform them.

Q. I understand that. Did you not say to Mr. Boone that you were going to come out and put the load where it belonged?—A. No, sir.

Q. Did you not say to Mr. Boone that they could not come any Bowen or Hoover business over you?—A. I don't think I said any such thing.

Q. Did you not say that they could not play the Fall business on you?—A. I don't think I said any such thing.

Q. Did you not say that you would not carry their load; that they would have to take it?—A. No, sir.

Q. Did you not say this to Mr. Boone: "The whole plan was conceived by Woodward, but I would not carry it out until I had consulted with the counsel for the Government, and I did consult with Mr. Merrick?"—A. No, sir; I say I have been very careful in my conversations. I had no right to talk with other persons on the subject.

Q. I don't care about your right; but did you?—A. I am giving it as a reason.

Q. Did you agree on a system of signals with Rerdell about the clock?—A. Yes, sir. Now, if the court please, I would like to explain the matter.

The COURT. Certainly.

A. [Continuing.] As I stated in the first place, or if I have not stated I will state, that the first interview I had with Mr. Rerdell was at the Hamilton House at the time referred to in Mr. Rerdell's evidence. It was in September, immediately after his release from prison. I was getting ready to go on my leave of absence, and I had stepped out of the office for a few moments. On my return I found a note on my desk informing me that Mr. Woodward had returned from Connecticut and desired to see me, and wanted me to call at the hotel that evening, which was Saturday. I called at the hotel, and he gave me instruction to be at the hotel the next morning. The next morning I was at the hotel, and I found Mr. Rerdell was there. That was the first interview I had with Mr. Rerdell, and on that day I received my instructions from Mr. Woodward. Mr. Rerdell and I had one or two interviews after that. After my return from my leave of absence, perhaps not far from the middle of November, the 10th, or 11th, or 12th, somewhere along there,

he came to see me, and after a short conversation he stated that he was going to Hartford. In all the interviews that Mr. Rerdell and I have had since then he has sought me.

Mr. INGERSOLL. I am not talking about that.

The WITNESS. I desire to say that.

Mr. INGERSOLL. I am not talking about that, but about the signals.

The WITNESS. I desire to make my explanation.

The COURT. You have that privilege.

The WITNESS. I am coming to the signals.

Mr. INGERSOLL. Start at the signals.

A. [Continuing.] I told him that I could not be confined to my room all the time, and if I must see him I must know when. Whether I said this first, or he said it to me, I cannot just now remember, but at all events he told me that whenever he desired to see me he would notify me by looking at the clock, and I would understand by that that he wanted to see me that evening at my room, and that I must not go out. Those were the signals.

Q. Was that during the trial?—A. Yes, sir; that was during the trial.

Q. Had the jury been selected when that signal was agreed upon?—

A. Yes, sir; and the trial had progressed some weeks.

Q. Did he meet you by virtue of such signal?—A. Yes, sir.

Q. And talked to you?—A. Yes, sir.

Q. Did you report the conversations?

The WITNESS. To whom?

Mr. INGERSOLL. To anybody.

A. Sometimes I did.

Q. To whom?—A. To the Government counsel.

Q. To Mr. Merrick, Mr. Bliss, or Mr. Ker?—A. Sometimes to Mr. Merrick and sometimes to Mr. Bliss.

Q. And Mr. Ker?—A. Never to Mr. Ker in the world, I think.

Q. At that time Mr. Rerdell was sitting with the defendants, was he?—A. Mr. Rerdell had not read his statement in open court.

Q. He was then sitting with the defendants?—A. I do not know whether he was sitting with them; he had not come out.

Q. He was not sitting between the Government attorneys, as he afterwards was, was he?—A. No, sir.

Q. He met you from day to day to tell you what?—A. I have not said he met me from day to day to tell me.

Q. He met you, you say, at your house according to a signal?—A. Yes, sir.

Q. And he would tell you something?—A. Yes, sir.

Q. The signal was looking at the clock?—A. Yes, sir.

Q. And then you would meet him?—A. No, sir; I do not want it stated in that way—that I would meet him. I did not go from my room. Don't try to warp what I say.

Q. He came to you?—A. Yes, sir.

Q. To tell you something?—A. Yes, sir.

Q. About what; about this case?—A. Yes, sir.

Q. Did he tell you what the defendants were doing?—A. I cannot remember now what he told me.

Q. State in a general way.

The COURT. You must confine your cross-examination strictly to the subject under investigation, and that is to what passed between Rerdell and the witness touching this matter of the selection of the jury.

Mr. INGERSOLL. I don't want to know the exact things that he told

him, but I want to know generally. I want to know if he told him what the defense were doing or saying.

The COURT. That is another subject altogether.

Mr. INGERSOLL. It is a subject cousin-german to this thing.

The COURT. We will not go into the cousin-german.

Mr. INGERSOLL. It is a direct brother, and he opened it himself.

The COURT. We will not go into the brother. Keep to the subject itself.

Mr. INGERSOLL. I want to know whether he was told by the Government counsel to stop receiving reports from Rerdell.

The COURT. I do not think that is proper. The inquiry must be strictly confined, especially at this stage of the case, to the subject to which the witness was called. The witness was called for a special purpose, simply in regard to the challenging of jurors.

Mr. INGERSOLL. He has now denied having made the arrangement or accepted the proposition made by Rerdell. In making that denial he tells what he did do. What he did do was to have one of the defendants, who was apparently acting with the other defendants, report to him from day to day what the defendants were doing.

The COURT. That was brought out by your cross-examination.

Mr. INGERSOLL. I understand that; but it is just as bad an arrangement as the other, just as devilish, just as infamous. This man, one of the defendants, was sitting with us, hearing our conversations and then taking them to this witness, by this witness apparently to be turned over to the counsel for the Government.

The COURT. Rerdell had given you notice long before.

Mr. INGERSOLL. No, sir; no, sir; no, sir.

Mr. CARPENTER. The first notice we had was when he went on the stand.

Mr. INGERSOLL. He had taken pains to deny in the public prints that there was any truth in it, and up to within two or three days of the time when he went over he had taken pains to borrow money from one of the defendants to buy bread and meat to give him strength to swear against that very defendant. I want to show that he carried this information day after day to this witness and this witness turned it over to the counsel for the Government.

The COURT. The court will not permit any extension of the examination beyond the particular point to which the witness was called.

Mr. INGERSOLL. I would be glad to do it.

The COURT. That point is directly in regard to the selection of the jury. That is what he is admitted for. I would not certainly have allowed him to go on the stand and interrupt the regular course of the proceedings for the purpose of going into the whole field of inquiry in regard to Rerdell's course.

Mr. DAVIDGE. May it please your honor—

The COURT. [Interposing.] I cannot hear any argument, Mr. Davidge; I *will* not.

Mr. INGERSOLL. I want the witness to produce the list of names given him by Rerdell.

Mr. CARPENTER. He said he will do that.

The WITNESS. I will do that if I can find it.

The COURT. I do not know that the court will even allow that. Your inquiry is in relation to the selection of the jury and whether the arrangement spoken of, or this statement of Rerdell's, brought any agent of the Government into collusion with Rerdell as to the selection of the jury?

Mr. INGERSOLL. Yes.

The COURT. It must be confined to that particular point, and not go beyond it.

Mr. INGERSOLL. I am confining it to that particular point—in regard to the list of four names which Rerdell gave him.

The COURT. No matter at all what names were on that list.

Mr. INGERSOLL. Let us see what names were on it.

The COURT. No, no; it is simply a question whether this was a proposition of Mr. Rerdell's own conception, or whether it was agreed upon by the agent of the Government.

Mr. INGERSOLL. Admit that it was not agreed upon by the agent of the Government, then let us take the next step and show that it was acted upon, and the list of names will show that the persons named on that list were challenged from the jury.

The COURT. That would be going into too large a field entirely at this time. The witness has stated what he is able to testify to in regard to what took place yesterday. It was charged yesterday in the speech of Mr. Wilson that this was an agreement entered into between a Government agent and Rerdell in regard to the selection of jurors. The simple question is whether there was such a stipulation or agreement between Mr. Blackmar and Mr. Rerdell. [The witness here spoke to the court in an undertone.] He says his recollection is refreshed, and he wants to state one thing.

The WITNESS. It is matter about which my memory is now thoroughly refreshed. You asked me if I gave Mr. Merrick a list of names. This occurred along in the early part of November. I could not have furnished him a list of names at that time. The first report I made to Mr. Merrick was this fact of Rerdell being willing to challenge a juror. I reported that to Mr. Merrick, and he was very much offended and was very emphatic about it, and gave me my instruction that the proposition could not be entertained. Said I, "What must I do? This is disagreeable for me, and I want instructions." Said he, "You cannot be prevented from listening, and it is your duty to listen, to what is said to you; but the matter of protecting him by ourselves consenting that he shall challenge jurors on behalf of the Government in any manner cannot be entertained." That list I referred to never went out of my room, and I could not have given it to Mr. Merrick then or afterwards, nor to any one else. I am positive about that, and I wish it so understood.

By Mr. DAVIDGE:

Q. You gave the names or the list to Mr. Merrick, I understand?—

A. No, sir; I never gave it to him, because this occurred early in November, and the names were not produced then.

Mr. DAVIDGE. I understood you to say that you gave the names to Mr. Merrick.

The WITNESS. I was not in the court-room; Mr. Rerdell came to my house without me knowing that he was coming, and he said that it had gone so far that he would give me the names, and he wrote down a list of the names, and said he, "These names are the names of the jurors that I am going to challenge."

By Mr. INGERSOLL:

Q. Who wrote the list?—A. Mr. Rerdell wrote it.

Q. Let me read this:

Q. Had you agreed that if the court allowed each defendant to challenge four, you would challenge any four the Government might select for you to challenge?—A. I sent word myself, or, at least, I told Mr. Blackmar I was willing to do that.

Was he to select the jurors, or were you to do it?—A. I certainly was not.

Q. Was the Government to select the jurors?—A. The Government was not to do it.

Q. Then, what did he offer to do?—A. He offered to challenge certain men on the jury, whose names he furnished on the list.

Q. And he selected them?—A. Certainly.

Q. And not the Government?—A. Not the Government.

Q. Had he any means of knowing whether the Government wanted those four or did not want them?—A. Not that I know of.

Q. When he said that the Government would select them, was that true?—A. I cannot tell whether it is true or not. If it is in any conversation with me I can answer it and say emphatically that it was not so.

The COURT. So far as you are concerned?

The WITNESS. Yes, sir.

Q. Here are the questions to Mr. Rerdell, on page 2521:

Had you agreed that if the court allowed each defendant to challenge four, you would challenge any four the Government might select for you to challenge?—A. I sent word myself, or, at least, I told Mr. Blackmar, I was willing to do that.

Now, did he tell you that he was willing to challenge any four the Government might select?

Mr. KER. I want the answer all read. Mr. Ingersoll has no right to stop reading in the middle of it.

Mr. INGERSOLL. I have a right to stop where I please.

Mr. KER. I submit that the answer should all be given.

The COURT. Read the whole of it.

Mr. INGERSOLL. [Reading:]

Had you agreed that if the Government allowed each defendant to challenge four, you would challenge any four the Government might select for you to challenge?

That is the question, and now I will read the answer:

I sent word myself, or, at least, I told Mr. Blackmar, I was willing to do that.

The point is, was the Government to select the jurors, or was he to select them. The rest of the answer is:

To show my good faith to the Government.

That has nothing to do with it at all. The point was whether he was to select them.

The COURT. Then it will do no harm to read it.

Mr. INGERSOLL. And it will do no good.

Q. Did he offer to let the Government select the four jurors for him to challenge?—A. He offered to; yes, sir.

Q. Was he to select them, or was the Government?—A. I do not know. So far as I know, his answer there is positively untrue. There was no arrangement made whatever whereby the Government was to furnish a single name to challenge.

The COURT. He did not say that.

Mr. INGERSOLL. Let me read it again:

Q. Had you agreed that if the court allowed each defendant to challenge four, you would challenge any four the Government might select for you to challenge?—A. I sent word myself—

That is the first part of it—

or, at least, I told Mr. Blackmar, I was willing to do that, to show my good faith to the Government.

Now let us go on :

Q. At the same time that you were sitting with the defendants as a codefendant ?—

A. Yes, sir.

Q. You told Mr. Blackmar you were willing, if the court allowed you, to challenge four men ; to challenge the four that the Government should suggest ?—A. No, sir ; not that the Government would suggest ; that Mr. Blackmar would give me.

Q. Is that true, Mr. Blackmar ?—A. That is not true.

Q. You understood that he was on the side of the prosecution ?—A. Oh, certainly.

Q. Do you now tell the jury that you at that time made that proposition ?

That is, the proposition for the Government to select four jurors.

A. I think I did.

Q. Did you afterwards endeavor to carry it out ?—A. I did.

Q. Did you while sitting with the other defendants tell them that you would in good faith try to challenge four men that you thought might be friendly to the defendants ?—A. I did.

Mr. INGERSOLL. Now I ask Mr. Blackmar if it is true that he made a proposition that the Government was to select four names ?

The COURT. [To the witness.] You can answer that.

A. He made the proposition that he would challenge four men.

Q. Who was to select the four men ?

The COURT. What was his proposition ?

A. His proposition was to exercise his right as one of the defendants to challenge, and that the Government might have the benefit of it.

Q. As a matter of fact, do you know whether he tried to carry it out ?—A. I do not know, sir. I was not in court when the jury were made up.

The COURT. The simple point is whether you agreed to his proposition.

The WITNESS. I emphatically refused to do so

The COURT. The inquire this morning is whether Mr. Blackmar, representing the Government, agreed to what Rerdell proposed.

The WITNESS. I received my instructions early in November from Mr. Merrick.

Q. Did you give Mr. Rerdell any names of any jurors to be challenged ?—A. No, sir.

Q. Did you receive from any Government officer—counsel or no matter what—any names to be given to Mr. Rerdell to be challenged ?—A. No, sir.

The COURT. That is going beyond the limits, but still——

Mr. INGERSOLL. [Interposing.] It is in favor of the other side, if the court please.

The COURT. The answer makes it so.

Mr. INGERSOLL. He has already said substantially that.

Q. Now, I understand you substantially to say that you did not give the list. By the list, do you mean the paper, or do you mean the names ? Do you now say that you never gave the names that were written on the list to any other Government officer than yourself ?—A. I certainly did not give the list ; that I am positive of.

Q. Did you give the names ?—A. I don't think I did ; I cannot say positively just at this moment. I have tried to refresh my memory by reading Rerdell's testimony, in order that I might give a truthful answer. I am quite confident I furnished no list whatever.

Q. Do not say list. Did you furnish names ? The list you did not furnish, I know.—A. I am not so confident about the names.

Q. You will not state whether you gave the names or not ?—A. I cannot say positively about that.

Q. What position did you then occupy in the Government?—A. Clerk in the Post-Office Department.

Q. Had you been assigned to any particular duty in this case? That is what I want to know.—A. Yes, sir.

Q. What?

The WITNESS. Since the trial began?

Q. What was your position at that time?—A. I was clerk in the Post-Office Department detailed to assist the counsel in whatever they might call upon me to do, I suppose.

Q. How long before that time were you detailed?—A. I think as long ago, colonel, as September, 1881; I think it was September, 1881.

Q. At the time you had this conversation with Mr. Rerdell had he agreed to go over to the Government?—A. I don't know anything about that.

Q. You made no agreement with him?—A. No, sir; I made no agreement with anybody.

Q. What was the first time that you remember that you met Mr. Rerdell?—A. I do not know that I ever met Mr. Rerdell to speak with him until about the 17th or 18th of September, 1882, last year.

Q. How often did you meet him during the trial up to the time he went on the stand?—A. I could not say, colonel.

Q. A great many times?—A. Not a great many.

Q. Was it a part of your business to meet him?—A. No, sir; I cannot say that at all. I did not meet him; he met me.

Q. Were you instructed to see him?—A. I was not instructed to see him, particularly. I was not instructed to turn him away from my door if he came to my room. I was instructed to listen to what he had to say.

Q. And to take it down?—A. I was told that my instructions were to listen to what he said to me or to others.

Q. Did you write it down at the various times?—A. I am very happy to say that I never wrote a word of what he said.

Q. You reported it from memory?—A. No, sir.

Q. You did not report it at all?—A. I did.

Q. Who did write it down?—A. Mr. Rerdell wrote down whatever was reported.

Q. And you handed it to others?—A. Yes, sir.

Q. To whom did you hand it?—A. Generally, to Mr. Bliss.

Q. Who else?

The COURT. That is going beyond the limits of this inquiry. Mr. Blackmar has been engaged openly here in handling the papers; we all know that.

Q. Do you know where those papers are that Mr. Rerdell wrote and handed to you—those propositions and statements that he wrote and gave to you and which you gave to Mr. Bliss?—A. I do not.

The COURT. That is going beyond the limit again.

Q. In order that there may be no mistake about it, I ask you if you, in conversation with Mr. Boone yesterday (I mean A. E. Boone) in the court-house, said that the arrangement you made with Rerdell was made under authority from the Government counsel?

[The witness spoke to the court in an undertone.]

The COURT. Let me hear the question.

Mr. INGERSOLL. I told him that Mr. A. E. Boone was the Boone I meant before when I just used his surname, Boone, and I asked him whether he said to Mr. A. E. Boone in the court-house on yesterday that the arrangement he made with Rerdell was made by the authority of

the Government counsel, and that he did not propose to bear the burden.

The COURT. You have asked him that already.

Mr. INGERSOLL. I want to know whether the witness says any such conversation occurred between himself and Mr. A. E. Boone at any time or place.

The WITNESS. I never told anybody that the arrangement I made with Rerdell was by authority of the Government, because I made no arrangement with Mr. Rerdell.

Q. Was the proposition put in writing by Rerdell to challenge any four jurors that might be selected by the Government?—A. I don't think that was. I think his first interview was early in November after his return from Hartford, and I do not think that was put in writing. I won't be positive about it, but I am quite confident.

Mr. INGERSOLL. That is all, except that I want the list of the four names.

The COURT. The witness pronounced a statement made by Rerdell as untrue. I think this was the question he referred to, which was asked of Rerdell :

Q. You told Mr. Blackmar you were willing, if the court allowed you, to challenge four men ; to challenge the four that the Government should suggest.

And here is the answer of Rerdell :

No, sir ; not that the Government would suggest ; that Mr. Blackmar would give me—

Mr. INGERSOLL. Yes, sir.

The WITNESS. Did I say that was not true ?

The COURT. I think you did, though I did not believe you understood it.

The WITNESS. I did not understand it. I mean to be understood as saying that no such proposition whatever was entertained. No names were taken or given ; that is, I gave no names whatever.

Q. You said you took four names?—A. I said he gave me the names.

Q. And you said you took them?—A. I did not say I took them, but I wrote them down. Perhaps there were more than four names.

Q. The question is, was he——

The COURT. [Interposing.] The whole thing has been gone over, and I only put that one question to him because I thought he did not understand it.

Mr. INGERSOLL. I want the court to put it so that we will understand whether that is true or not. He stated once that it was not true, and now he says that it is true that he made a proposition that he should challenge the four men that Mr. Blackmar would suggest.

The WITNESS. I cannot deny that. I cannot say that that was untrue.

Q. So you do not know now whether his proposition was that you were to furnish the names, or that he would furnish the names ?

The WITNESS. That Mr. Rerdell was to furnish the names ?

Q. Were you to furnish them, or was he to furnish them?—A. I certainly did not furnish them.

Q. Were you, or was he?—A. I cannot say.

By the COURT :

Q. What was his proposition to you?—A. To challenge four jurors.

By Mr. INGERSOLL :

Q. That you would suggest, or that he would suggest?—A. That was not entered into at all.

Q. Sir?—A. That was not stated. He came to me and said he was going to challenge four jurors. That is the way he said it.

Q. And that is all he said?—A. No; it was not all he said, but I cannot remember what else he said. That was the proposition.

Q. Were those four jurors to be challenged in the interest of the Government, or in the interest of the defendants?—A. In the interest of the Government, as I supposed.

Q. Were they to be suggested by the Government?—A. No. He made the list right on the spot, right then, and that is the list that he said he intended to challenge.

The COURT. That will do. Now, we have gone over the whole matter.

Q. I want to know whether he said the men whose names were on that list given to you were friendly to the defense, or to the prosecution?—A. Nothing was said about that.

The COURT. [To the witness.] That will do, sir.

Mr. INGERSOLL. Will the court allow us to call Mr. Boone?

The COURT. No.

Mr. DAVIDGE. We have laid the foundation for the introduction of the evidence of Mr. Boone.

The COURT. The court is not going to open this whole trial; I do not know where it would run, if that was done.

Mr. DAVIDGE. He would be very explicit, and, as I think, would throw a great deal of light upon the subject.

The COURT. What he would say might be explicit or it might not be, and it might be credible or it might not be.

Mr. INGERSOLL. He is a Government witness.

The COURT. Yes.

Mr. DAVIDGE. This is his *imprimatur*, and he must be credited, I suppose.

The COURT. I am not going any further.

Mr. INGERSOLL. Will the court allow us to ask S. W. Dorsey about the conversation?

The COURT. No.

Mr. INGERSOLL. Well, we except.

The COURT. [To Mr. Wilson.] We will not charge you with this hour.

The reason I decline to allow these other witnesses to be called is this: This witness was called out of time and out of place by consent of counsel, and he could not be examined beyond the reach or consent of counsel.

Mr. DAVIDGE. They have not objected to the calling of Mr. Boone.

The COURT. They gave their consent to Mr. Blackmar.

Mr. DAVIDGE. They have not objected to Mr. Boone yet, or to Mr. Dorsey.

The COURT. It does not need an objection, and I cannot hear anything more. You can go on, Mr. Wilson. I will not open this matter any further. I did not suppose it would take ten minutes.

Mr. DAVIDGE. Nor I.

The COURT. It has taken an hour.

Mr. DAVIDGE. I supposed the whole thing was reopened in the interest of the administration of justice.

The COURT. So it is.

Mr. DAVIDGE. I did not think it depended in any degree upon either side. It was a flagitious, malicious interference with the administration of justice which has been brought to the knowledge of your honor, and your honor very properly, in my judgment, determined that a

matter of that sort ought to be cleared up at once. Hence, I could not understand, pending the examination, the ruling of your honor touching examination-in-chief or cross-examination. I never regarded a matter of this sort, involving the dignity of the court, as subjected to the ordinary rules of evidence, where a witness is put upon the stand by either one side or the other. I have regarded this man as a witness called by the court, as you might call anybody to testify about a matter of this sort.

The COURT. This witness was not called by the court.

Mr. DAVIDGE. Not in a strictly technical sense, and yet the court deemed it proper to admit the testimony of this witness, in view of the scandalous and infamous character of the transaction. Now, I say that I cannot perceive what the consent of the parties has to do with the matter. Suppose we could put Mr. Boone upon the stand to state what was said yesterday, what was said over and over again in the past. Suppose we put upon the stand S. W. Dorsey, and he testified as to what was yesterday represented to him; will your honor decide that that is not pertinent in a matter of this sort, affecting the dignity of this court and the administration of justice? For I do not put it upon the narrow ground of parties at all.

The COURT. I cannot at all sympathize with this declamation of the most violent kind which I have listened to yesterday and to-day, charging Government officers with entering into a combination with Rerdell for the purpose of violating the jury law and obtaining improper members of the jury. Rerdell was examined on this subject, and an interpretation was given yesterday by Mr. Wilson to what Rerdell said that produced astonishment in my mind, because in the course of the testimony I was not conscious that any such conclusion could be reached from Rerdell's testimony. But when Mr. Wilson put the construction upon the testimony in regard to that transaction which he did yesterday, and charged corruption upon the part of the agents of the Government in seducing Rerdell—

Mr. DAVIDGE. [Interposing.] Not seducing him, your honor.

The COURT. He was seduced before.

Mr. DAVIDGE. His virginity disappeared some time ago.

The COURT. I say that I was astonished at the suggestion of this attempt upon the sacredness of the jury gotten up between a Government officer on one side and Rerdell on the other, and I called for the evidence upon the subject. The evidence was read, and so far as it appeared, after reading the evidence, I came to the conclusion that it was a suggestion of Rerdell's received in silence by Mr. Blackmar. I thought probably that Mr. Blackmar had not done his whole duty, according to Rerdell's testimony, in not denouncing it at the time. But on the face of that evidence I did not see any foundation for the indignation against the course of the Government which has been expressed by counsel, and after reflecting upon the subject during the night I thought it possible, and I thought it most likely, that I had done injustice to Mr. Blackmar in suggesting that he was in fault as well as Rerdell. There was no question about Rerdell on either side. But I thought probably the slight censure which I expressed yesterday with regard to Mr. Blackmar was undeserved, and I did not wish him to lie under that any longer than was necessary, and for that reason I wished to make the correction which I suggested this morning. That correction was merely that I thought I had probably uttered a censure yesterday in regard to Mr. Blackmar which was not deserved. Then it was proposed upon your side to call Mr. Blackmar himself on this subject. I should

not have allowed Mr. Blackmar to be called without the consent of the other side. Mr. Ker then rose and said that on his side he was willing to consent that Mr. Blackmar should be examined out of time, out of place, in this irregular way, in regard to this particular point as to whether he had suggested any such scheme as that to Rerdell, or had entertained it, or whether counsel had entertained it after it was suggested. That was the limit of the inquiry and the limit of the consent. Mr. Blackmar's tale has been told, and now you propose to call other witnesses to contradict him in regard to questions which he has answered on cross-examination, and touching his credibility. I have not heard and I did not hear any consent on the part of Government counsel to go further into the inquiry than they have already done.

Mr. DAVIDGE. They have not refused.

The COURT. I know; but it requires positive consent to go further in this irregular way.

Mr. DAVIDGE. Will your honor put the question whether they do consent? For this further examination will take but little time, and it really appears to me that this matter is of the greatest importance, and ought to be cleared up.

The COURT. I do not think it is of any importance myself, or very little, because if an agent of the Government should so violate his duty not only to the Government, but to the administration of justice, as to enter into an arrangement of this kind, I do not think that the case before the court ought to be damaged or prejudiced by the misconduct of such an agent. The administration of justice would be clogged and embarrassed, and, in fact, even overthrown, if agents employed by the Government were to bind the Government by their own misconduct. The Government has to employ agents, and so long as those agents act within the sphere of their duties, the Government will be bound by them. But if they enter into outside operations—as in the case of the Fall business, and other things of that kind that are notorious in this community—those things drawn into the trial ought not to disturb the regular course of the trial.

Mr. DAVIDGE. I did not mean to assert that the Government is bound, but that the spirit of the Government prosecution is illustrated by the conduct of the Government agents.

The COURT. The jury are not bound to try the spirit of the prosecution.

Mr. DAVIDGE. But it is a fact. The spirit of the Government is not unlike the spirit of a man. All that I ask is whether your honor will inquire of the other side whether they will allow the evidence of Boone to be given on that subject at this time.

The COURT. I do not think I would admit it if they would consent, but I will ask them.

Mr. KER. Your honor, I will say that so far as the Government is concerned, we do not ask anything. We have no offer to make at all. I thought it was a judicial inquiry, to which I readily assented, so far as Mr. Blackmar is concerned, and if your honor thinks it ought to go further I am perfectly willing. But what good would it do to indulge the other side by allowing Boone to be called to contradict Mr. Blackmar? It would amount to nothing. Rerdell had been making offers to the Government which had been regularly rejected, and, in order to "show his good faith," as he said, he made the proposition to Mr. Blackmar in regard to challenging the jurors. Mr. Blackmar has nothing to do with the case. He has had charge of the records. According to his testimony, he reported Mr. Rerdell's proposition to Mr. Merrick, and it was

instantaneously rejected. What good would it do to go any further? Still, if your honor thinks proper to go farther, I am perfectly willing.

The COURT. I decidedly say no.

Mr. DAVIDGE. That ends it.

Mr. WILSON. I suppose I am the only one permitted to go on. The jury will not charge this time up to me.

Mr. DAVIDGE. It has occupied an hour and a quarter. These judicial inquiries always take longer than any other.

The COURT. They do, I believe.

Mr. WILSON. [Resuming.] May it please your honor, at the adjournment last evening I was about to consider the construction of section 5440 of the Revised Statutes, or the act of May 17, 1879, which is practically the same thing. I know, if your honor please, that that provision of the law has been the subject of a great deal of discussion, and not only in this court, but it has likewise been the subject of discussion and serious controversy in other courts. And up to about the time the testimony closed in this case, none of us had had the benefit of any decision by the Supreme Court of the United States in respect of this statute. I find, as I say, that here is not the first place where lawyers, and even judges, have differed in respect of this law, because it appears now that two distinguished judges of the United States courts, being unable to agree about this thing, certified the case, involving this very statute, to the Supreme Court of the United States. They certified it because they could not agree, as some of us have not been able to agree, as to the true construction of that law. And within the past month the Supreme Court of the United States has passed upon and settled something in respect to this law, and, to the extent to which that court has gone, that decision is now authoritative and the law is settled.

The COURT. As to what point?

Mr. WILSON. I was going to read to your honor the decision, but first let me state a little in regard to this case. I refer to the case of the United States against James H. Britton *et al.*, that came from the eastern district of Missouri.

The COURT. In order that I may comprehend your authority I want to understand the point you make in this case about that law.

Mr. WILSON. I make this point, if your honor please: I was discussing yesterday the point that conspiracy is the crime alleged.

The COURT. Undoubtedly it is.

Mr. WILSON. That the conspiracy is the offense for which these parties are to be punished, if it all. I was careful to say yesterday that this statute had two branches to it.

The COURT. Is that section 5440 or the later statute?

Mr. WILSON. Either of them; they are precisely the same.

Mr. INGERSOLL. They are precisely alike except as to punishment.

The COURT. Yes; I know.

Mr. WILSON. I do not care which you take. It has two branches to it:

If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purposes, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty, &c.

Now my point is, first, that we have no common-law offenses in this country.

The COURT. In the District of Columbia?

Mr. WILSON. I thought that had been settled by this court.

The COURT. No common-law offenses in the District?

Mr. HENKLE. Against the United States.

Mr. WILSON. Against the United States.

The COURT. In this District?

Mr. WILSON. In this District.

The COURT. I have never agreed with you in that.

Mr. DAVIDGE. Anyway, this indictment is under the statute.

The COURT. Undoubtedly this indictment is under the statute. I have ruled that. The counsel for the Government at the beginning had some doubts. I remember very well that at the former trial that question came up, and Mr. Bliss declined to say whether he stood upon the statute or upon the common law, or had one foot upon the common law and the other upon the statute; and I never had an answer from him exactly as to that. But the court was of the opinion that this was an indictment under the statute.

Mr. INGERSOLL. That is sufficient for our purpose.

Mr. WILSON. That is sufficient for the purposes of my argument. But I go a step further, if your honor please: I say that whenever the Congress of the United States legislates upon a particular subject they exhaust that subject, and that the only offense there can be is such an offense as is designated by that legislation.

The COURT. You may take it for granted that the court is going to hold this indictment under that statute.

Mr. WILSON. Section 5440?

The COURT. Or the other; it makes no difference to me which one, because they are the same except as to punishment. I am inclined to think that the later statute, of May 17, 1879, is the one under which we are acting.

Mr. DAVIDGE. Yes; I understood your honor to rule that.

Mr. WILSON. I think there cannot be any question about that.

The COURT. I think I ruled that in the case, and I think you may assume that that will continue to be the ruling of the court.

Mr. WILSON. I am glad to have that intimation from the court that we are proceeding under the statute of May 17, 1879. What does that statute provide, your honor? It provides that if two or more persons shall conspire to commit an offense against the United States, and do an act in pursuance of that, or if two or more persons shall conspire to commit a fraud against the United States, they shall be punished thus and so. Now, my point is this—and this case that I have referred to settles that—I do not know whether your honor has ever seen it or not—the Supreme Court say that it must be some crime which is designated by law as a crime; and although in this very case the indictment charged in so many words that the parties had conspired to violate a particular section of the statute which created a crime, to wit, the willful misapplication of the moneys of a national bank; and the statute provided that the willful misapplication of moneys of a national bank was a crime; the Supreme Court say to the gentlemen who made that indictment, "That will not do; you must set out the means by which that misapplication was to be accomplished; and if those means do not constitute the crime defined by that section prohibiting misapplication, then your indictment is bad." Then that court review the character of the means that were set out in this indictment, and say that those means, if they had done everything set out, would not constitute that offense, and therefore that indictment is bad.

The COURT. Allow me to suggest that you postpone the argument upon that point until the argument upon the facts is closed, when I

will pass upon it, and in the mean time I will have an opportunity to examine this decision.

Mr. WILSON. That is entirely satisfactory to me, and if your honor will allow me I will pass up these papers.

The COURT. I should be glad to see them.

Mr. WILSON. There are three cases here, all of which are upon the same statute. You will see that the case No. 407, and the case I have just alluded to are very intimately connected. The cases are of exceeding importance, and I rose, if your honor please, before the argument began at all, to bring your honor's attention to it, but was interrupted by what happened at the time. I thought then it ought to be presented.

The COURT. If rightly presented it may rule this case.

Mr. HENKLE. That would save a good deal of argument.

Mr. WILSON. That is the very reason why I wanted to present it at the beginning, but there were objections interposed and I was prevented from doing it. I thought then that I would bring it to your honor's attention at the earliest opportunity, because I shall ultimately claim that that decision of the Supreme Court makes this indictment just so much waste paper, just so much valuable paper that has been spoiled by having this indictment written upon it.

Mr. DAVIDGE. A good deal of it, too.

Mr. WILSON. But I will postpone what I was going to say, and pass on with my argument to the jury. I am really very glad to be relieved from the discussion of that question this morning.

And now, gentlemen of the jury, I come back to the question I was discussing before you last evening at the adjournment: Did these parties agree together? Did they conspire? That is the great central question in this case. It is *the* question in this case, and I wish you just here distinctly to understand that I am not contending, nor shall I contend, that the Government must prove by distinct, direct testimony that the parties met together and entered into some formal agreement. Do not understand me as claiming more than I do claim. I want you to understand me as conceding that, while the Government is bound to prove this agreement, it is not bound to prove that these men gathered together around a table and came to a formal, distinct agreement. I am not contending that they are bound to prove by direct testimony that somebody heard them reach this agreement while they were sitting about that table. I am conceding that they may prove this great central and only issue in this case by circumstantial evidence, precisely as you may prove any other fact alleged against a party by circumstantial testimony.

In the nature of things, gentlemen, direct, positive proof of such an agreement is scarcely possible. But in this case, if such an agreement was ever entered into, it was possible. It was possible in this case to prove it directly. Why? Because the Government has made use, as a witness, of one of the very men who, it alleges, entered into this conspiracy with the men on trial. If at any time, in any place, these men ever agreed to do this thing, that man Rerdell could have proved it before you directly. He has come here before you, gentlemen of the jury, in the presence of this court and withdrawn his plea of not guilty, and formally entered his plea of guilty as charged in this indictment. Gentlemen of the jury, either that plea is a lie, or Rerdell is perjured before you. One or the other of those things is inevitably true. And why? He has said before this court, "I am guilty of this offense." And yet he comes here, placing himself upon that witness-stand in the

interest of the Government, and he proves, if you believe what he says, that he is not guilty of this offense.

I always want to do a kind thing and a just thing, if I can, to every man, no matter how mean and wicked he may be. That is about all the religion I have, if I have any. I think it is a pretty good religion for this world, whether it will do any good in the world to come or not. But I am going to take some chances on that, and therefore, gentlemen of the jury, I am going to stop right here to do a good thing for this man Rerdell, who has, in every way that he could, by devilish and wicked devices, sought to injure my client. Notwithstanding that, I am going to do him a good turn, if I can. Now, look at this, gentlemen. What has he testified before you, notwithstanding this plea? He has said to you that he was first sent out by Stephen W. Dorsey to assist John W. Dorsey in putting service on these routes; that he had no interest in them in the world except to do a kindly act to Stephen W. Dorsey, who had done many kindly acts to him.

Then what? Why, after these parties separated, Rerdell, holding an office down here under the District government, Stephen W. Dorsey employed as his agent and confidential man to attend to this business for him, and he has told you over and over again, that in all his relations to this case he had nothing to do with it except as a confidential agent and clerk of Stephen W. Dorsey, upon a salary; and that when any paper was to be drawn, any blank was to be filled up, any alteration in a paper was to be made, he was simply the right hand of Stephen W. Dorsey to do that thing at his request. Now, look all through this case, gentlemen of the jury, all through his own declarations as to his relations to this case, and what position has Rerdell occupied in relation to it except that he was the agent, the clerk of Stephen W. Dorsey, simply carrying out the work or doing the work according to the directions of his employer, getting his salary month by month, but never getting a farthing of any of the proceeds of these contracts? Do I overstate it, gentlemen? Do I understate it? Have I not stated it exactly as it is? And I say, if that is true, this man is no more a conspirator than I am; no more deserving punishment than I am; no more than Kellogg or any other of the men who wrote papers and acted as private secretaries to Stephen W. Dorsey.

And yet the fact that this man has pleaded guilty in this case, in the face of these facts, is paraded and held up before this jury for the purpose of persuading this jury to find a verdict against these other defendants. Now, I say if there had been a conspiracy such as these gentlemen talk about, they undertook to prove it by Rerdell, but they have not done it, gentlemen of the jury. But I do not say they are bound to do it. I do not even say they are bound to accept his testimony proving himself not guilty. They are not bound to accept that testimony, and they are not willing to accept that testimony.

I care nothing for the question whether they could or could not have proved it by direct and positive testimony. You will remember that I am conceding, gentlemen, that they have a right to prove this agreement by evidence circumstantial in its character, and that they are not bound to prove a formal agreement by direct testimony. They may prove it by circumstances. And, as all the writers say, in the nature of things it must be proved by circumstantial evidence.

We have, therefore, to consider whether or not the proofs that have been adduced by the Government in this case are sufficient to show that they did thus confederate and agree together. They may prove it, I repeat, by circumstantial testimony. But all the books say and all the

courts say that whenever the Government undertakes to prove any case by circumstantial evidence, every circumstance must be proved beyond a reasonable doubt. And the circumstances, when they are all gathered together, and linked one with another, must make an unbroken chain, leading the mind to a conclusion beyond a reasonable doubt, and to the exclusion of any and every other reasonable hypothesis, that the agreement was entered into or the understanding was reached which is charged in the indictment. A distinguished judge, Judge Dillon, said (I read from 3 Dillon, page 621):

The evidence must be such as to exclude every reasonable hypothesis but that of his guilt of the offense imputed to him; or, in other words, the facts proved must all be consistent with and point to his guilt not *only*, but they must be inconsistent with his innocence. If the evidence can be reconciled either with the theory of innocence or of guilt, the law requires the jury to give the accused the benefit of the doubt and to adopt the former. The burden of proof does not shift in criminal cases. It is on the prosecution throughout to establish the defendant's guilt by the evidence, and in criminal cases the defendant, not being permitted to testify, cannot be called upon to explain or produce any proof until the prosecution, by the evidence it actually produces, establishes the defendant's guilt beyond a reasonable doubt.

I read you that, gentlemen of the jury, for the purpose of showing to you just what the rule of law is in respect of this matter of proving a man guilty by circumstantial testimony. I think in a few words I can show you something of the philosophy of that law. I want to impress this upon your mind, for it has much to do with what I shall say to you hereafter. A man may be environed by a thousand circumstances. A crime has been committed. The circumstances may point towards him as the party who is guilty of that crime. But suppose that these circumstances are all entirely consistent with his innocence, the question is, are you to adopt the theory that he is guilty because they point to him as guilty, or are you to adopt the other theory that he is innocent, because they are entirely consistent with and point to his innocence. The law is a law in the interests of justice, in the interests of the protection of the citizen against unwarranted punishment for crime. It is simply this: That if when you have gathered all these circumstances together, put them together, linked them together, they are consistent with his innocence, you are then bound to find that he is innocent. They may raise suspicions in his mind. Yet if they are consistent with his innocence you are bound to adopt that idea. In order to show that the defendants are guilty of this offense, in order to prove that they did conspire together to do this thing, they must produce to you and all of you evidence that excludes every reasonable hypothesis except that a party is guilty. Now, if they point to guilt and guilt alone, and there can be no reasonable hypothesis other than guilt, then that is sufficient in the eye of the law to warrant a jury in finding a verdict of guilty against a defendant.

I do not believe, gentlemen of the jury, that there will be any serious dispute over the soundness of the proposition which I have just attempted to present to you. Therefore I will presently proceed to examine this case somewhat in detail for the purpose of seeing whether or not it is sufficient to warrant you in finding a verdict against these defendants. The defendants other than General Brady have counsel of their own who are far more capable of discussing the features of the case applicable to them than I am. I will not presume to deal with the part of the case that particularly belongs to them further than as it may be connected with that which it is especially my duty to consider. Now, gentlemen, I ask you to look over the entire field of this case from horizon to horizon, to look it through and through, and to go into every highway

and byway of it. I ask you to look into every room and closet and crack and cranny, from cellar to garret of this whole structure, and see if you can find a single solitary act done by General Brady except that he made certain official orders in his capacity as Second Assistant Postmaster-General. Turn it over in your minds now and see if you can find one act. You cannot find a single act; not one.

Now, mark you, gentlemen, they are trying to prove this conspiracy by circumstances. They are trying to prove that my client was in this conspiracy by circumstances. In all the range of circumstances that they have brought to your mind, can you find a thing done by him that was not an official order made by him in the discharge of his duties as Second Assistant Postmaster-General of the United States? Not a single one. In a moment I shall have occasion to call your attention to an authority or two, preliminary to which I want to make this proposition: that no one man can confess another man into a conspiracy. No man out on the street can, by saying that you were in a conspiracy, put you into that conspiracy. No man, in New York or somewhere else, by doing something there, can make you a party to a conspiracy. The agreement of somebody else will not answer the purpose. It must be your agreement. Nobody can make that agreement for you. If the law were otherwise, any man could be drawn into crime, convicted by a jury and lodged in the penitentiary. The law is nothing but a little common sense. It is very much befogged oftentimes for want of common sense, but it is nothing but a little common sense. Your common sense and the common sense of each one of you, gentlemen, teaches you that no man can make you responsible for a crime. He cannot confess you to be responsible for a crime. It is only your own acts, your own doings, your own confessions, that can bind you in the meshes of the law.

Now, remember that they are trying to prove a conspiracy against these defendants. They do not pretend to have proved it directly. Oh, no. They say they cannot do that. They do not even assume to have proved it by Rerdell. They propose to prove it by circumstances, and these circumstances, so far as my client is concerned, are the official orders made by him. What are these official orders, gentlemen of the jury, of which the Government complains as against my client, and against all these defendants, and which are relied upon, so far as my client is concerned, to prove this conspiracy against him as well as them.

Let me enumerate:

1st. They say that he made certain orders for the increase of service on these nineteen routes when such increase was not needed, and he knew that it was not needed. There are three points for consideration as to that class of orders: First, that it was not needed; second, that he knew it was not needed; and third, that he made the order and made it fraudulently for his own gain in connection with the other defendants. That is one class. Then there is another class.

2d. That he made orders for the expedition of service on these routes when such expedition was not needed, and he knew that it was not needed. There are three elements also here: First, that it was not needed; second, that he knew it was not needed; and third, that he made the orders and made them, as a matter of course, fraudulently knowing them not to be needed. There are two points. Now, the next:

3d. That he made orders placing post-offices on these routes, and then

gave to the contractors pay for supplying those post-offices with the mail.

4th. That he made orders granting additional pay for increased distance by reason of these new post-offices embraced on these routes.

5th. That he made orders granting a month's extra pay where the service was discontinued or dispensed with.

6th. That he made orders fixing the schedule time on routes, and not adjusting the running of the mail on those routes with other routes with which they were connected.

7th. That he made orders granting pay for expedition in excess of 50 per cent. of the original letting price after the passage of the act of 1880.

8th. That he made orders granting increase of pay prior to the orders for increase of service. That is what they call retroactive orders.

9th. I will mention for convenience that it is imputed as an indication of conspiracy on his part that he omitted, when requested to do so, to increase the running time on a certain route. That, you will observe, is an averment of an act of commission, but they aver that he omitted or refused to do a certain thing that was requested, and that is brought here as an indication that he was engaged in the conspiracy.

At this point (1 p. m.) the court took its usual recess.

AFTER RECESS.

Mr. WILSON. [Resuming.] Gentlemen, I said to you before recess, in substance, that whenever the proof relied upon is consistent with innocence it cannot avail to convict. In that connection I desire to consider these alleged orders of General Brady, and see whether they are consistent with innocence of this charge. If I can demonstrate to you, as I think I can, that they are, then they will cut no figure in this case so far as he is concerned, or so far as any defendant in this case is concerned, and the Government will have to look elsewhere than to these orders to satisfy you that he or they conspired. I desire to repeat, and I trust you will bear it in mind, that you cannot prove him or any of these parties guilty of a conspiracy by what somebody else may have said or done. After the conspiracy is established you may consider what is done by one to further the object as against every other, but not until then; and that for the reasons which I stated before recess. In that connection I want to read a single paragraph from the case of *The United States against Goldsborough, 7 Bissell*, page 188:

If a conspiracy—

Says this learned judge—

be shown to exist the question then follows, were the defendants on trial, or either of them, connected with that conspiracy as parties thereto. To establish the connection of either of the defendants therewith, such connection must be shown by facts or circumstances independent of the declarations of others, or by his own acts, conduct, or declarations, and until this fact is established he is not to be bound by the declarations or statements of others.

Now, I will proceed, gentlemen, to consider these various orders that were made by General Brady which have been introduced in evidence and commented upon by counsel for the Government during the progress of this trial as being evidence tending to prove a conspiracy. It is necessary in order to make myself entirely understood, and I wish in

justice to you to read two or three provisions of the statute, and also some regulations that have been commented upon, in order that you may have them in your mind. I read first section 3965 of the Revised Statutes :

The Postmaster-General shall provide for carrying the mail on all the post-roads established by law as often as he, having due regard to productiveness and other circumstances, may think proper.

I want to say right here that Congress establishes these postal routes. The department has nothing to do with them. Whenever Congress sees fit in its wisdom to establish a post route it establishes it, and the executive department of the Government has nothing to do with it, and no control over it. That is a matter that belongs to the legislative branch of the Government. I mention this right in the present connection, so that whenever your minds recur in the progress of this case to the fact that here was a mail route running over a mountain or through a wilderness, it was not made to run over that mountain or through that wilderness by the action of the Post-Office Department, but Congress, having the supreme legislative power in this Government, strung it across the top of the mountain or planted it in the wilderness.

I will pause here just long enough to say that the regulations of the Post-Office Department are not made by the Second Assistant Postmaster-General. They are made by the Postmaster-General, and they are made by him because Congress has authorized him by law to make them, and they become, by operation of the law, law themselves. In other words Congress has authorized the Postmaster-General by a statute to make regulations for the government of that department, and then has provided that those regulations thus made shall have the force of law. During the progress of this case you have had this presented to you, and if some person who never had looked into the subject at all had listened to what has transpired in this case, such person would have supposed that this matter of increase and expedition of service was a new thing that had been devised and put into operation for the express purpose of forwarding a scheme to defraud the Government of the United States. Section 3960 of the Revised Statutes, which is an old statute brought down in the revision, provides as follows :

Compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service, and when any such additional service is ordered, the sum to be allowed therefor shall be expressed in the order, and entered upon the books of the department; and no compensation shall be paid for additional regular service rendered before the issuing of such order.

Now you see that that bears upon two or three distinct features in this case. First, it provides that where the service is increased or additional service is provided for, the compensation shall not be in excess of the exact proportion which the original compensation bears to the original service. They say that Brady violated that provision of the statute. It further provides :

No compensation shall be paid for additional regular service rendered before the issuing of such order.

They say that he violated that provision, in that he made retroactive orders. I am particular, gentlemen, to bring your attention to these provisions of the law, because presently I propose to take this case as the Government has presented it and see whether there has been a single instance of violation of these provisions of the statute. I will now read to you section 3961 of the Revised Statutes :

No extra allowance shall be made for any increase of expedition in carrying the mail, unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

Now, you see from these two sections of the statute, gentlemen, that increase of service, that is to say, mere multiplication of trips, as for instance, where there is one trip a week extending it to two trips a week, or three trips a week, or six, or seven, as the case may be, is expressly provided for and contemplated by law. Then, you will observe that the law likewise provides for what is called increased celerity, or, as it has been expressed during this trial, for expedition of service. That is to say, Congress has said to the Postmaster-General, "If it so happens that a mail is being carried on too slow a schedule, if the contract that has been made for carrying the mail does not provide for carrying it as fast as the needs of the people require that it shall be carried, or as rapidly as the harmony of the postal system requires that that particular mail shall be carried, he may increase the speed of that route." It is expressly provided by law that he may increase that speed. It was necessary to have that authority rest in the Postmaster-General, or somewhere else than in Congress. Otherwise they would be running contracts for four years probably on some route that connected with some other route at too slow rate of speed and with no power to increase that rate to make it conform to the general wants of the system and to the general developments of the country. You will see, gentlemen, that if they were simply going to multiply the trips there would be no trouble about the compensation, because if the amount given for one trip a week was \$100, the amount for two trips a week would be \$200. That is the provision of the law in regard to increase of trips. But when you come to this other matter of increase of speed, then you have got a new element. It is the same kind of element that enters into every question involving the doing of something in a shorter space of time than it has been done heretofore. For instance, if you start to run a steamship across the ocean it will require so much power to make it go five miles an hour. But if you undertake to drive it ten miles an hour, can you do it for the same cost? Everybody knows you cannot. Suppose you were running a railroad train ten miles an hour and put up the rate of speed to forty miles an hour. Then the proportion of cost to the speed is very greatly increased. It does not simply multiply by the number of miles per hour that you put on, but every additional mile you put on per hour you more than in the same proportion enhance the cost of that transportation. That is a rule that is recognized in physics. Science recognizes it. Everybody knows it. Therefore, when you come to this feature of the case you have introduced an entirely different and exceedingly difficult problem to solve. How are you going to get at just exactly what is the additional compensation that ought to be paid when a party is required to increase the speed? When a horse can walk all day he can perhaps go twenty or twenty-five miles; but if you are going to put him to a five-mile gait how far can he travel? Any one of you knows how easily you can walk from here to Georgetown. You can saunter along, and when you get there you will not be fatigued. But start and run to Georgetown and see how soon you will be fatigued. Perchance you would give out by the time you got to Ninth street. The same principle prevails in regard to horse-flesh. The same principle prevails everywhere. And therefore Congress had to make a different provision in regard to this

matter of increase of speed, and they said what is thus written in the statute, which I have already read to you, that for the purpose of ascertaining you should take the number of men and animals necessary to carry it under the existing schedule or rate of speed, and you should take the number of men and animals that would be necessary on the proposed rate of speed, and that would furnish the ratio. Do you not see, gentlemen, what an element of uncertainty lies right there? I have no doubt some of you gentlemen have had something to do with horses, but whether you have or not, do you not see that here is an element of uncertainty? It is an element of calculation. It is a subject upon which, perhaps, no two men would exactly agree. Recollect now it is not the number of men and horses that were actually used. I will come to that after a while. We are now talking about the number of men and animals that are necessary to be used. Take any two men, and I do not care if they have spent their lives in dealing with horses, they will not agree as to how many are necessary. These contracts have to run for four years, winter and summer, hot and cold. We have to take into consideration the roads over which these mails are to be carried, and a thousand other considerations. There may not be a blacksmith shop from one end of the route to the other, and a man may have to put up his own blacksmith shop to shoe his horses. It is not like this settled country, where at every cross-road you will find a blacksmith shop where a cast shoe can be replaced, or where a broken vehicle can be repaired, or where a driver can stop and get dinner at any place within a mile, or where he can get a horse fed. That is not the kind of situation you have to deal with. We are dealing with a new country. Take two men or a dozen men, and let them sit down to make a calculation, each separately from the other, of how many men and horses would be necessary to carry the mail on the existing schedule. One will say, "I have got to do that for four years?" "Yes." "Will there be bad roads in that four years?" "Yes." "There will be storms. There is uncertainty about getting supplies and all these things. I think that so many will be necessary." Another man sitting right by will make the same calculation and say, "I think so many would be necessary," and that would differ very widely from the first calculation. But when you go into the prospective, the calculation becomes still more difficult. Why? Because you are going to increase the speed, and you have a larger element of calculation and a larger element of uncertainty. You will probably find no two men who would agree in respect to that. It is a matter of judgment; it is a matter of calculation, as to which possibly no two men would ever come to the same calculation. Surrounded with uncertainty as it is, you may not think that this rule of the law and the regulations is a wise rule. Nevertheless it is *the* rule that has been provided by law, and I want these learned gentlemen at some time or some place in this case to show where my client violated that rule that has been laid down for his conduct. They wanted him to adopt some other rule, to do some other thing. The law says, "This is the way to do this thing," and he did it in that way, and now these gentlemen have the unblushing effrontery to come here and say that because he did not do it in some other way he must be criminal. That is the logic of this argument of these learned gentleman. Let me read you a little further. Here come the regulations:

When it becomes necessary to increase the speed on any route, the contractor will be required to state under oath the number of men and horses required to perform the service according to contract schedule and the number required to perform it with the proposed increase of speed.

The COURT. Mr. Wilson, when was that regulation adopted? I see it is one of the regulations—

Mr. INGERSOLL. [Interposing.] The 1st day of July, 1879. Mr. Brady says there had been a general custom of that kind in the department, but that is the first time it was reduced to writing and formally promulgated.

The COURT. I see it is not contained in the regulations of 1873.

Mr. INGERSOLL. No, sir; I find it in the regulations of 1879.

Mr. WILSON. If I may be permitted to use it I have it here in the report of the Postmaster-General.

The COURT. I think Mr. Kirby was the witness who was examined in regard to these regulations.

Mr. WILSON. Yes.

The COURT. He said that the regulations of 1873 were regarded as in force until the promulgation of these regulations of 1879.

Mr. INGERSOLL. Yes, sir.

The COURT. But he said that possibly there might have been regulations adopted between the date of 1873 and the date of 1879.

Mr. INGERSOLL. And that he would look.

The COURT. He could not tell by looking at the book of 1879 at what exact time they had been adopted. This regulation No. 620 appears in the book of 1879 for the first time in the published regulations of the department, and it does not show on its face at what time it came into use in the department between June, 1873, and June, 1879.

Mr. INGERSOLL. There is so much testimony I may have forgotten, but my recollection now is that Mr. Kirby, if that was the name of the witness, said he could not find out without looking over a large number of pages, but that he would go and do so.

The COURT. And he never did.

Mr. INGERSOLL. We never heard of him any more, and possibly he did not find it.

The COURT. I know I felt a curiosity to learn at what particular time this regulation No. 620 was adopted in the department, because it was not in force in 1873.

Mr. INGERSOLL. It was not in force until July 1, 1879.

The COURT. It was not promulgated until that time, but may have been adopted between 1873 and 1879.

Mr. INGERSOLL. But there is no evidence to show.

The COURT. It was certainly acted upon in the department before the 1st of July, 1879.

Mr. WILSON. Perhaps I ought not to say it, but it is a regulation that was suggested by General Brady, because the thing was running at loose ends there in the department. Whether that is for or against us I am perfectly willing it should be known. That is the fact.

The COURT. General Brady suggested that regulation.

Mr. DAVIDGE. Himself, sir.

Mr. WILSON. Because there was a loose-jointed way of doing things in the department. I have here a statement of the manner in which they did it, and I will show it to the court.

The COURT. I think Kirby was the first or second witness produced on the part of the Government.

Mr. INGERSOLL. All we know is that the evidence shows it was adopted July 1, 1879. There is no other evidence on the subject.

Mr. WILSON. That is all.

The COURT. The evidence in the case shows it was in practical use in the department prior to that time.

Mr. WILSON. Oh, yes; there is no doubt about that.

Mr. INGERSOLL. That simply shows the promulgation of the order.

The COURT. It shows the promulgation, but does not show when it first came into use.

Mr. WILSON. Oh, no; because it was bound in this particular volume of regulations, that does not show when it went into operation. You recollect the witness said that from time to time the regulations were changed, and that each regulation went into effect from its adoption.

The COURT. Undoubtedly the regulation was adopted between 1873 and 1879. This regulation, of course, does not appear in the published regulations of 1873. It appears first in the published regulations of 1879. Its publication does not show the time when any particular regulation which had been adopted between these two dates went in fact into use.

Mr. INGERSOLL. The Government failed to prove when this regulation was adopted.

The COURT. They only proved that it was not in force in 1873, and that it was published as a regulation of the department in 1879.

Mr. INGERSOLL. That is it exactly.

The COURT. At what particular time between these periods this regulation, No. 620, was adopted by the department has not been shown.

Mr. INGERSOLL. No, sir.

The COURT. But it certainly was in use in the department prior to the time of the publication of these regulations in 1879.

Mr. DAVIDGE. I do not know about that, your honor.

The COURT. The evidence in this case shows it.

Mr. DAVIDGE. It shows they did file these affidavits, but there was no regulation requiring them to be filed and no practice, as I understand. Before that regulation was adopted I have been informed that the Second Assistant would sit down with the contractor and go over the matter and fix it up in that way between them. It was to get rid of that uncertain mode of doing business that it was formulated in the shape of a regulation.

The COURT. It might not have been in the form of a regulation prior to the publishing of the regulations of 1879, but it was in practical use in the department prior to that date. When it was first brought into use we are in the dark; we have no information.

Mr. DAVIDGE. I do not mean to deny that before that time contractors who wanted expedition might file affidavits. That might be. But I do deny that before the promulgation of the regulations the affidavit, if filed, had not the potency that the regulations attached to it afterwards.

Mr. WILSON. I will come back to this after a while, gentlemen, in another connection. I can do it just as well then as now, and I will therefore pass on. I will now read regulation 621:

The Postmaster-General may discontinue or curtail the service on any route, in whole or in part, in order to place on the route superior service, or whenever the public interests, in his judgment, shall require such discontinuance or curtailment for any other cause; he allowing—

Now mark this, because you will see that each one of these paragraphs that I am reading is very pertinent to the matters that we have in hand—

as full indemnity to contractor, one month's extra pay on the amount of service dispensed with—

Mark that. He has the right to curtail it at any time he pleases, but he shall allow to the contractor a month's extra pay for the amount of service dispensed with—

and a pro rata compensation for the amount of service retained and continued.

Please recollect that. Then the next regulation, No. 622, is as follows :

The Postmaster-General may change schedules of departures and arrivals in all cases, particularly to make them conform to connections with railroads, without increase of pay, provided the running time be not abridged. But an application for schedule change cannot be granted—

Mark it; *cannot be granted*—

1. Without the assent of the postmasters at the ends of the routes, except in case of manifest necessity.

2. Unless agreed to by the contractor, except in cases where the propriety of the change is clearly shown.

3. If more running time is asked than is given in the contract schedules.

Then it cannot be done. Now, gentlemen, as I have said, increase and expedition of the service is not a matter that originated with General Brady. It originated in the statute law of this Government. The idea of giving a contractor a month's extra pay did not originate with General Brady. That originated elsewhere. He had nothing to do with it. I told you on yesterday that the form of contract was prepared by the law officer of the Post-Office Department, a man especially selected to look after the legal affairs of the department, and having his office in that department. I told you yesterday that the contracts that were used during a particular contract period with which we are dealing were the same that had been in use by the Government for at least twenty years before General Brady came into the office of Second Assistant Postmaster-General. Now, we have three of these different contracts in evidence in this case. On page 4335 of the record you will find the contract which was in use between the years 1860 and 1870. Let me read you one of the provisions of that contract:

It is hereby stipulated and agreed, by the said contractors and their sureties, that the Postmaster-General may alter the contract, and alter the schedule, he allowing a pro rata increase of compensation within the restrictions imposed by law for the additional service required, or for the increased speed.

Will you mark that—

—if the employment of additional stock and carriers is rendered necessary.

Away back in 1860 you find this provision lodged in the contracts that were entered into between the Government and those who carried the mails:

But the contractors may, in case of increased expedition, relinquish the contract on timely notice, if they prefer it to the change; also, that the Postmaster-General may discontinue or curtail the service in whole or in part, in order to place on the route a greater degree of service—

As, for example, if a railroad runs over a star route he can stop the stage from carrying the mail and put it on the railroad, and the contractor cannot say nay—

or whenever the public interests in his judgment shall require such discontinuance or curtailment for any other cause; he allowing as a full indemnity to contractors one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the amount of service retained and continued.

Those are the stipulations of the contract, gentlemen, binding the contractor and binding the Government in respect of these very things that are complained of in this indictment as having been done by my client. I am not going to take your time, gentlemen, to read precisely the same provision as it occurs in the form of contract that was used from 1870 to 1880—a form of contract adopted, and “kept in stock,” to use the language of one of the witnesses. In 1870—four years or

more before my client came to be Second Assistant Postmaster-General—precisely the same provision is found in that contract adopted and used from 1870 to 1880. I have here likewise, gentlemen, the form of contract adopted in 1880 while my client was Second Assistant Postmaster-General, to be used from 1880 to 1890, prepared by the same law officer of the Government and containing precisely the same provisions. Now, if you will please bear that in mind, gentlemen, I will proceed to save your time as well as my own and your patience as well as my strength. I propose to group some of these complaints they have made against my client, and instead of taking them up one by one, and therefore having to travel over the very same ground repeatedly, I propose to take them up in their groups, and see if I cannot dispose of every one of them to your entire satisfaction. I want to see if I cannot demonstrate to the satisfaction of every gentleman on this jury that not one of all these orders, with a slight exception, to which I will refer, was a violation of the law or a departure from any regulation; but that every one of them was perfectly consistent with the law, and it was demanded of General Brady by the contract of these parties which had been entered into between them and the Government.

Take the matter of one month's extra pay. Let us look at that for a moment. I have shown to you that the contract stipulates that when service is dispensed with the contractor is by the contract and by the law entitled to a month's extra pay. In whose interest, gentlemen of the jury, was that regulation made, and in whose interest was that stipulation put in the contract? Was it in the interest of the contractor? No, gentlemen. It was in the interest of the Government, as I will show you. Let us see what the Government wanted to do. It wanted to avoid the danger of being held for damages if it dispensed with service. Let us take this case, and it is not an extreme case either. You remember as a part of the history of this country that there was a mail route established running from over just beyond the Mississippi River clear across to San Francisco, and it was put across there at a time when there was scarcely a hut between the Mississippi River or the Missouri River and San Francisco. The Mormons, it is true, were at Salt Lake City, but there were immense reaches of alkali plains where nobody lived. There were the Rocky Mountains and the Sierra Nevadas to be traversed. Take a route like that. The Government enters into a contract with a man to carry the mail for all those thousands of miles. It requires a vast horde of horses, if I may use such an expression with reference to horses. It requires an army of men. It requires men to take care of these men and protect them, for they traveled through a country inhabited by savages. A man must make a great many preparations in a case of that kind. He must provide himself with horses and with all the appliances to carry the mail, not for a month or for a year, but for four years. After going to all this enormous outlay for the purpose of carrying that mail, the Government comes to the conclusion that it is not needed, and they had better send it around by way of Cape Horn or by the Isthmus and get rid of this route and the expense of operating it, and so they say, acting upon the authority provided by law, "We will discontinue this service," and they have a right to do it. Just see how much damage the Government would lay itself liable to, if it cut that contract up by the roots and left that man with all of this outlay and this preparation and all this stock on his hands. You see the Government would be liable to be mulcted in very heavy damages if that thing was done. Therefore the Government stipulates in the con-

tract and says, "We will reserve to ourselves the right to discontinue this service any day that we please, but you shall not have the right to claim unlimited damages from us. We will settle this question of damages right here on this contract. We will give you one month's extra pay." Now, in the case that I have just put, you will see that that contract would be largely to the advantage of the Government, because the month's extra pay that the party would get would probably in no degree meet the actual loss of the party. Then, on the other hand, there may be a case where the amount of service dispensed with would be comparatively insignificant, and comparatively harmless to the contractor. There the month's extra pay would more than compensate him for the injury that was sustained. So it is a thing that works both ways. That provision is put in these contracts so that the question of damages shall never be open to controversy. They stipulate that "Whenever we dispense with any part of this service we will give you a month's extra pay for that part of the service we thus dispense with."

I need not elaborate that further.

Without going into the details of the particular cases to which they have referred, I invite you, gentlemen, to look into this testimony, and I invite these gentlemen, at the conclusion of this case, to look into this testimony and point out, if they can, a single case where General Brady ever granted a month's extra pay, excepting just such as was demanded by the contract. There is no such case. Why, they say that he granted a month's extra pay in respect of some place where the contractor had not performed the service, as for, example, not running to a post-office that had been put on a route. He was ordered to put it on, but, in point of fact, he did not do it. Have they brought to your attention a single case where he, having knowledge of that fact, granted a month's extra pay to a contractor who had not put the service on? It is an easy matter to bring a witness here three or four years afterwards, who was a mail-carrier, and have him swear that he did not ride to that post-office. That is the way they are trying to make out this case. In point of fact, there is no such case, except one, and there is not a scintilla, a syllable of evidence in this case to show that that fact ever came to the knowledge of the department until long after the matter had been settled and the money paid. He could not do anything else but grant this month's extra pay. It was impossible. The contract stipulated that it should be paid. There was a contract made in that form for the express purpose of protecting the Government against excessive damages, lawsuits, &c.

That is all I have to say about this month's extra pay business.

Now let us look at this matter of retroactive orders. These retroactive orders, they say, had relation to Pagosa Springs, Raton, Brighton, and Fitzalon. What do they say? They say that he made an order, for instance, to-day, to pay a man money from last July. They say that is a retroactive order, and all those I have mentioned are of that character. Each one of those was a case where a new post-office had been put on these several routes. The law is, and the regulation is, as I have just shown you, that whenever increase of service is required, then the contractor is to be paid pro rata. Take, for example, Pagosa Springs or Fitzalon, or any other of these places where a new post-office is established. I explained to you yesterday that the Second Assistant Postmaster-General does not make the new post-offices, but the First Assistant does that. In other words, he orders that the contractor, instead of going along the routes that were established at the time the advertisement was made, and when he took his contract, shall go out of his way to reach

this new office, and that increases the distance. Will you tell me, gentlemen of the jury, how it is possible for the Second Assistant to know how much the distance is increased by putting on that route? How should he find out? The First Assistant has made this post-office; he has to put it somewhere, and he puts it on this route as being the most contiguous to the new office. What is the practice of the department, gentlemen? As shown in the testimony in this case—for I am going to keep myself inside of this record—what is the practice in a case like that? It is the simplest thing in the world. As soon as he says to embrace this post-office on this route, then this corresponding clerk sends out what they call a distance circular to the postmaster at the head of the route. That postmaster is required to fill up that distance circular by stating how far it is to the next post-office; he then sends it to the next postmaster, who states upon it how far it is to the next one; it is then sent to the third postmaster, and he states how far it is to the next post-office; it is then sent to this new post-office, and the postmaster there states how far it is to that office and how far it is to where the route again unites with the original route; and so on until you come to the end. That distance circular comes into the Post-Office Department, showing the distance between all those post-offices, including the new one that has been placed upon the route. When that reaches the department it discloses the fact that there has been an increase of the length of that line. Now for that increased length, they make to the contractor a pro rata compensation. The order embracing the office on the route is made, we will say, on the 1st of July, and the contractor is notified immediately, and he puts on the service, we will say, on the 1st of July. Of course there will be a few days intervening in order to have the papers reach him, but we will say for convenience that he puts on the service on the 1st of July. Then this distance circular goes out, he all the time carrying the mail, you recollect, backward and forward, while this distance circular is traveling around among the post-offices to gather up the necessary information. After awhile, probably two or three months afterwards, it comes back to the Post-Office Department, showing what the increased distance is, and then the Second Assistant Postmaster-General makes his order, saying, "Pay this man from the day that he commenced this service."

And yet, because orders were made to pay contractors for performing service that they were ordered to perform, these gentlemen come here and say that they are retroactive orders and violations of law. They are not, in any sense, retroactive orders. The order was made to supply this post-office with this service, and the contractor goes on and performs that service, and just so soon as the department can find out what his pay is under the contract and under the law, they direct that he be paid for the service that he has thus rendered. And because my client was following the regular practice and custom of the department time out of mind these gentlemen come to you here and say that that is an indication of conspiracy and fraud.

On this branch of the case let us take the post-office you have heard so much about, Raton, and you will pardon me for coming back to Raton after awhile, in another connection, when I come to deal with the route itself. But for the purposes of my present point I want to see if I can clear this thing up as I go along. On page 1028 of this record you find a jacket, which they have put in. It is dated—

June 6, 1878. State, Colorado.

Then, down at the bottom of it:

Embrace Raton, next after Trinidad, from July 1, 1878, without change of distance or pay.

BRADY.

Now, there we stood. The service was put on, as the records show. That was Brady's order, to embrace it without change of distance or pay. On page 1031 comes the next thing in this order.

Mr. GREENE. (a juror). May I ask whether the order putting on Raton was made by the First Assistant Postmaster-General, or by the Second Assistant?

Mr. WILSON. The First Assistant simply creates the post-office. Then the Second Assistant Postmaster-General's Office has to supply it with mail. Now, the Second Assistant had determined how he would supply that office with mail, and he made an order to embrace it on this route (Trinidad to Madison) next after Trinidad.

Mr. GREENE. I understood a while ago that the First Assistant made the post-offices?

Mr. WILSON. Yes; that is right.

Mr. GREENE. He makes the post-offices, and the Second Assistant directs them to be put on the route; is that the idea?

Mr. WILSON. Yes, sir; that is it. The First Assistant says, "We will have a post-office right here," and having established that post-office, he gives notice to the Second Assistant's office, or to that of the Postmaster-General, as the case may be—we will say, for the purposes of the case, to the Second Assistant—saying, "I have made a post-office right here; now you supply it with mail." And when the First Assistant has done that his duty with that is ended. Then comes the duty of the Second Assistant. What is that? To supply it with mail. So, the First Assistant having made a post-office at Raton, the Second Assistant, on the 6th of June, 1878, directed, by an order, that the office be embraced on the route from Trinidad to Madison, next after Trinidad, and his order was "without change of distance or pay."

Now let us see what comes next: After that had been put on by Brady, on the 13th of November, 1878, this occurs (I read from the jacket on page 1031):

The office of Raton was embraced on this route from July 1, 1878, without change of distance or pay. It now appears from d. c. that the distance was actually increased twenty-three miles. Contractor now asks pro rata pay for increased distance.

Now, there is a sample case, where a post-office was put on a route. Brady ordered that to be done. He said to do that without change of distance or pay, and to put it on this route. Very well. Then the distance circular went out in the manner in which I have already indicated, and after a while, away down in November, it comes back. The other occurred in June. The distance circular comes back in November, and they find by that that the distance has been increased twenty-three miles. How do they find out that the distance was increased? Why, as I have already told you, by the certificates of the postmasters along the route. They state to the Department, "You have increased this distance twenty-three miles," and the distance circular shows that there was an actual increase of twenty-three miles. The contractor now asks pro rata pay for that increased distance. Was he not entitled to it under the law and under his contract? Had not the contract stipulated that if they increased the distance they would pay him pro rata? Certainly; and because Brady did not violate that contract, these gentlemen come here and say to you that that is an evidence of fraud. Was

there ever anything more absurd? And yet the absurdity of this does not stop there, gentlemen. Let me read you the order:

Modify order of June 6, 1878—]

That is the one Brady made—

No. 4215, so as to increase distance twenty-three miles, and contractor's pay \$172.75 per annum, being pro rata.

Who made that order? Brady? No, sir; it was made by French. Need I say anything more about that? It seems to me not. In the first place, Mr. French was justifiable in making that order for that pay, because, as I say, the contract not only authorized, but required it. But it is carrying the joke of this case a long way to seek to make Brady responsible for the order which was made by French.

Now, let us go a little further. Let us take Pagosa Springs. And here I am afraid I shall have to confess, gentlemen, that they have the advantage of us just a little. It is the only place in all this case where I have been able to find that they have a little the advantage of us, and I am not sure that they have here. Perhaps the apparent difficulty is caused by a 1 being printed for a 7. However that may be, I am going to take the record as printed, without referring to the original papers, for the purpose of this argument. Pagosa Springs was a post-office that was put on the Ojo Caliente route, as you remember. You will remember that my Brother Ingersoll, after the Government had exhausted itself and had not given you any very definite information in regard to this matter, took the trouble to go to the department and fish out a lot of records in respect of Pagosa Springs. But for the purposes of my argument I will confine myself to what the Government itself has shown in this case. The order in reference to Pagosa Springs was made on the 24th of April, 1879, and the recital in respect of that order on this jacket is this:

July 7, 1878, the office of Pagosa Springs was established on this route.

That is enough for us. My Brother Ingersoll need not have worn out his shoe-leather in going to hunt these things up, for the Government brought here the record evidence of the fact that on the 7th of July, 1878, Pagosa Springs was established on the Ojo Caliente route.

What further? The distance circular indicates that the distance was thereby increased twenty miles. That is to say, just the same process had been gone through as before. Pagosa Springs had been put on on the 7th of July, 1878. This distance circular came back, and it showed that the distance had been increased twenty miles. Now follows the order:

1. From July 1, 1878, allow contractor \$190.62 per annum additional pay, being pro rata, on twenty miles' increase in distance, caused by embracing Pagosa Springs next after Park View.

2. From July 1 to Dec. 31, 1878, allow subcontractor \$125 per annum additional pay, being pro rata.

So you see, gentlemen of the jury, this is one of those cases which they call retroactive; and you will remember, gentlemen—I will not stop to turn to the evidence—that we called back upon the witness-stand Jaramillo and Anthony Joseph, who carried the mail on that route, and showed by them that they did carry the mail to Pagosa Springs. We did that simply for the purpose of closing the mouths of this prosecution, so that they never could be able to say that we were paying for service that was not actually performed.

Mr. INGERSOLL. What page was that order on?

Mr. WILSON. 1152.

Mr. DAVIDGE. How much would it amount to in money for those six days?

Mr. WILSON. Now, Mr. Davidge, you can calculate that at your leisure; I have not time to do it.

Mr. DAVIDGE. Three dollars I make it.

Mr. WILSON. Pagosa Springs was put on the route on the 7th of July. After the distance circular came back the order was to pay from the 1st of July. They have got us there for those six days at the rate of \$190 a year. It does seem as though that was put back there six days before Pagosa Springs was put upon the route, and to that extent, as I said awhile ago, they have rather got us, to use a vulgar phrase. I hardly think, gentlemen of the jury, that you will believe that General Brady dated that back six days too far, for his proportion, as they say, of that six days' compensation. That is getting this *enormous* conspiracy down to proportions entirely too small. It would be an insult to your intelligence, gentlemen of the jury, to argue before you that General Brady was not moved to make that order six days too soon for the amount of money that would come out of it, according to the theory of the prosecution.

Then there is Fitzalon. This is on the route from Kearney to Kent. The jacket is on page 589, dated May 3, 1878:

From July 1, 1878, embrace Fitzalon next after Sweetwater.

That is signed by Brady. I must give Brady credit for all the good things he did in supplying these people with postal facilities, and I want him to have credit for that. The next order was made on the 24th of September:

Allow contractor \$112.24 per annum additional pro rata for 15 miles increase for Fitzalon, from July 1, 1878.

That is the time when it was put on. So that when they made the distance, as I have stated, then they made this allowance to the contractor for the service that he was required to perform.

That is all I shall have to say, gentlemen of the jury, in regard to these retroactive orders.

Now, we come to another class, and I am going to speak of them in a group. They say that Brady exceeded this 50 per cent. law. What is their point about that? They say that on the 7th of April, 1880, Congress passed an act making this provision:

That the Postmaster-General shall not hereafter have the power to expedite—

Mark it—

shall not have the power to expedite the service on any contract, either now existing or hereafter given, to a rate of pay exceeding 50 per centum upon the contract as originally let.

You see, gentlemen of the jury, that that statute is expressly confined to expedition of service and not increase of trips. By that statute Congress said, "If you expedite a route after the passage of this act you shall not allow for the expedition more than 50 per cent. of the price as the contract was originally let." The misfortune of these gentlemen, in respect of this class of cases, is that not a single case of expedition is brought to your knowledge after the passage of that act. There is none such in evidence.

How do they undertake to make this a violation of that law, gentlemen of the jury? They say that prior to the passage of that law contracts had been let and they had been expedited; as, for example,

here was a contract that was being run in one hundred hours, and, when it was perfectly lawful to do so and before this act was passed, that time was expedited to fifty hours. When it was expedited to fifty hours there was a contract existing between the Government and the contractor to carry the mail in fifty hours for a specified sum, and that was the condition of these contracts that they talk about when this law was passed. After the law was passed, as I have said, there was no expedition. All that was done after that was to increase the trips; that is to say, here was one trip a week in fifty hours. That is the condition into which the contract had come at the time of the passage of this law. It afterwards becomes necessary to make two trips a week, we will say, for the convenience of illustration. What does he do? He simply gives for the two trips just twice what was being paid for the one. He did not change the time of carrying the mail one whit. Now, how are you to say that that was a violation of this statute? And yet, gentlemen, these gentlemen parade it as such. Why, gentlemen, the theory of their argument must be this—and the absurdity of it is right upon its face: Here is a party carrying mail once a week in fifty hours at a certain price. They say now that he has got to put on an additional trip. I am assuming, for the purposes of the argument, that it is necessary to have an additional trip. What is to be the pay for that additional trip? Is it to be some different rate of pay from the other trip? Is he to be carrying one trip for \$1,000 per trip and the other trip for \$100? Is that the meaning of this law? Will anybody suppose that this law was intended to work out any such absurd results as that?

But I need not go into any minutiae about it. I say that the statute *in terms* says that if he expedites he shall not exceed 50 per centum of the price at the original letting. Now let them produce a case where he expedited one. None such exists, nor do they pretend that any such exists. And yet, by the way, these gentlemen have urged this thing upon you as being an indication of fraud upon the part of my client. My Brother Ker took it up and chewed it over; then he laid it aside, and came back and picked it up and chewed it over again and again. And after it had been thus handled for about seven days, my Brother Bliss comes in, and he takes up the same old "chaw," and chews it over again and again *ad nauseum*. And that is all there is of it, and there is nothing of it, gentlemen of the jury.

There is another class of orders, gentlemen. They say that in making orders Brady did not separate that which was for increase of trips from that which was for expedition, because, in the order it was not stated that so much was for trips and so much was for expedition; and consequently that must be a violation of law. They say that there was some purpose evidently to hide something, because in those orders they said it was less than pro rata. Now, there was a cat in that meal-tub; there was some scorpion in that grass; there was a fraud hidden away in that. Let us see how much there is in that. You know the law is that for increase of trips you simply multiply. If it is one trip now, and they are going to make it three, they multiply by three. If it is one trip at \$900, and they want to make it two trips, that would be \$1,800. That is very simple. There is no trouble about that part of it. Now, the \$1,800 with some other sums added to it has the expedition in it. They say we have not separated them. How long does it take you to separate a case of that kind? You know that the increase of trips is simply multiplication of the original sum by the number of trips, and the balance is expedition. It is a mere matter of mathematical calculation, a mere matter of subtraction. That boy over there

would tell you in two minutes how much the expedition would be. And yet, because that formality was not gone through with in the way of cypthering this out, which anybody could see at a glance, they say that that is an evidence of fraud.

There is one other thing in that connection that I want to bring to your attention. There is not a gentleman on this jury that does not know perfectly well that all these things are made up by the corresponding clerk and brought to the Second Assistant Postmaster-General for his signature; and if there is anybody who has committed an oversight in this matter, it is the corresponding clerk, who did not make that separation of these two items.

But is not this too trivial to talk about? Ought I to waste your time further about it? You can see yourselves that what I have said is all there is of it. And they find, I believe it is, two cases of that kind out of these nineteen routes. I will not take your time now, for I may have to refer to it hereafter, to speak further than I have already done as to this putting on of new post-offices and giving pay for the increased distance. I do not think I need to occupy your time further about that.

That leaves, gentlemen, of all these orders, the question of the propriety of those ordering increase and expedition. I had classified these orders, you will recollect, and I have taken up all of them except the orders themselves making increase and expedition, and I come now to consider those, because right in here lies a very great and important question. To those I now invite your attention. You will recollect that this indictment charges that Brady made these orders when they were not needed—the orders for increase of trips when the additional trips were not needed—the orders for the expedition of the service when the expedition was not needed—and that he knew that neither the trips nor the expedition ordered was needed.

I beg first to attract your attention to that which is of very great importance. General Brady was Second Assistant Postmaster-General. That is an office in one of the executive departments of the Government. According to the theory of this indictment that office devolved upon him the performance of certain duties. In the exercise of the functions of that office and in the discharge of the duties imposed upon him by law, according to the theory of this indictment, he had general charge of this mail service. When, for any cause, the question of an increase of trips upon any route arose, it was his duty to decide that question. If a question of increase of speed on any route was brought up the duty of deciding it resided with him. The law made him the judge as to whether increase or expedition should be given. In the nature of things this duty of increasing the service, either by multiplication of trips or by expediting, must rest upon some officer of the Government, and according to the theory of this indictment it rested upon him. Whenever, therefore, any question of that kind arose it was his duty to decide in respect of it. If a new post-office was created it became his duty to determine the manner in which that office should be supplied. If a railroad was constructed along a part of one of these routes it became his duty to determine as to putting the service upon the railroad, so far as constructed, to curtail the other service. If curtailed the contract left him no discretion; he must grant one month's extra pay.

Let us now see what is the logical result of all this. Here is an officer of the Government upon whom the law imposes these duties. He has this vast business to supervise. He has these questions which in the management of these affairs he must decide. Just as the judge

of a court, when cases are brought before him, is compelled to decide from time to time the questions that arise, so this officer in another department of the Government is compelled to decide from time to time, as the questions arise, these matters that are committed to him by the law. It would be a fearful position in which to place the judge of a court if you could, from his decision, draw an inference against him in a criminal prosecution. Now what I contend for in this case is simply this: that from the official acts or decisions of a judge who sits upon the bench you cannot draw an inference of criminality, nor can you from the official acts of an executive officer draw an inference of criminality against him; or, in other words, the proof in this case that General Brady made orders in the discharge of his duties as Second Assistant Postmaster-General, even though you may be of the opinion that his orders were not wise orders, amounts to nothing in a case such as this. You cannot sit in review of his judgments. It would be monstrous if an executive officer in the discharge of his duties, doing his duty as he thought it necessary that he should do it, should afterwards be condemned as a criminal because a jury of twelve men should come to the conclusion that his judgment in respect of these matters was not a sound one. Just think of it for a moment. An executive officer, one of these accounting officers in the Treasury Department, for example, or the Commissioner of Indian Affairs, or the Secretary of the Interior makes a decision in a given case, as they are making decisions in many cases every day of their official lives; then you turn about and say that that decision was wrong. Twelve men are put in the box to give their judgment as to whether it was a right or a wrong decision, and they conclude that it was wrong, and from that reach the result that the officer who made that decision had made it from some criminal or corrupt motive. Do you not see that such a proposition is absolutely monstrous, and that if it were permitted to prevail in this country not an executive officer from the President down would be safe for a moment. Every time that he made a decision he would be in peril of the penitentiary. I want to impress this upon your minds, for you will see, as I go along, that it is exceedingly important in this case—important not merely to my client but important to the administrative affairs of this Government.

And right here I might say another thing, gentlemen of the jury, it seems to me, with some profit. I talked to you a while ago about the mode of proving a conspiracy, and I am talking to you now about the effect of these orders as tending to prove a conspiracy. Now, what would you think of a case of this kind? Take one of these accounting officers in the Treasury. A man files a claim before him. The claimant goes out and gets a thousand false affidavits. He goes and gets somebody to personate somebody else and make an affidavit. He does a thousand things, and they all have the semblance of being exactly right, perfectly fair, all "straight as a string," to use the common phrase. They come before that officer, and he orders the payment of \$20,000 out of the Treasury upon the faith of them. Now, gentlemen of the jury, would you say, or would anybody say, that the fact that that official made that order, causing the payment of that money out of the Treasury, would justify an inference against him that he was part and parcel of a conspiracy to rob the Government? You see it will not do, gentlemen of the jury. That kind of logic will not do. The argument that I am making to you, and propose to make to you hereafter more particularly, is that these orders in and of themselves and by themselves prove nothing of this conspiracy, and that from them you cannot draw an inference of criminality.

Here is an executive officer now on trial before you, and you are asked to take his official decisions and to examine into those decisions, to say that you would not have decided as he decided, and that because you would not have decided as he decided that therefore his decision must have been a criminal act on his part. You see, gentlemen, that that will not do, but that the evidence in this case must go much beyond that. Now my proposition, I repeat it, is this, and I think you will see the plain common sense of it and the force of it when I state it; namely, that from the decisions of the Second Assistant Postmaster-General, even though you may conclude that his decisions were wrong, you cannot draw an inference of guilt, and the proof of such decision does not prove that he was engaged in a conspiracy such as is charged in this indictment, nor can you from the proof of such orders or decisions draw an inference that he was engaged in a conspiracy, nor are these official acts or orders of his circumstances tending to prove that he was engaged in a conspiracy.

Gentlemen, at this point as well as anywhere I may consider one of the features of this case greatly relied upon by the Government. Much has been said not merely in the opening statement of counsel for the Government, but during the long progress of this trial and during the arguments that have thus far been presented to you by the Government upon the testimony that has been adduced in respect of that provision of the law which directs the Postmaster-General in the matter of the carrying of the mails or placing service upon the routes to have due regard to productiveness "and other circumstances." You will remember, gentlemen, that the argument has been that he put on too much service; that he paid too much for it; that it did not produce as much as it cost; and because it did not produce as much as it cost it is an indication of fraud on the part of the officer who made the order by which that additional service was granted. You cannot have failed to observe, gentlemen, that the counsel for the Government have laid great stress upon that word "productiveness." Tables have been introduced here for the purpose of showing you the productiveness of those routes. They have, however, given but little consideration in the presentation of this case to the other word in that statute, to wit, "other circumstances."

Would the court just as lief adjourn at this point? It lacks but five minutes of the usual time.

The COURT. Really, this clock is about 10 minutes too fast. It wants a quarter of 4 now by my time, but if you are exhausted of course we will adjourn.

Mr. WILSON. My time is two minutes slower than this. I am not exhausted, but I would like to stop for to-day.

Mr. DAVIDGE. He is about beginning a new subject, and that will have to go over until to-morrow, at any rate.

Mr. WILSON. I would be glad to make up the time by commencing ten minutes earlier to-morrow morning.

Mr. INGERSOLL. I would prefer to have the clock set back in the morning.

The COURT. I suppose it ought to be made slow in the morning and fast in the afternoon.

Mr. INGERSOLL. Like Charles Lamb, when he came late in the morning he went away early in the afternoon, to make up for it.

Thereupon (at 3 o'clock and 56 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

FRIDAY, MAY 11, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. WILSON. [Resuming.] Gentlemen of the jury, at the adjournment last evening I had just commenced calling your attention to a feature of this case upon which the prosecution has laid very great stress, predicated upon a provision of the statute to which your attention was called by the prosecution, and to which I have likewise called your attention, which in substance is that the Postmaster-General is to put service upon the routes established by Congress, "having due regard to productiveness and other circumstances." You have observed, gentlemen, as I believe I remarked yesterday afternoon, that the prosecution lay great stress upon the word "productiveness." They claim that that is the great and controlling word in the statute. You have observed that they have given but little attention to those other words, "and other circumstances." At this point, gentlemen of the jury, we enter upon a vast field—a field that I know I am incapable of adequately presenting to your consideration, and a subject that I fear even you will scarcely be able to entirely grasp. It is a subject that may well command the most careful and thoughtful attention of the greatest intellects of this or any other country. It is a subject upon which men will differ in opinion, and honestly differ in opinion. The Government proceeds upon the theory that productiveness, that is to say, the relation between the amount of money that it requires to perform the service and the amount of revenue derived from any particular route, is the great and paramount consideration which is to operate upon and guide the Postmaster-General, or the Second Assistant Postmaster-General, or whatever officer of the Government is charged with the duty of managing this matter. It proceeds upon the theory, gentlemen of the jury, that each route is to be considered independent of all other routes. It proceeds upon the theory that each route is to be considered as a separate and independent thing, and to be dealt with as a separate and independent thing. Now, I contend, and my client has contended, and upon that theory has administered the affairs of this great office, that productiveness is not the great and paramount consideration as to these several routes. I contend as he contends—and upon which theory he administered the affairs of this office, as he has told you, not merely by his acts, but under his oath before this jury—that the "other circumstances" are in almost if not in all cases the great and paramount consideration. He contends, as I contend, that these routes are to be dealt with not as separate, independent routes, but as part and parcel of the vast system of mail carrying, to which I called your attention at an earlier period in what I have been presenting to you.

Now, gentlemen, what are these "other circumstances?" Remember that this country in which we live reaches more than three thousand miles north and south, and more than three thousand miles east and west. It extends from the limits of almost perpetual frost on the north to the regions of almost perpetual summer on the south. It is washed on the east by the Atlantic and on the west by the Pacific, upon the bosoms of which float the commerce of the world. Its rocky, manufacturing New England, its regions of iron and coal, its fertile valleys and plains and prairies adapted to agriculture, its mountains filled with precious metals, its vast areas adapted to the purposes of grazing, are scattered about and intermingled with each other throughout all its

vast extent. Its people are a homogeneous people. Throughout all the country they come and go. The school-boy or the college-boy of New England to-day, is digging in the mines or herding cattle on the plains in the far-off West to-morrow. The banker or merchant of Boston, New York, Philadelphia, or Washington has his branch establishment in some far-off region. For business purposes there are no State lines, there are no county lines, there are no township lines, but all this country is a vast hive of industry, each part working in harmony with and dependent upon every other, and the interests of all aggregated together constitute the vast interests of this vast Republic. Upon their harmonious action in connection with each other depend the prosperity and the greatness of this country of ours. To bring all these multifarious interests into close communion with each other as instantaneous as it is possible to make them is a matter of infinite importance to the prosperity of the country. The closer you can bring them to each other, the more expeditious you can make the communication between these different sections of the country, the more you add to its prosperity and its greatness. Therefore speedy and frequent mails is one of the great appliances to national growth and greatness. You must remember, gentlemen, that the wealth of this country and its prosperity do not depend upon the aggregation of people in the cities, do not depend upon the amount of business that may be done in Boston, or in New York, or Philadelphia, or any other of the great centers of trade. These aggregations are only the result of the rills and the brooks and the rivers of business that come together and concentrate in these centers, just as the oceans are made of the rills and the brooks and the rivers, that, uniting together, make them. Look at it for a moment, gentlemen. In the various sections of this country each man is working in his own way. The farmer, on his forty or eighty or a hundred and sixty acres of land, plows, and sows, and reaps. The result in itself is meager; but that is going on all over this great country, and the aggregation of these little things makes the vast amount of agricultural products which make this country famous throughout the world, not only feeding the fifty millions here at home in our country but freighting innumerable ships to feed other millions beyond the seas. The miner delves in the mountain. His individual product is but little, yet the aggregate of it all is the vast amount of the precious metal that goes out to aid in the commerce of the world. The manufacturer plies his comparatively little trade. In itself it is insignificant, but when you aggregate these things they furnish the appliances with which the farmer carries on his occupation, the articles of use and luxury which enter into all the homes of the country, the apparel with which we all are clothed, and I might go on and enumerate indefinitely, but it is unnecessary for the purposes of my argument. Now, gentlemen, do you not see that to bring all these things close together, to bring all these things in the closest possible relationship to each other, to afford all these various interests the most speedy communication with each other is of the utmost importance to the prosperity of this country. These are some of the "other circumstances" which are to be taken into consideration, and which, as I contend, are of vastly more importance than the mere matter of the amount of money that is to be derived by the Government from the means by which these interests are thus united and brought in close contact with each other. There are other circumstances which I shall take occasion to consider hereafter when I come to deal more specifically with some of the other features of this case, but I want to say this much at this time, in order that you

may get at the idea that I desire to impress upon your minds and the theory upon which my client has administered this office, and which he believed then and believes now to be the true theory for the administration of this particular department of the Government. He has told you that he administered this office upon the theory that there should be a daily mail everywhere. That is one of the elements that enters into this case. You see, therefore, gentlemen, that this is a subject, as I said a moment ago, that it requires a statesman to grapple with. It is a subject as to which men may honestly differ in opinion. My client might honestly believe with Secretary Teller or with General Sherman or with Major Macginnis or with Mr. Belford that that is the true theory. Just in that connection, gentlemen of the jury, I want to read to you a little from this testimony. I want to show to you, gentlemen, that men of ability, men of high standing, men of undoubted integrity, men holding then and holding now high official position in this Government, trusted and honored by the Government, thought of this question precisely as my client thought of it. I want to show to you, gentlemen, for this is a vital question in this case, that my client could be honest in thus administering the affairs of this Government, because you have to determine whether or not the motive by which he was moved was a corrupt motive or whether it was a motive consistent with and demanded by the highest integrity.

Mr. Teller was brought upon the stand, and at the risk of wearying you, I want to refresh your memory as to his testimony by reading it, for it is exactly applicable to the point which I am now presenting. I read from page 2813:

Question. Were you a Senator from the State of Colorado in Congress in 1878?—
Answer. I was.

Q. When did you first enter the Senate?—A. In December, 1876.

Q. When did you leave the Senate?—A. April, 1882.

Q. Do you hold any office at present?—A. I am Secretary of the Interior.

Q. While a Senator, and representing in part the State of Colorado, did you ever call upon Thomas J. Brady, say, in the years 1878, 1879, and 1880, and urge upon him the necessity for the increase or expedition of any mail routes in your State; if so, will you be kind enough to state to the jury, as nearly as you can remember, the reasons that you urged for such action?—A. I very frequently called on Mr. Brady, when he was acting as Second Assistant Postmaster-General, for the purpose of having routes expedited and service increased and all those things pertaining to this business. I do not think I ever called except in response to a petition or urgent letters from people from that section. I have no recollection of calling at any other time.

Q. Did you, as a matter of fact, receive many letters upon the subject?—A. A great many.

Q. Letters asking you to use your influence?

Then an objection was interposed, and I will pass over that:

Q. Did you receive a great many letters from your constituents on that subject?—
A. Yes, sir; I did, and I called on the Second Assistant sometimes with the letters. I think sometimes I filed the letters, and sometimes I did not. I think I always filed the petitions.

Q. If you gave any reasons to General Brady why certain action should be taken by him in regard to the mail service, will you be kind enough to state to the jury what was said, or the substance of what was said?—A. Well, I have not a very distinct recollection of what I did say. Sometimes I suppose I would say one thing, and sometimes another. One case would present one reason, and perhaps another might present a great many others. I was always quite urgent to have great mail facilities within the State, especially as we were starting a number of new mining camps in different parts of the State. I was quite anxious to have a daily mail if possible.

Then, passing over another interruption, he says:

I do not myself know what routes are in the indictment, and if I did I probably would not be able to separate them, and state what I said with regard to any partic-

ular route. I have a very distinct recollection about the general way in which I presented the case, if that will do.

Mr. INGERSOLL. Yes; that is what we want.

The COURT. Yes.

Now I come, gentlemen, to what I want more especially to direct your attention to :

The WITNESS. It was substantially the same view that I had taken in the discussion of the matter in the Senate, so that I have quite a clear recollection about it. I frequently insisted that those people who had come from the East were especially accustomed to frequent mails, and had been all their lives, and they seemed to feel the need of mails more out in that country than did the people who had been there longer. Therefore I pressed upon him—

I pressed upon him—

the fact that the mail facilities should be increased, that these people might communicate with their friends. Then I also suggested on various occasions that it was a sort of opening wedge and an opening up of the new country there.

There is a whole volume in that sentence. It is directly in the line of what I have just said, or rather what I have just said is directly in the line of what Senator Teller had been urging upon the floor of the Senate, and was repeating over and over again to my client in respect to this matter. It was an opening wedge to the development of that vast region of country teeming with wealth in its soil and filled with precious metals in its mountains:

The people used the mail for carrying packages and all sorts of things, and it was very desirable that the people should have frequent and prompt and expeditious mails. I am not able to say what I said with regard to any special route.

Gentlemen, he was broad enough not to get down to some particular route. Here was a vast empire to be peopled, and that was to contribute to the greatness and the renown of this country, and he was not picking around as to this particular spot or that, but with broad-minded statesmanship he was looking into this vast question :

Q. Did you say anything to him on the question of the right of these people living in the West to have mails as frequently as though they lived in the East?—A. I did; I very frequently discussed that question with him, or rather I do not know that I discussed it with him, but I insisted that it was not a matter for him to say whether it paid or not; that the question was whether the people had gone into this section. If they had, I insisted that it was then the duty of the Government to furnish them the mail facilities.

Oh, no. When Mr. Teller went to General Brady he said to him, "Sir, it is not for you to say whether this particular thing pays or not. That is not the question. It is a bigger and a broader and a higher and a deeper question than that." And he insisted with my client that productiveness, the argument that these gentlemen are using here by the hour, by the day, by the week, and by the month before you, was not the question. It was the "other circumstances," the development of this country, the performance of a great duty by the Government to the people. That was the question, and whether it paid or not that duty he insisted this Government ought to perform. I venture to say that every one of you will decide that that duty this Government was bound to perform. Now, let us go a little further:

Q. If you said anything to him about the mail being an instrumentality in the settlement of the country or the civilization of the people, please state what it was.—

A. As I said before, that was my theory, which I frequently pressed upon him as well as on others.

Q. Was there anything said by you to the Second Assistant with regard to the question of the department being self-sustaining or running any parallel between that and the Army or Navy?—A. Well, I would not be able to say positively now that I

said that to Brady, because I might confound it with what I said in other places. For instance, I very frequently said it in the Senate.

That is to say, here we have one department, or one part of the business of this Government, that goes to every home and brings all parts of this country together. If your son goes to Colorado, or to Dakota, or Oregon, or wherever else he may see fit to cast his lot and start out to fight the battle of life in this great world, you are very much interested in keeping up communication with him, and the Post-Office Department is the department by which that is to be accomplished. Here is a system or business of the Government which it carries on itself and will not let anybody else interfere with. It comes directly home to each and all of the fifty millions of people of this country. That is one department, or a part of one department. Here is another, the War Department, that is doing a great work in this country; and another department, the Navy Department, that goes to all the governments in the world, protecting our interests at sea. The War Department is not productive of money, is it? Every dollar of the millions upon millions paid out for the War Department of this Government is just so much taken out of the public Treasury, without a farthing of return. And so of the millions and millions that are expended in the Navy Department. Does anybody say they ought to be self-sustaining? Does anybody say they shall be self-sustaining? Of course not. But when you come to this other department, which goes right home to all the people, then these gentlemen come and say, "Oh, it must be self-sustaining, it must be productive, and if it is not productive the people must not have these privileges."

Mr. BLISS. Mr. Wilson, I expressly said to the contrary.

Mr. WILSON. Now you see, gentlemen, just what Secretary Teller was referring to. He said he would not be able to state positively whether he had drawn a parallel between this department and the Army and Navy or not, to General Brady; that he was afraid to say he had, because he might be confounding that with what he had said in the Senate. He had frequently said that in the Senate. Let us go a little further:

Q. Did you say anything to Mr. Brady with regard to the growth of the State and with regard to the Post-Office Department keeping up or not keeping up with the growth of the State?—A. Yes, sir; I did contend very frequently that the postal facilities did not keep pace with the immigration and development of the country.

The postal facilities did not keep pace with the immigration and development of the country. Will any of you tell me why they should not keep pace with the growth and development of the country?

Q. Did you state to him anything about the number of men that would be entitled to mail facilities, that is as to whether there had to be a great number or whether a small number would be entitled to their letters and papers. What was the theory that you advanced to him?—A. The theory that I went on was—

Mr. MERRICK. [Interposing.] Was it the theory you urged upon him?

The WITNESS. Yes, sir; that whenever a mining camp was established or any number of people, even though it might be quite small, it was the duty of the Government to furnish them mail facilities. I think I recollect saying to him that twenty people were entitled to a mail.

Q. Was that whether it paid or not?—A. I never had any reference to whether it paid or not. I did not know whether it paid, and did not inquire, and, frankly I will say, I did not care.

Q. Did you say anything to him, if you remember, with regard to the influence of frequent mails upon the Indian question?—A. I would not be able to say that I ever discussed the question of its effect upon the Indian question with Mr. Brady.

Q. You do not remember that you did with him?—A. I have in other places, but I would not venture to say I did with him, for fear I might be mistaken.

Then, on page 2823 :

Q. About how many times, Mr. Secretary, did you go to see the Second Assistant Postmaster-General for the purpose of urging these expeditions and increases?—A. I went a very great many times, because I received frequent letters about the mail, and I was quite apt to go when I received an urgent letter and urge it upon either the Postmaster-General or the Second Assistant.

Q. You say you went a great many times?—A. Yes; a great many times.

Q. Could you give the least idea as to how many times?—A. I would not like to do that.

Q. As many as a hundred?—A. That would be mere guess. I think a great many letters of mine must be on file. I would indorse people's letters to me and carry them to the department, and I would frequently go there when I left nothing. I would not undertake to say how many times I went there on that business.

Now, gentlemen, remember the point I am immediately pressing upon you is that a man who entertains precisely the ideas of this subject that my client did may act upon them and be entirely honest and his action be entirely inconsistent with any theory that he was engaged in a conspiracy to defraud the Government, because the thing didn't pay. Here you have Secretary Teller testifying before you that he went to General Brady and urged upon him to do these very things, pressed them upon him with argument, insisted upon it, did not care whether it paid or not, demanded it for the people of his State, in their interest, and in the interest of the country.

Now, gentlemen, if Secretary Teller, who occupies one of the most responsible positions in this Government, had had the misfortune to have been the Second Assistant Postmaster-General, and had carried out his ideas, which was no more than what my client did, instead of occupying that position which he now holds he would have been here in the criminal dock, called upon to answer to the charge that my client is now called upon to answer unto. And why? Because, as I told you before, you may search this record from beginning to end, and you will find nothing in this case, so far as any acts are concerned, except the official orders of my client, as against him; I am not speaking about what others have said about him, which I will come to in the due course of my argument. But here you have just that state of affairs, gentlemen. Look it squarely in the face. Mr. Teller, lately a Senator of the United States, representing the people of a State which, in itself, is an empire—a State that first began to grow and give signs of vigor but just a few years ago and just when these things were beginning to happen—Secretary Teller comes here and tells you that he urged and urged (in obedience to the demands of the people and pursuant to his own ideas and theories of the powers and duties of the Government towards its people) my client to do the very things and pursue the very policy that he has pursued. And I repeat it, if he had been Second Assistant Postmaster-General and had carried out the ideas he urged upon my client he would not to-day be Secretary of the Interior, but he would be arraigned before this court, charged with a great crime.

Now, let us go a little further. There is another distinguished gentleman who has testified in this case. I refer to General Sherman, and without very much comment—for I see that I am consuming entirely too much time, and I know must be wearying you—I want to read an extract from his testimony. Some objection having been interposed by the counsel for the Government, finally the General was permitted to testify, and here is what he said :

A. Ever since the close of our civil war there has been a tendency to push westward by every available route. The war was hardly over before I went out on the plains in person, and I have seen it progress from that time to this. I have been across the continent by every known route, in wagon, on horseback, and by rail.

The first stations along the Kansas Pacific to Denver were sod-houses every twenty miles, at which the stage company kept from two to five men to take care of the teams not on the road. Those men were armed with Spencer rifles and the best kind of arms.

This is a magnificent picture, gentlemen, of the character of that country, of frontier life and growth.

The stations averaged from about seventeen to twenty miles apart all the way to Denver. At that time that country was traversed back and forth by the Cheyennes, as troublesome and dangerous Indians as ever inhabited this country.

Permit me, right here, to pause and state as history that when the Union Pacific Railroad was built across that country—which by the way, followed a star route; the star route was the pioneer of that great railroad—one man would dig with a spade or a mattock and pick, and another man would stand guard over him with a musket. That was the way that road was built, and that was what General Sherman was here referring to.

The way this work was done on that stage line was a demonstration to my mind, from personal observation, that it was the best picket line possible to an army. I saw the same from Omaha clear to the Summit, and the same in Texas. I have traveled along similar routes, and I know that there have grown up in that country a class of men who are as brave as soldiers, and who are in fact soldiers. They take all the risks of soldiers. They know no fear. If these stations about twenty miles apart are attacked by the Indians, they fight them.

And yet these gentlemen come here and tell you that those men who performed that great service to this country ought not to have a mail, because the postage-stamps do not pay for carrying it.

Finally, settlers come, and then this condition of things is soon followed by a better. From 1875 up to 1879 or 1880, I saw that that was the very best method of protecting that line from the Sitting Bull Indians, who had gone north to Canada, and keeping them from having any kind of communication with their fellows down in the Indian reservation. By making a barrier of that kind and cutting off communication you at once separate them into two distinct bands or tribes. That resulted exactly as we foresaw. Mr. Sitting Bull soon got very tired and sick of his game and asked to come back, and now we have got him down the river, a poor, harmless, miserable Indian, whereas, before that, he was a very dangerous warrior, followed by four hundred or five hundred as desperate men as were ever known to carry on war in this country.

That is what the Bismarck and Tongue River route did for this Government. It suppressed or greatly aided the Government in suppressing that Indian war, in bringing into subjection to the Government and making quiet and peaceful this band of as desperate men as ever shouldered muskets and went forth to battle.

That road from Bismarck to Keogh, Keogh to Custer, and Custer to Bozeman was one of those westward lines from the Mississippi River to the Rocky Mountains, which formed a barrier between the different parts of the Sioux Nation and which has produced results we now enjoy.

Gentlemen, if the Army had gone out, at an expense of ten, fifteen, twenty, or thirty million dollars, and suppressed these Indians—because I believe it is estimated that it takes about a million dollars to kill an Indian—the money would have been gone; but General Sherman tells you that the expenditure upon the Bismarck and Tongue River route has accomplished all this, and yet it only cost \$65,000, besides giving the people their mails.

It is a perfect line, the best line possible for that purpose. The distance between Bismarck and Fort Keogh must be about three hundred and seventy-five miles, and if we had had two regiments of troops along that line we could not have picketed it better than was done by the stage company. [Page 3608.]

Now, what do you say about that? This stage company picketed that

line as well as could have been done by two regiments of the Army of the United States.

There is another portion of General Sherman's testimony that I would beg your attention to in another connection. I am using this, gentlemen, because you will remember, when I recall it to your recollection, that he said in his testimony that when they were attempting to suppress these Indian wars they thought it was no more than the Government should do to step in and aid them through the instrumentality of the Post-Office Department. But that I will come to again after awhile; I cannot refer to it just at this moment.

I will not stop to read the testimony of Major Maginnis or Mr. Belford, which goes upon the same general theory, for it would occupy too much of your time; but you see, and I bring this testimony to your attention for the purpose of having you to see, that this is a question certainly as to which men may honestly differ, and I have read you thus much to show that some of the most eminent men of this country take precisely the same view of it that my client took.

They believe, many honest people believe, that by administering the affairs of this department upon that principle; that is to say, upon the principle of frequent and expeditious communication between the various sections of the country, although it may cost more money than is derived from it, is infinitely profitable to the country, because although it costs more than it produces in the mere sense of paying out money for it and receiving money from it, it yields to the country in the facilities it furnishes for business, and for the increase of intelligence, and for the development of undeveloped regions, and for the development of the natural resources, agricultural, manufacturing, and mineral, vastly more than the difference between cost and revenue, and although in one direction you pay out more than you receive, yet in the other directions to which I have alluded, the increase, the growth, the profit is enormously greater than this disparity between cost and revenue. That is the policy—that is the theory upon which my client administered this office. Will you say that it is an unwise policy; can you say that it is not the best policy? But even if you should think it is not the best policy, even if you think it is not the wisest policy to thus bring these different sections of the country in close communication with each other, because it costs more than it actually produces, are you sitting here to say that a man who honestly differs with you in opinion on this subject is a rascal and is to be incarcerated in the penitentiary for entertaining views different from you upon so great a question as this? But that is what you are called upon in this case to do. You are called upon to say—and that is the great burden of the argument of the Government in this case—you are called upon to say that because my client made orders for carrying the mails over routes where the cost of carrying was greater, and, if you please, I will say vastly greater than the revenues derived from it, that, therefore, he is to be regarded as having made those orders for a criminal purpose, or, in other words, you are asked to draw an inference from his having made such orders that those orders were made for some corrupt purpose, and that he was engaged in a conspiracy when he made them. You are asked to say that because he made these orders, in carrying out this great policy, this broad-minded policy which I say commends itself to every broad-minded man, to every statesman, those orders tend to prove that he was engaged in a conspiracy to rob this Government.

You will see, therefore, gentlemen, what I mean when I say that from these orders in and of themselves you can draw no inference against

him in this case. They cannot in and of themselves be circumstances tending to prove that my client when he made them was making them pursuant to some conspiracy. In and of themselves they do not prove or tend to prove this charge of a conspiracy, because they are entirely consistent with the highest integrity.

Now, a great parade has been made here, gentlemen, before you on the subject of cost and revenue. It has been the burden of the Government's song, and I want to show you before I leave this case how unutterably fallacious all that is as they have presented it to you, as they have undertaken to show you, of how little importance these postal routes are. They take one of them, and they say the revenues from that office are so much. Then they turn around and say to you, "Look here at what it cost! Look at these enormous figures of cost! Here is this little bit of revenue and this enormous cost!" And by that means they undertake to impress you with the idea that the revenue that they present here represents the importance of that line. Is that so, gentlemen of the jury? It is not so. Why? What appears by these revenues? Only the stamps that are sold at the offices on the line, that is all. So that if a ton of letters is started from the city of New York, another ton from Philadelphia, another ton from Boston, and another ton from Washington, and every one of those tons of letters were to pass over a route, the records of the department would not show that a single one of them had passed over that route—not one. Why? Because all that those records show is the stamps sold at the offices. Now let me show you how that will work. I wish I had something here by which I could make a diagram, but I guess I can state it so that you can comprehend it. Now recollect, I said that these routes are part and parcel of the system. Suppose a route starting from New York goes out a certain distance and there connects with another route, and that one connects with another route, and that with still another, until it reaches its destination, at, say, Chicago. They start ten tons of letters out of New York to Chicago. Every one of those ten tons passes over these intermediate routes, don't they? But when you come to the consideration of the revenues of those intermediate routes would you find anything of those ten tons there? No; there might not be a stamp sold on those intermediate routes. The record might be an absolute blank as to those intermediate routes, so far as revenues were concerned. And yet those ten tons of letters passed over those routes daily.

Now, do you not see, gentlemen, from that simple illustration, how absolutely ridiculous, fallacious, and misleading is this testimony that these gentlemen have brought here for the purpose of influencing your minds and judgments in this case?

Let me take a very striking illustration: You recollect—and I have referred to it heretofore—that they established the great overland mail between the Missouri River and San Francisco. The mail from New York, Philadelphia, Boston, all over the country, went over that line, we will suppose. They had another route, by the Isthmus, but I will suppose that that was the only one. You know that between the Missouri River, at that time, and San Francisco, as I said before, this route traversed uninhabited plains for hundreds and hundreds of miles; it went over mountain tops and through canyons and gorges, until it reached San Francisco. Now, here is a route, which, of course, I am not permitted to state, because it is not in evidence, as to how much it cost, although I think I might venture to do it, because it is history, and the amount that it has cost could be shown by the statutes of this country; but I will not venture to state that. However, in the nature of things, you know that to carry that

overland mail cost an immense sum of money ; you also know that the stamps that were sold on that line were nothing, because there was nobody there to buy them. Here you have a great route apparently producing absolutely nothing, but in fact a great deal. And why? Because, as I said, gentlemen, these routes are part and parcel of a vast system, and the revenues that were earned by that route were paid not along the line, but in Boston and New York, Philadelphia and Cincinnati, and in all the hamlets throughout this county this side of the Missouri River. But they want you to say that it is only what is sold upon this particular route that is the guide and is the indication of its importance.. You see it is absurd, gentlemen. Here, all this mail that is being concentrated, is chargeable not merely to this place or that place or the other place, but it is being operated as a vast system, of which this particular route is a part. It is performing its part of this work, and all of this revenue is to be attributed to it just as much as to the offices where the stamps are sold from which the revenue is derived.

The commercial centers are the places from which the revenues are received. New York sends out tons and tons, car-loads, team-loads every day. Boston, Philadelphia, Baltimore, Chicago, Saint Louis, Cincinnati, do the same. They are so many great hearts throwing out this life-blood of business and social affairs into the great arteries, to be carried into every part of this great body-politic, utilizing it and making it the giant that it is. And therefore it is, gentlemen, as I said before, that in dealing with this question, you have to deal with a system and not with separate and independent routes.

Just here I want to make one or two other observations in aid of what I have already said. Counsel for the Government have referred to the fact that recently the postage has been reduced from three to two cents. They hold it before you and say, "Why, here we have got a reform administration." How many times during the progress of this case have they talked about a reform administration, by way, as a matter of course, of casting reflections upon the administration that preceded it, and thereby affecting your minds? And now they come, and say, "Why, we have got this reform administration, and the postage is absolutely reduced from three to two cents." They say the people are now reaping the benefit of it by cheapening the postage from three cents to two. Will you please consider that for a moment? A letter has been carried from Portland in Maine, to Portland in Oregon, for three cents; now it is to be carried for two. If I were going to criticise anybody in respect of this thing, I should be disposed to criticise the gentlemen who make the laws, for having passed any such act as that when nobody was demanding it, when nobody had any right to complain that postage was a burden. I should be inclined to say that that was one of the appliances resorted to by politicians to make cheap capital, but it comes with an ill grace in this case to urge a thing of that kind when there are thousands upon thousands, and tens of thousands upon tens of thousands of localities getting mails infrequently and on long time which if the revenues derived from a three-cent postage had been maintained could have soon been supplied with mails frequently and speedily. And yet they are to be deprived of frequent and speedy mails for the purpose of reducing postage from three cents to two.

Now, you see, there is a question about which men might very honestly differ. I do not know what I might do or what you might do under such circumstances, but I do know that a man could be perfectly honest and yet stand up and face the Congress of the United States and say, "Gentlemen, you ought not to cut down this postage from three

cents to two until you give the people of all sections of this country adequate mail facilities." I think a man could face the world and make an argument of that kind. I think a man could stand up and say, "It is not the wise policy to do it. You brought postage down; you used to carry the mail at so much a mile; if a letter went one hundred miles it was so much, if five hundred miles so much, and if it went another distance it was so much; but finally it was reduced to three cents for a letter to any part of the country." You can now send a letter that weighs half an ounce to any part of this country for three cents, and if it does not happen to get to its proper destination and contains something valuable, it is returned without additional cost to the man who sent it. I do not think anybody had a right to complain of that, but I do think that when there are vast regions of this country that have not yet had adequate mail facilities, it was not a wise policy to cut down the postage from three cents to two, and I think that I or any other man can insist upon that without any danger of being suspected of dishonesty.

The COURT. If three cents would produce more revenue than ten cents to the letter, why should not two cents produce more than three?

Mr. INGERSOLL. That does not follow.

The COURT. It is the theory of the law, I think.

Mr. WILSON. It may be the theory of the law.

Mr. INGERSOLL. It has to be tried.

Mr. WILSON. You would have to try that a good deal. We get a great deal more revenue now than we did when we paid twenty-five cents for a letter, but there is a very great difference between the condition of this country now and when letter-postage was twenty-five cents. There are several more millions of people to write letters and do business than there were then. All such comparisons as that, it seems to me, are utterly futile in a great question like this. I should not have alluded to this at all, gentlemen, but for the fact that it has been made use of here as an argument against my client, an argument coming after the fact; that is to say, when postage was three cents my client did this service, and now, because Congress since that time has made it two cents, it is brought here and paraded as an argument against my client and these other defendants. Do you not see that when you have thus reduced the revenues of that department you have reduced the means by which the Government could afford these great facilities to the people in remote localities, and you have thereby retarded the development of these remote regions, and thus have thrown an obstacle in the way of the growth of the country, because it is too plain for argument that frequent mails do aid in the development and civilization of the country?

How can I better illustrate this further than by bringing to your attention what you so well know, because it is a part and parcel of the history of this country, the fact that we have what is known as the free-delivery system in the cities; what is that system, and how utterly inconsistent it is with the theory of the prosecution of productiveness as the great element of success. Why, gentlemen, that idea of productiveness has long since, by a slow process of progress, ceased to be a controlling element in this business. Free delivery illustrates it. It first began in the larger cities, and gradually it has been extended to smaller and smaller ones. This system of free delivery, what is it? Why, men in uniform, with their satchels on their backs, going about from house to house daily and twice a day, carrying the mails from the post-offices to the residences and offices and places of business

of the people in cities. Business letters, social letters, letters of friendship, letters of love, valentines, Easter cards, carried about and delivered at the doors of residences, in offices and counting-houses throughout the cities of the country, and that, too, at a cost of about two and a quarter millions of dollars a year without producing a solitary cent of revenue. When your correspondent away off in Oregon sends his letter to you in Washington, not only did you get it formerly for three cents, and you soon will for two, but, in addition to that, the Government uniforms the carrier and sends him around to deliver that letter to you at your breakfast-table in the morning, at your dinner-table in the evening, or at your counting-house, without a farthing derived from it. And yet these gentlemen tell you and tell me, that the farmers and the mechanics in the country-places shall not have their mails excepting the revenues derived from their carriage shall pay for the carrying. To my mind this theory of the prosecution in the light of the present age is an absurdity, to say the least, if not a monstrosity.

Mr. BLISS. Your honor, I beg to say that Mr. Wilson has now twice stated that it was the theory of the Government that there should not be any mail unless the route was productive of expenses. The Government in its opening and all through has disclaimed any such idea.

The COURT. So I have understood.

Mr. WILSON. Then I would like to know what all this parade has been about in this case, where there has been so much talk about routes that do not produce much and yet cost a great deal. We have spent four or five months on that subject. We have had table after table on that subject in this case; and I wish these gentlemen had made themselves better understood at the outset. Productiveness has been the watchword of this prosecution. With infinite emphasis the learned counsel has used that word "*productiveness*;" but his cooing was

As gentle as any sucking dove

when he came to talk about the "other circumstances." They seem to be a little sensitive about that now, and as they are so very sensitive about it, I will pass over some things that I had intended to say, lest I might wound the tender feelings of these gentlemen who have been for five months talking to you about productiveness.

Now, let me bring your minds to another illustration. I must pass over some things, because

Life is short and time is fleeting.

Mr. DAVIDGE.—

Art is long and time is fleeting.

Mr. WILSON. I know art is long, but life is short. Let me direct your minds, gentlemen, to another illustration of this subject. You have it in evidence in this case that off in these far-off regions where these star routes are, or have been, for many of them have passed out of existence, and forever, in the march of affairs, and where these gentlemen say to you there were no people to be supplied—I suspect they will deny that directly, although they have said it in the arguments—and no necessity for this service, railroads have been built at enormous cost, covering very many of these very routes, since the contracts were made on these routes which are the subjects of this investigation, whereby these star routes have been entirely superseded. Look at that region of country, a map of which I took occasion to show to you during the progress of this trial, lying in Colorado, New Mexico, Arizona, and see how the railroads have been built through these—as this

prosecution would have you believe—uninhabited regions of country. They were then comparatively uninhabited. Do you not know that just so soon as a railroad went over one of these star routes, although that star route may have had over it only a weekly mail, yet just as fast as the railroad was constructed there was placed upon it a daily mail. What would you think of sending a weekly mail over a railroad? What would you think of running a star route alongside a railroad, carrying the mail at four or five miles an hour, when here was a train sweeping through the country at thirty miles an hour every day? What would you think of carrying the mail once a week on a mule or buckboard or stage-coach at four or five miles an hour, when there was a train running right alongside the route daily at thirty to forty miles an hour?

And do you not know that it costs more to carry the mails on a railroad than it does by the star routes? And how absurd it is to say that if you have a railroad on which you can carry the mail at a high rate of speed and daily it is more needful to the people than it was to have their mails daily before that railroad was constructed! So far as the needs of the people are concerned, they are just as great in the one case as in the other—just as great when supplied by star routes as when supplied by railroad.

I come back, therefore, gentlemen, to what I before said, that these questions that you are called upon to consider are questions of the greatest moment to this country; questions as to which men may honestly differ in opinion, and when one man takes one view of it, it is entirely consistent with his integrity of purpose, and no imputation of want of integrity is to be entertained against him because another man may take the opposite view. I shall probably have occasion, before I get through, to recur to this subject incidentally, but I pass now to another consideration.

Let me state it as carefully as I am able. Suppose that you have the right in this case to sit in review of these acts that are charged against my client. Suppose that they may be considered as circumstances tending to prove that my client entered into a conspiracy. Suppose the court shall say to you—I do not know what the court will say to you, and, therefore, I must argue this case upon the various views that may possibly be taken in respect of these matters—suppose the court shall say to you that you have a right to look into each one of these acts to determine from each and all of them the main fact to be proven by the Government in this case, to wit, whether or not there was a conspiracy between my client and the other defendants as charged in this indictment. Now, supposing that the court will say that to you, which I can hardly believe, then I want you to go with me through this case, weary as I know you are and anxious as I know you are to get rid of it, while I examine the testimony touching each one of these acts of my client, and see whether or not what he did as to each and every of them is consistent with his innocence of this charge, or is inconsistent with any other hypothesis than that of his guilt as charged.

And in doing this I shall endeavor to present to you, with no more detail than is absolutely necessary, the evidence in the case. Some of it I shall simply state, and when I am doing so if any one of you discovers inaccuracy in anything I do state as having been proven in the case, I shall take it as a kindness if you will correct me at once, for I do not claim that my memory is infallible. I shall take up these various acts of my client in the precise order in which they have been presented to you in the opening argument of the case by Mr. Ker on behalf of the

prosecution. Now, I beg you to remember, and please do not forget it—I wish to burn it in upon your minds, fix it indelibly there—that the charge in this case is conspiracy; that these parties combined, confederated, and agreed together to defraud the United States. Do not forget that that is the charge, and none other. Do not forget, I beg you, that that is the charge which these defendants have been called here to answer unto. Do not forget that they are being tried for that, and not for something else; and do not forget that that is the charge which the Government must prove. And while you are remembering that I want you to remember distinctly another prominent fact in this case, and that is that these parties had one hundred and thirty of these star routes among them. Do not forget that, please.

And when you remember that, please bear in mind that the charge in this case is not that they conspired as to the whole one hundred and thirty routes, but that they conspired as to nineteen out of the one hundred and thirty routes. Now, I know, gentlemen, that it will seem strange to you, and it will appear to you to be inconsistent and absurd to suppose that these parties, having one hundred and thirty routes, if they were going to conspire to defraud the United States would not have conspired as to the whole of them, the whole one hundred and thirty. Why should they pick out, if they were going to defraud the United States, nineteen and conspire as to them, and not conspire as to the one hundred and thirty? If their purpose was to defraud the United States, to get money out of the Treasury of the United States, having the one hundred and thirty routes, they could get a great deal more money out of one hundred and thirty routes than they could out of nineteen, and if their object was to get money and to defraud the United States, having all this material with which to work, is it not on its face absurd to say that they would pick out nineteen of these routes and conspire, that by and through the instrumentality of these nineteen routes they would defraud the United States and not embrace in their combination the whole one hundred and thirty? On its face it is an absurdity; and asking you now to keep that in mind as an element of this case, I will proceed to take up these routes in the order in which they have been presented to you by Mr. Ker, and show you just what has been developed in respect of each of them, especially so far as my client is concerned. I shall not deal with the details of them in respect of many things that have been disclosed by the evidence with which my client was not in any way connected, but will leave that for the counsel who represent the other defendants, because it is more peculiarly within their province to discuss them.

As I go through these routes I shall have opportunity, if necessary, to notice the orders other than those for increase and expedition of which complaint is made before alluded to.

Before I begin this in detail, gentlemen, let me call your attention to this: It is alleged in the indictment that false petitions were procured and filed in the department; that false affidavits were made and filed in the department; that affidavits were altered or forged and filed in the department. Now, without saying anything as to the mode of preparing these affidavits, as to their truth or falsity, as to whether any petition was altered or forged or not; without intimating, insinuating, or in any way committing anybody in respect of any of these things; without conceding that what the Government has said in respect of them is at all true, I want right here and now to ask you this question, as to each and every one of these petitions and affidavits as to which complaint has been made: Did General Brady know anything about

who procured these petitions or the manner in which they were procured? Did he know, if a petition was altered, that it was altered, or who altered it, or anything about it? If an affidavit was made in blank and filled up by somebody, did he know anything at all about it? Had he anything whatever to do with it? I say no, gentlemen. All of you know that there is not a syllable of evidence to show that he did. On the contrary the evidence shows, if it shows anything in this case, that the first he ever knew or heard of any of these petitions was either when some Member of Congress or Senator brought it to him or when the corresponding clerk brought it to him in a jacket with his indorsement upon the jacket already prepared. Do I not state the testimony accurately as to that? Do not understand me as conceding anything against the other defendants in this case. I am not dealing with that feature of the case now. I am dealing with a distinct feature of the case. I am dealing with these affidavits, petitions, and so forth, in so far as my client is concerned with them and had to do with them. And I repeat that the first he knew of them was, when they were brought to him either by a Senator or Member or brought to him by the corresponding clerk whose business it was to put them in a jacket and make an indorsement upon that jacket of the contents of that jacket, and what those petitions stated! General Brady was interrogated upon that subject, and his testimony is to be found on page 3390:

Q. After these contracts were let, referred to in the indictment, there were increases of trips and expedition of service, I think. I wish you to state to the jury what you know, if anything, in regard to the manner in which affidavits were procured which were filed in the office?—A. I know nothing about that personally.

Q. What do you know, if anything, as to whom they were procured by?—A. I know nothing about that. I simply know what was the law on the subject and what was required by the department, that is all. How they were gotten up or who got them up, further than the names indicated, I know nothing.

Q. If there were any changes made in these affidavits after they were signed and sworn to, had you any knowledge of it?—A. I never heard of any changes being made; none were ever brought to my knowledge.

Q. If any were signed or sworn to in blank had you any knowledge or information on that subject?—A. None whatever.

Q. When did you first hear it?—A. During the first trial.

Q. What, if anything, do you know as to the manner in which petitions were gotten up and by whom they were gotten up?—A. I know nothing about that whatever. I regarded a petition as of value because of the indorsement given to it, as a rule, by the Member of Congress or Senator. If they indorsed them that was a guarantee to me. If they sent them up, that was a guarantee to me. The recommendation of a member of Congress was of more importance to me than the recommendation or hasty report of a special agent, or anything of that kind. I thought the member of Congress knew the needs of his people better than anybody else. At least, it was his duty to know them.

Q. If any of these petitions were in any way altered after they were signed by the parties who did sign them, had you any knowledge or information of that?—A. None whatever.

Q. If any of these petitions were signed by fictitious names attached to them, had you any knowledge or information about that?—A. I had none, and could have had none, unless somebody had come and told me.

Q. Did anybody ever come and tell you?—A. Nobody ever did come and tell me.

That is his statement in regard to the feature of the case upon which I am just about entering. Does anybody dispute that, gentlemen? Has any witness given you any testimony to the contrary of that? No. None whatever. You know in addition to his testimony the mode of doing this business in this office. You know that these things went to the corresponding clerk, or to the inspection division, as the case might be, and then were brought to him for the first time when they came to him with the order already written, or the facts indorsed upon the jacket which contained these papers. They say he should have known. Per-

haps I might just as well here, as at any other time, say a word upon that subject. Did you notice, gentlemen of the jury, that in many of these cases where they say he should have known, it would have been very difficult for him to have known. The corresponding clerk brings him these papers in a jacket with the indorsement upon it. They say in the indictment that it was the duty of the corresponding clerk to indorse upon the jacket a brief statement of the contents of the jacket. Why is that, gentlemen? It is to facilitate business. How on earth is any man going to read every paper that comes to him. You have got to have somebody whom you can trust. Look at Mr. James. They said to him, "Was a certain order rescinded?" And he replied, "No. I ordered it rescinded in March, and I never found out it was not rescinded until September." "Why did you not?" Said he, "Why, gentlemen, it is utterly impossible for any man to know about all these things. You have got to trust somebody." Mr. Spangler and Mr. Brewer and other men who have been brought here from the department say that it would be an absolute impossibility for a man to read all the papers that he has to sign. Therefore they select trusted men who will go through these details. In respect of this particular business, they say in the indictment that Turner's duty was to make a brief statement of these things upon the jackets for the action of the Second Assistant Postmaster-General. Why? Simply so that the Second Assistant Postmaster-General would not have to read an armful of papers. He has the whole contents boiled down into the statement upon the jacket. They say he ought to have known. You recollect Brother Bliss and Mr. Merrick would hand you papers and say, "Gentlemen, look at that. Don't you see where it has been altered?" "No; I don't exactly see it." "Well, but turn around and hold it up to the light and you will see it." I recollect one particular instance that attracted my attention. My Brother Merrick was very much tickled because Brother Bliss had found an erasure on a paper. The jury could not exactly see it. Then Mr. Merrick got up and adjusted his spectacles with the greatest nicety, and got right out here on the floor and stood here and gazed at the paper for a long time, and finally said, "Gentlemen, I see it. Look right there. Don't you see it?" "No." "Hold it to the light and you will see it. All you have got to do is to hold it to the light." What they are saying to you is that when Brady took up one of these papers—and I will have occasion to look at them now in a very few minutes—when he took up a bundle of these petitions, sometimes twelve or fifteen of them in a single package, that instead of sitting at his desk with his head drawn down between his shoulders, he ought to have had his neck craned out and stood up and held each one of these papers to the light to see if some fellow had not erased a letter "s" somewhere and reduced a word from the plural to the singular number, for that is just what was done in one of these cases. They come here and say, "Suppose he did not know. He says he did not, and we have no evidence to prove that he did. There is a great deal of evidence here to sustain his assertion that he did not know, but he ought to have known." If he had spent two years on these nineteen routes as my Brother Bliss has spent two years on them, with several able major-generals, brigadier-generals, captains and corporals to help him, I suppose he would have found out just as much about those nineteen routes as Bliss has found out, and Merrick has found out with the aid of Bliss. My Brother Merrick never would have found any of these things. Bliss is the man that found out these

things. Merrick never would have discovered one of these things in the world, never. But they think Brady ought to have known.

Mr. DAVIDGE. Bliss has the microscopic vision.

Mr. WILSON. Gentlemen, I was going to use a street phrase, but I will not do it. It would not do to say "You may bet your bottom dollar," and so I will say you may rest assured that there is not a thing in all this business that Colonel Bliss does not know. If any fellow wrote a communication to the department and spelled the word "do" with a "u" instead of an "o," Colonel Bliss knows exactly where to find it. If there is any "t" in all these twenty-seven hundred papers that the fellow did not cross, Colonel Bliss knows exactly where to go and pick out that "t." If there is an "i" that has not been dotted, or if that dot was made by a wandering fly, Colonel Bliss knows it. As sure as you live, you have got all there is in this case, gentlemen. The representatives of the Government have not left out anything that will help their case. You can rely upon that. Now they say General Brady ought to have known these things, and that he ought to have held them up to the light and put on a pair of "double million magnifying glasses." I believe Sam Weller said it required something like that to see through a deal door and up a pair of stairs. Because General Brady did not do this you are asked to come to the conclusion that he was purposely, maliciously, fraudulently, and corruptly, and with a view to robbing the Government, making these orders.

At this point (12 o'clock and 58 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. WILSON. [Resuming.] Gentlemen of the jury, the field of the case into which I am now going makes it necessary, as it seems to me, or at least proper and I hope useful, that I should make one or two illustrations, one of which is in the line on which I was proceeding before recess, but it is a more restricted line; that is to say, it is a line of consideration bringing this case down to particular routes. If I understood the intimation that was made by Colonel Bliss before recess, when he interrupted me, it was that they were not expecting that you as jurors would take any different view of this great question from that which I was presenting to you, but that when you got down to the particular routes there was that in and about the particular routes which indicated, or should have indicated to the Second Assistant Postmaster-General, that the service that he put upon those particular routes was not proper service to be put on. Why? Because there was not enough mail going over these special and particular routes to justify such an expenditure of money, and not being enough mail over a particular route, therefore from that you are to infer that he put the service upon these routes for some improper purpose, and was actuated in doing it by a corrupt motive. You will remember, gentlemen, that all through this case, they have asked mail carriers, the man who drove the horse that hauled the buckboard, the man who rode the horse or the man who drove the coach, or the postmaster, if you please, how much mail was being carried over these routes. You recollect that part of the testimony. What I now say I am going to say for the purpose of covering that particular subject generally so that I may not be de-

tained in going into particulars in respect of it. They say there was not but a few pounds of mail running over the routes, and that is evidence that it was not necessary to have that mail carried as it was ordered to be carried. That is their theory of this case. Let me suppose a case, gentlemen, which will exactly illustrate what I am driving at. Suppose that right out here in Virginia a hundred miles from Washington—of course this is by way of illustration merely—and with no railroad near it, there is a community of people engaged in business, and the mail that goes to that community can only go over a star route from the city of Washington. Suppose that every day in the week a hundred letters come to the post-office in Washington to go into that place. You would say, gentlemen, that those letters ought to go forward. That is a business community. They are digging iron out of the Virginia soil and they are manufacturing it into pig. They are digging out the ore and manufacturing it into pig and perhaps making something out of the pig right there. There are a hundred letters every day for this point coming to the post-office here in Washington. Is there any man on this jury who would say those letters ought not to go forward daily? It is a hundred miles and there is not a post-office between here and there; not one, for the purpose of my illustration. Every one will say that that hundred letters ought to go and the Government ought to carry them, for it will not let anybody else carry them. You recollect only three or four days ago men were arrested in New York for—what? Why, for running a penny post. They could make money by carrying the letters around New York for one cent when the Government was charging them two cents. The Government carries letters now all over the country for three cents, and yet exacts two cents for carrying a letter from Capitol Hill down to Fifteenth street. Just a few days ago in New York they arrested men because they were carrying on a large business in the way of delivering mail cheaper than the Government could deliver it.

Mr. BLISS. If you will confine yourself to the record you will not be so likely to make a mistake. There have been no arrests in New York for that reason. It was a civil proceeding entirely.

Mr. WILSON. The Government has stopped the business. We will say it in that way.

Mr. BLISS. They have not even done that.

Mr. WILSON. At any rate, the Government has a monopoly of this business, and you, gentlemen of the jury, cannot engage in it. That is the point I make.

Mr. INGERSOLL. They seized the letters.

Mr. WILSON. They seized, I believe, twenty thousand letters. But that is neither here nor there. The Government has a monopoly. Here are a hundred letters to go to this point, a hundred miles away, and there is no intermediate post-office. Every gentleman on this jury will say those hundred letters ought to go forward every day to these people who are engaged in this business at this point out in Virginia. Gentlemen, just see how deceptive this testimony is. You could hear people laugh around in the audience when some carrier testified, "I didn't have more than three or four pounds of mail. There would not be over three or four pounds of it." How many pounds will one hundred letters make? Have you thought of that? A letter goes for two cents per half ounce. Nine hundred and ninety-nine out of every thousand letters that are carried will not require more than a three-cent stamp; so that when you have a hundred letters you have only got a fraction over three pounds. Every pound calls for

thirty-two letters. Thirty-two letters make a pound, admitting that every letter comes up to the half-ounce standard. When you have a pound of letters you have thirty-two letters, and when you have a hundred letters you have a little over three pounds of mail matter. Now, because it is only three pounds, does it cease to be important to carry that mail out to those people? No, gentlemen. But, gentlemen, how much revenue would the Government get for carrying those one hundred letters? The Government would get just three cents a letter, and one hundred letters would amount to \$3. For carrying the mail so important as that per day one way the Government would get the enormous sum of \$3. These gentlemen say that because it is only \$3 the mail is of no consequence and does not justify the expenditure, and you must hold that mail up for six days until you get six hundred letters, which will produce \$18 for the trip, and then you may carry it through once a week instead of once a day. Is not the thing absurd? Does it not show, gentlemen of the jury, that what I am contending for in this case is the true theory upon which to administer the affairs of this department? That is all I am going to say to you on that subject. I only wanted to get your attention to it.

Another thing. They say: "But these contractors were getting up petitions to have the service increased. The contractors were doing it. They were drawing up petitions here in Washington." They showed you petitions in Miner's handwriting. Miner drew those petitions and sent them off to Oregon or somewhere else for people to sign. Then they said to you, "Stephen W. Dorsey was drawing up the forms of petitions." They paraded here before you a pencil memorandum, a draft of a petition. Because these contractors prepared petitions, circulated petitions, and had them signed and filed in the department, they ask you to say that that is an evidence of guilt. I say to you, gentlemen of the jury, that every man in this country has the right to petition. I say that these contractors had a perfect right to do that. They were engaged, as I said in the beginning, in their legitimate calling. They had their contracts, and they had a perfect right to have petitions circulated and signed setting forth the truth in regard to the condition of things in the country through which these routes passed. Gentlemen, I can give you very high authority on that subject. I can show to you that I am not alone in this statement which I have just presented to you. His honor on the bench, having once had occasion to pass upon this question, stated so much more clearly and forcibly than I can state it what I am just now urging upon you that I beg to read it to you as part of my remarks. I read from page 1578 of the old record:

The COURT. Well, never mind. John W. Dorsey was the contractor in this case. S. W. Dorsey was the subcontractor and his subcontract was on record. Then S. W. Dorsey, with a proper regard to his own interests, had a perfect right as a contractor and as a citizen to start petitions, have publications made in the newspapers, and to pay the men who did the work for him. There is no crime in that. Now, if he had hired a man to get up a fraud upon the Government, to present as true things that are not true, to get up petitions signed by false names and have them transmitted here and used by him with the department, that, of course, would be a different case. But so far as the offer in this case is concerned now, I see an offer on the part of the Government to prove facts which do not tend at all to make out the conspiracy or any overt act under the conspiracy. They tend merely to prove that S. W. Dorsey did what every contractor had a perfect right to do and what he ought not to be held criminally liable for trial for doing. Now, everybody knows who is connected with public affairs that there is not a public improvement projected that there are not parties interested in having the work done. These parties have a right to use the press in advocating the work, and they do not always confine themselves to the truth in doing so either, and they have a right to employ agents to attend to business of that sort.

So that, inasmuch as the offer in this case is an offer to prove nothing but the truth, and to prove that Dorsey did nothing but what he had a right to do, I do not see how it would tend, in the slightest degree, to make out the charge of conspiracy if it was allowed to come in; and, as time is valuable, the court does not think it right to spend the public time and its own time and tax counsel in an investigation which can lead to no result.

Then again, on page 1579:

When we come to that I will decide that. But for the present I merely hold that a publication made in a newspaper in Oregon in regard to the expedition on this route which states nothing but the truth in regard to this route is no evidence of fraud, even if Dorsey instigated it and paid for it. Here are petitions sent out from Washington by these defendants to that country and they are signed by numerous parties and they are indorsed by Senators and Representatives, they come here, are laid before the department, the department does not know who started them, but they are indorsed in this way, and if fair petitions—not forged petitions, but fair petitions—stating the truth and indorsed by Senators and Representatives are to be used as evidence of fraud on the part of the contractor merely because he suggested them or wrote out the forms of them, I do not think that is evidence of fraud.

That is just what I am contending for here, gentlemen. I say that Stephen W. Dorsey had a perfect right to do that thing.

Mr. BLISS. If you will refer to my opening you will find I used that precise language.

Mr. WILSON. After having had seven days of time will you not permit me to go on?

Mr. BLISS. I thought you would like to know that I agreed with you for once.

Mr. WILSON. Now he agrees with me. Now we are agreed, gentlemen, and I am glad to know it. He says that Stephen W. Dorsey had a perfect right to do this, and if the petitions are true petitions, and not false petitions, then you cannot draw any inference of guilt from the filing of those true petitions, nor can you draw any inference of guilt as against my client or any of these men because they got up these petitions. What I have said as to Stephen W. Dorsey is exactly true as a matter of course as to Miner. Now we agree that these men had a perfect right to do that thing. I think that whether he and I agree or not, you and I will agree that when a man does a thing that is fair and honest, and which he has a perfect right to do, you cannot draw an inference of guilt against him for having done that thing.

Now, gentlemen, with these two preliminary statements by way of illustration, I come to

ROUTE No. 34149, FROM KEARNEY TO KENT.

The indictment, mark you, charges that Brady increased and expedited this route when it was not needed, and when he knew it was not needed. That is one thing. Then they say that that was brought about by means of a forged petition, and they take that petition, and they say that they have proved that Miner forged the petition. If the testimony of Rerdell, which is contradicted by the testimony of Miner, and which is contradicted by the handwriting which they say is forged, constitutes proof of the fact that Miner did it, then you have the proof. Otherwise you have not. But even if it were proved beyond peradventure, proved beyond a reasonable doubt, it is not proved anywhere by anybody that General Brady knew anything about it. These gentlemen have treated this case as though that expedition was made upon that petition alone. Mr. Ker so argued to you and Mr. Bliss so argued to you. If this case had stopped when these gentlemen got through with their argument it would have gone to you just as though that was the only paper in

this case. They have claimed to you, and they brought a witness all the way here from Nebraska to prove that that paper was sent to John R. Miner and therefore prove that John R. Miner filed that paper in the department, and therefore to establish the fact that John R. Miner had written in there "Schedule thirteen hours." If this case had rested upon the proof exactly as they left it that would have been the impression remaining upon your minds. What is the history of that petition? The date of the order is June 26, 1879, Mr. Henkle says; I do not happen to be able to place my eye upon it. It was to take effect on the 10th of July, 1879. Recollect, June, 1879, and July, 1879. An order made in June to take effect in July. Let us see whether these gentlemen have given you all that you are entitled to have in this case. They gave you this letter, on page 571:

KEARNEY, NEBR., April 14, 1879.

Hon. ALVIN SAUNDERS, *Washington, D. C.:*

DEAR SIR: Has there been anything done in the matter of getting a tri-weekly mail between this place and Loup City? Our people are very desirous that the service should be increased, and if you can do anything in this matter to hurry it up and bring it to a final consummation, you will confer a favor on a large portion of the people of both this county and Sherman, and also confer a favor on

Yours, truly,

JOHN D. SEAMAN.

Now, I turn to page 3260, and I find a letter that we brought here from the files of the department when we began introducing testimony for the defense. It is addressed not to the Second Assistant Postmaster-General, but to the Postmaster-General himself. Let me read it to you:

LAW OFFICE OF HALE & NIGHTINGALE,
Loup City, Nebr., May 12, 1879.

Hon. D. M. KEY,
Postmaster-General, Washington, D. C.:

DEAR SIR: Will you kindly inform us what, if anything, has been done toward increasing the mail service on mail route No. 34149.

A petition was submitted for the consideration of Congress, requesting the same, and as yet we have heard nothing from it. Immigration and business—

Mark this now, gentlemen, because, as I read to you a while ago, if these are fair petitions, true petitions, if they tell the truth, there is no harm in them—

is greatly retarded on account of the defective mail service which exists at the present time.

The country is settling up rapidly, and small villages now dot a district of country which a short time ago was wild prairie land; homes are being established; societies are being formed; and as a consequence these intelligent communities need more extended means of civilized communication. In behalf of the inhabitants of Sherman, Valley, and Custer Counties, receiving their mail on said route, we earnestly ask your influence and assistance for increased service thereupon, if the same has not already been procured.

We are, yours, respectfully,

HALE & NIGHTINGALE.

That letter, gentlemen, although addressed to the Postmaster-General, found its way of course into the office of the Second Assistant Postmaster-General. It is dated the 12th day of May, 1879, and is taken from the very jacket on which was written the order of which these gentlemen complain. But that is not all. Away back in January, 1879, this letter appears, which also comes from the same files, and was also before the Second Assistant when he made the order increasing and expediting the service:

KEARNEY, NEBR., Jan. 2, 1879.

Hon. PAUL VANDERVOORT, *Omaha, Nebr.*:

DEAR SIR: I inclose you petition of Loup City and *vicinity*—people asking for an increase of service on the route between Kearney and Loup City. This, I think, is needed very much, as that county and Valley, the co. above. is settled up wonderfully in the last year, and if our Democratic Congress will allow this further expenditure, they certainly ought to have it. Then again there seems to be competition between this place and Grand Island for this increase of service, and of course I would like to secure it for here. See John Fury and ask him how Armstrong's letter strikes him by this time. If you can and will do anything for me in the way of getting an increase of service on this route, do so, and if possible for me to throw a stone in your way, I will do it.

Respectfully,

JOHN D. SEAMAN.

Recollect that is addressed to Paul Vandervoort, in Omaha, Nebr., in January. It finds its way here into the files of the Post-Office Department in respect of this particular route. I will show you how in due time. Then what next, gentlemen?

RAILWAY MAIL SERVICE, OFFICE OF CHIEF HEAD CLERK,
Omaha, Nebr., Jan. 5th, 1880.

DEAR VALENTINE:

You recollect Valentine was the Representative in Congress for that entire State.

Enclosed find a petition from people of Sherman Co., in regard to increased mail facilities, forwarded by Senator J. D. Seaman, of Kearney, Neb. I would advise you to do all you can to accomplish the end desired by these petitioners for your own welfare and that of the dear people. I shall advise Seaman that I sent the papers to you.

V'y truly,

PAUL VANDERVOORT.
Ch'f H'd Cl'k.

Now, gentlemen, comes another letter. I want your special attention to this, if you please:

LAW OFFICE OF HALE & NIGHTINGALE,
Loup City, Neb., April 26th, 1879.

Hon. ALVIN SAUNDERS,
Washington, D. C.:

DEAR SIR: On behalf of the people of Sherman Valley, and the northern part of Custer Counties receiving their mail on mail route No. 34149, we thank you for the earnest and persistent effort made by you in our behalf.

As we need additional service on said route, we earnestly request that you will exert every endeavor consistent with the high and responsible position in which you are placed to forward our interests in this matter.

Our daily stage line is constantly bringing in settlers, and we constantly feel the necessity for better mail facilities.

Because of the lack of frequent service on said route, immigration and the ordinary course of business is greatly retarded; in some instances parties desirous of locating in these counties wholly refuse to locate in a country where they have so much difficulty in hearing from their friends at a distance.

Again thanking you for your interest shown in this matter, so important to us, and again requesting you to help us in a matter of so much importance to us as settlers and indirectly to the whole State,

We are, very respectfully, yours,

HALE & NIGHTINGALE.

These communications, gentlemen, were sent to Mr. Valentine and to Mr. Saunders, the Representative and the Senator representing the demands, the interests, and the necessities of these people for the mail. This Representative evidently filed those letters in the department, or they would not have been there. General Brady, you remember, told you that he had matinees there nearly every day of Senators and Mem-

bers coming there to insist upon having more mail. It is through these sources you can see that these letters came into that department and by the dates they bear you will see that every one of them was there at the time this order was made.

Mr. BLISS. Allow me to correct you. You distinctly read one letter dated in 1880.

Mr. WILSON. If I did, let me be corrected. Please point out the letter.

Mr. BLISS. I remember your reading one bearing that date. I think it was headed railway mail service.

Mr. WILSON. If I did it was an oversight in the order of reading.

Mr. BLISS. I think you will find that to be so.

Mr. WILSON. Oh, yes. The letter of Vandervoot to Valentine is dated January 5, 1880. I am thankful to Colonel Bliss for making that correction for me. That letter was not here. You remember, gentlemen, that these letters say a petition had been forwarded. These gentlemen have brought into this case but one petition, and I therefore may reasonably suppose this is the petition. You will recollect that one of these correspondents thanked Senator Saunders for the interest he had taken in this matter. It is very evident, gentlemen of the jury, that that gentleman who came here and said he sent the petition to lock-box 714 or 706, whichever it was, I don't remember, is mistaken about it. It is the easiest thing in the world for a man to be mistaken about a thing of that kind, and I attribute nothing to his discredit in saying he is mistaken about it, because it is just such a thing as a man would be mistaken about. Here is this petition which they say was all that Brady had to go upon. They cut it very fine there as I will show you in a moment. On that petition is an indorsement by Senator Saunders, and as it has had to be pasted over to preserve it I will have to go to the record to read the indorsement. It is on page 570:

SENATE CHAMBER, *February 16, 1879.*

You recollect now that these parties say they had sent on a petition.

The Loup Valley is a very large and fertile one, and is being settled up rapidly.

Mark that. It is indorsed right on the back of this petition:

I approve of the request made by the settlers for the increased service on the route between Kearney and Loup City, and shall be glad to learn that their petition has been granted.

A. SAUNDERS, *U. S. S.*

Mr. BLISS. I think the date is erroneously printed. The date should be the 6th, I think.

Mr. WILSON. It is immaterial. Whether it should be the 6th or the 16th, Senator Saunders received that petition; he made that indorsement upon the petition, signed his name to it as United States Senator, and put it in the department. Whether he filed it there or not is not very material in this case, because when General Brady had to act upon this case, when he had to act upon the question that was brought forward for his decision, to wit, the increase of service and the expedition of service, he had there the guarantee of Senator Saunders that that petition stated the case. He had before him at the same time these letters which I have read, saying to him, "This country is settling up rapidly. These people need more mail facilities. There are people who will not stop here, unless they can get more mail facilities. It is not merely to the interest of this particular locality, but the whole State is interested in having

these immigrants locate themselves in the State. If they cannot get mail facilities here they will go where they can get them. Therefore this young State of Nebraska—not this particular valley nor this particular county, but this great State of Nebraska—is interested in having this thing done.” These are the papers and these were the representations that were made to him, and nobody has proven here that they were not true. On the contrary, Senator Saunders says they are true. He says, “I indorse what these people say, and I urge upon you to grant them this request.” It was granted. Having been granted under such circumstances, these gentlemen want you to say that the making of that order was an indication of fraud, and that it tends to prove a conspiracy. Ah, but, gentlemen, as I said, they draw a very fine line here. They say, “They did not ask for expedition in these letters; they only asked for increase of service. I will just appeal to any one of you gentlemen. Suppose that out in Nebraska you had been located along the line of that route, and somebody had come around there and you wanted to get your mail quickly and you wanted to get it more frequently. Do you suppose you would know all about these little niceties, these shades of distinction between increase of trips and expedition? You would say, “We want more mail facilities”—wouldn’t you?—mail facilities. That includes trips according to the ordinary mind and the ordinary acceptation, just as much as it does expedition, and expedition just as much as it does trips. But suppose it does not, for the purposes of the point I am making. Will you tell me where the evidence is that General Brady had any knowledge of the fact that that petition was changed after these people had signed it? Let any man sit down in that office to discharge its duties. If a petition comes in signed as this petition was signed, indorsed and vouched for as this petition was indorsed and vouched for, even though you should scrutinize it to see if anything was written in there thus vouched for, would you ever suspect it had been done after it had been signed, and not before? Upon things such as that they are asking you, gentlemen of the jury, to draw an inference against my client in this case.

Well, Fitzalon was put on this route. I will not get out the maps this afternoon as to Fitzalon, gentlemen; I will have to use them as to other matters hereafter. I spoke to you yesterday in regard to one feature of Fitzalon. They say that the mail-carrier in carrying the mail went to Fitzalon anyhow. How did they make that out? The department advertised this route to run by certain points from Kearney to Kent, and it mentions the points. There was a road that ran from one point across to the other. That was the road that was contemplated by the department. Of course, the officers of the department did not travel over these roads, and they do not know just what road a carrier may see fit to go by. It seems there was another road that ran by the way of Fitzalon, and these carriers ran by that road instead of going in the direction that was advertised. They took that upon themselves. Did anybody in the department know that? There is not a syllable of evidence that they did. Nobody ever dreamed of it, and nobody ever heard of it until these industrious gentlemen went around and hunted up these carriers and found out that the carriers had been traveling in one direction instead of the other. Then they say that one of these carriers, French, went through in twelve hours. He was actually going through in twelve hours. How did he do it? In the first place, the department knew nothing about it, and could not know anything about what the carrier was doing. There was nobody out there required to report it and nobody ever did report it.

How did he carry it in twelve hours? By simply not performing his contract. Instead of going to Cedarville, as he was required by his contract to go, he left Cedarville out of the route and went straight through. He got through in twelve hours and then he got up a little private enterprise of his own and supplied Cedarville by a side supply. In that way he was getting through in twelve hours by not carrying the mail as the contract required. Nobody knew anything about it, or could know anything about it. It was nobody's business to report about it. If anybody did report about it, it did not come to the knowledge of the department. They say that the subcontractor was carrying that mail for a good deal less than the contractor got and that should have showed General Brady that he was paying too much. That is the argument. He ought to have known it. He should have known he was paying too much for the service. I said yesterday, and I do not know as I need to repeat it, and shall only say a word or two on the subject, that the contractor agrees to carry the mail for four years, summer and winter. The contractor is bound to carry it for four years, or to be declared a failing contractor and suffer the consequences. The subcontractor, as you find in several of these cases, could throw the mail down at any minute and the contractor was bound to pick it up and carry it on.

Mr. BLISS. Do you say the subcontractor was not liable during the time of his contract?

Mr. WILSON. Not liable to the Government.

Mr. BLISS. No.

Mr. DAVIDGE. He is in no iron contract with the Government.

Mr. INGERSOLL. His subcontract was not on file either.

Mr. BLISS. On this route it was not filed.

Mr. WILSON. It was not filed. Gentlemen, if I expect ever to get through with this case I cannot pick up all these little things, and I am not going to try to do so.

I think I will make one remark in regard to another point here. They say, gentlemen of the jury, that the affidavit as to the men and horses was a false affidavit. That, of course, they have to prove. How do they prove it? They prove it by bringing a subcontractor or a carrier or somebody else here to prove how many horses he *used* in carrying the mail on the existing schedule and how many he *used* when he carried it on the expedited schedule. That is the way they did it. The law says that they are to make an affidavit showing how many *are necessary* to carry it on the one and how many *are necessary* to carry it on the other. Does it prove how many are necessary by bringing to you the testimony of a subcontractor who said he used so many when he did not perform the contract? This man did not perform this contract. He admitted when he testified that he did not perform the contract, and the fines and deductions imposed upon him show that he did not perform the contract. What was the matter? He did not use enough. It only proves that the subcontractor did not use enough. You must remember that these subcontractors were talking about what they used when they were at liberty to throw that mail down at any moment, whereas when the contractor makes his affidavit he has got to make it with reference to the whole contract term, as I have said once before.

The next is :

ROUTE 38135, FROM SAINT CHARLES TO GREENHORN.

I am going to run through these routes as rapidly as I can. My main

purpose in going through them at all, gentlemen, is to show you what Brady acted upon when he made these orders. What about the Saint Charles and Greenhorn route? Recollect the advertisement was not prepared by Brady. It was prepared by Eaton. The route was advertised as from Saint Charles to Greenhorn, giving the distance, and the contract was let on that advertisement. There was undoubtedly an oversight in making that advertisement. There is no doubt about that. The route ought to have been from Pueblo to Greenhorn, but they advertised it as from Saint Charles to Greenhorn, and let the contract from Saint Charles to Greenhorn. Let me say right here that there is one letter written by a postmaster along in January, after these bids were in, saying that this mistake had been made, and that it had been advertised from Saint Charles to Greenhorn, and he supposed it was an oversight. It was one of those things that it was too late to correct. There is not a particle of evidence that Brady ever saw that letter or ever heard of it until it came out in this trial. Why should he? What particular reason was there for his seeing it? It went to the corresponding clerk, and Brady was not called upon to make any order about it. You could not expect him to be mousing around with the industry of Colonel Bliss, and rumaging among all the papers in that vast department. There is not a scintilla of evidence to show that he ever heard of it. But even suppose he had. It was too late to correct it, for the bids were all in. The contract was let from Saint Charles to Greenhorn. You recollect they found that that wouldn't do. The postmaster's letter on the subject is on page 772. I will read it:

SAINT CHARLES POST-OFFICE,
Pueblo County, Colorado, August 15, 1878.

SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

DEAR SIR: This is to inform you that it is impossible for me to act as postmaster here, and have the head of the route here. I have no time to attend to the business, and will not pay any more attention to it as being the head of route No. 38135. Pueblo is the place for the head of the route. Route 38135 should be extended from Saint Charles to Pueblo, and Pueblo made the head of the route, and service paid pro rata, and messenger service done away with.

Prior to this time they had had, in consequence of this mistake that occurred in the department, a messenger service from Pueblo down to the head of this route.

He says to the Second Assistant Postmaster-General:

Route 38135 should be extended from Saint Charles to Pueblo, and Pueblo made the head of the route, and service paid pro rata, and messenger service done away with. By having messenger service between Saint Charles and Pueblo the mails are delayed at Saint Charles post-office three days each trip. By extending the route to Pueblo the mails will go through Pueblo to Greenhorn in one day.

You will please attend to this, as I shall not pay any more attention to the business as this being the head of the route.

Yours, &c.,

JAMES FAIRHURST,
Postmaster.

On the 15th of August, 1878, this letter was written:

SAINT CHARLES POST-OFFICE, PUEBLO, COLO.,
August 15, 1878.

SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

DEAR SIR: Mr. Jacob S. Taylor commenced messenger service between Saint Charles and Pueblo to supply route No. 38135 with mail August 15, 1878, at the rate of \$250 per annum.

Yours, &c.,

JAMES FAIRHURST,
Postmaster.

There they had had to employ messenger service from Pueblo to Saint Charles at \$250 per annum.

Please give me instruction in regard to settling for temporary service between this post-office and Pueblo from July 8, 1878, to August 12, 1878, being eleven trips at the rate of \$275 per annum, that being the best rate that I could secure for carrying it at that time. Please advise at once.

Yours, respectfully,

J. FAIRHURST.

On the 30th of August, 1878, is this jacket:

Date, August 30, 1878; State, Colorado; number of route, 38135; contract, Saint Charles to Greenhorn; length of route, thirty miles; number of trips per week, two; contractor, John R. Miner; pay, \$548 per annum.

Postmaster at Saint Charles reports that there is no station out on the Denver and Rio Grande Railroad at his office, and recommends that service on this route be changed so as to embrace and begin at Pueblo, increasing distance twelve miles. Extension will cost at pro rata \$328.80 per annum.

Please mark that.

Extension will cost at pro rata \$328.80 per annum.

They were paying for temporary service that delayed the mails three days, \$275 per annum; and here, for regular service, where the mails would not be delayed, but would go through in one day, covering this same ground, it cost \$328.80 apparently. That state of affairs was found in connection with this business on this route. I hope that you will not come to the conclusion that all of this immense business can be done in all its details and nobody ever make a mistake. I hope that you will not come to the conclusion that a little irregularity in any of this business is to be regarded as a criminal irregularity. But now what happened? An order was made, dated August 30, 1878, which reads as follows:

Embrace and change service so as to begin at Pueblo, increasing the distance twelve miles, and allow the contractor \$328.80 per annum additional pay, being pro rata, from September 10, 1878.

That order was made by Mr. French. They say that is evidence against Brady, however, I suppose.

Mr. DAVIDGE. What was the slight irregularity you spoke about.

Mr. WILSON. The mistake was in the original advertisement. They did make a mistake there; there is no doubt about that. But it was one that was very easy to be made, and I will show you why. Because this great Denver and Rio Grande Railroad, as you have seen in the testimony in this case, was marching southward. It was on its way to the far South. It had gone beyond Pueblo, and naturally the corresponding clerk would say, "I am not going to advertise this star route from Pueblo to Greenhorn, but I will advertise it from Saint Charles to Greenhorn, so that the railroad will carry it down to Saint Charles." But it turned out that the Saint Charles that was on the railroad was only a water-tank some two or three miles away from the Saint Charles that was on the star route. Now, it was a very natural mistake to make. In his zeal to save all he could for the Government, not to make a star route run where a railroad would carry the mail, the corresponding clerk advertised the route to commence at Saint Charles. It turned out to be utterly impracticable. It was a mistake, and a mistake the correction of which cost the Government about \$40 for temporary service in excess of what it ought to have cost.

Now, let us see how this service happened to be increased and expedited. There were placed on file quite a large number of petitions ask-

ing for increase and expedition, among them 7 B, which you have heard a great deal about, and which reads as follows :

GREENHORN P. O., PUEBLO COUNTY, STATE OF COLORADO.

Hon. D. M. KEY,

Postmaster-General, Washington, D. C. :

DEAR SIR: The undersigned, citizens of the State of Colorado, county aforesaid, residing and getting their mail on route 38135, from Pueblo to Greenhorn, respectfully represent that it is necessary that the service of said route should be increased from two trips a week to three trips per week and faster time. The country is being very rapidly settled by people of intelligence, and we ask the increased mail facilities for the benefit of those who have already made their homes in this section, and as an inducement to others to settle, frequent mails being one of the strongest inducements to intending settlers.

That is signed by a great number of people, as you will see, and then on the back it is indorsed as follows :

I respectfully request that the prayer of the petitioners be granted.

JAMES B. BELFORD.

1879, April 18th, Colorado. I respectfully recommend the increase of service herein prayed for.

H. M. TELLER.

N. P. HILL.

Now, you have the guarantee of Mr. Teller and Mr. Hill, the two Senators, and Mr. Belford, the Representative, that that petition told the truth ; and not only that, but, as I read to you this morning, Mr. Teller told you that he got from his State numbers of letters, and he was continually calling upon the Second Assistant in regard to it ; and Belford told you the same thing, so far as he was concerned.

Now, what is there, gentlemen of the jury, to complain of about this petition ? They say this petition does not count because it is a forged petition. What is there forged in it ? Imagine either of you to be Second Assistant Postmaster-General, and look at those words "and faster time ;" they have asked you so many times to look at that petition, that I invite your attention to it again. Would you, in passing upon a petition of that kind and reading it over, ever suspect that those words "and faster time" had been written in there after it was signed ? Why, gentlemen, only the assiduity of these learned gentlemen who are representing the Government could discover anything of that kind. I will show you presently that there is a great deal more in this case than that. Somebody says that those words "and faster time" were written in there after they were signed. They have found that out, and they say Brady ought to have known it, and if he had put on his magnifying glasses he would have found it out, and because he did not find it out it is an indication of fraud on his part.

Now, where is 11 B ?

Mr. BLISS. I have it.

Mr. WILSON. I am glad you came back.

Mr. BLISS. I knew you were hankering after me.

Mr. WILSON. Here, gentlemen, is another one of the same kind. They have shown you that letter, I think, about forty or fifty times. This poor, little, short-legged petition with about twenty or thirty names on it, has not cost this Government less than \$500 in its travels along the line of this jury. They say those words "and faster schedule" were written in after it was signed, and Brady ought to have seen it, and as he did not see it, why, as a matter of course, he must have been engaged in some devilment in connection with that.

Mr. DAVIDGE. He ought to have had Bliss.

Mr. WILSON. He ought to have had Colonel Bliss along side of him all the time.

Mr. BLISS. It would have been rough on Bliss.

Mr. WILSON. It would have been mighty hard on Bliss, but it would have been a great deal harder on Brady.

Mr. BLISS. He would have had to divide the profits.

Mr. WILSON. Now that you have mentioned that, I would mildly suggest that if Bliss had been there and anything of that sort had been going on, the profits would have been a great deal larger than they were.

Mr. BLISS. That is why you regret he was not there.

Mr. WILSON. Oh, no; I think you would have handled the paper with such facility that if anybody came around there with papers not just right, Brady would not have had much trouble in finding it out. I cannot find that "quicker time." Show me where it is.

Mr. BLISS. You cannot find it? I think you can find it if you want to.

Mr. WILSON. I give it up; it is here, gentlemen. They say Brady ought to have seen that in looking over these petitions, and inasmuch as he did not he must have been a terrible rascal. [Paper handed to jury.] Mr. Evans, you could not find it in a week unless it was pointed out.

Now, what else was there, gentlemen? Mr. Chaffee writes a letter. Mr. Ker don't think much of Chaffee.

Mr. DAVIDGE. He thinks he is all chaff.

Mr. WILSON. He sends several petitions in this case, and Mr. Ker is rather inclined to sneer at ex Senator Chaffee. Well, the people of Colorado thought well enough of him to keep him in Congress a long time and to send him to the Senate :

NEW YORK, April 23, 1879.

Hon. D. M. KEY,
Postmaster-General, Washington, D. C. :

SIR: I have the honor to recommend daily mail service between Pueblo and Greenhorn. The interests of the people of that section require these additional mail facilities.

Yours, truly,

J. B. CHAFFEE.

And then follows one of those petitions which I have just shown to you. And then we have this :

Hon. D. M. KEY,
Postmaster-General, Washington, D. C.

Remember these people were deceiving Key. He was not to know anything about this thing. They were going to deceive him, and to deceive him they sent this communication directly to him.

Hon. D. M. KEY,
Postmaster-General, Washington, D. C. :

DEAR SIR: The undersigned, your petitioners, most respectfully ask you to grant us the following petition :

That you increase the service on route 38135 from two trips per week to a daily mail. In asking this, we do it with the conscientious feeling that we are requesting something of you that did you know the circumstances and condition of the country personally, that you would have no hesitance in acceding to our wishes. Our people are a reading community, and many of us wish to keep posted in the doings of the world through the medium of a daily paper. This can only be accomplished by having a daily mail again. Our population is increasing faster than any one can imagine with seeing the number of emigrants, and while a year since a semi-weekly mail supplied our wants, with our present population it does not meet with the necessities of the people. Hence your petitioners will ever pray, &c.

Then, on page 787 :

[Office of treasurer of Pueblo County, George Morgan, treasurer.]

PUEBLO, COLO., May 6, 1879.

Hon. H. M. TELLER:

DEAR SIR: A petition signed by most of the citizens living in the southern part of our county, and signed by a great many citizens of Pueblo, to establish a daily mail between this point and Greenhorn, has been sent forward and presented to the Postmaster-General, or, I suppose, rather to the Second Assistant Postmaster-General. I wrote you to state that at least one-third of the citizens of Pueblo County outside of the city of Pueblo got their mail at Greenhorn post-office, and that until the building of the Denver and Rio Grande Railway south of Pueblo they had a daily mail, when it was cut down to twice a week.

See what the effect of the railroad was :

The expense of a daily mail will be but small, it being but thirty miles, and the people ought to have it. I will take it as a personal favor if you will see the proper authorities and urge the immediate establishing of this line, or rather of this change, from a biweekly to a daily mail.

Yours, truly,

J. G. CHILCOTT.

My attention is called here to some testimony, at page 830, in respect of one of these petitions :

Q. Can you say whether it is in the same condition now as when it was signed by you or not?—A. I think it is.

Then he says as to 12 B that he thinks it is in the same condition as it was.

Now, let us take 10 B :

Hon. D. M. KEY, *Postmaster-General* :

The undersigned, citizens of the State of Colorado, residing and getting their mail on route 38135, from Pueblo to Greenhorn, respectfully represent that it is necessary that the service on said route should be increased from two trips per week to six trips per week. The country is being very rapidly settled by people of intelligence, and we ask the increased mail facilities for the benefit of those who have already made their homes in this section, and as an inducement to others to settle, frequent mails being one of the strongest inducements to intended settlers. We also respectfully request and urge that the running time be reduced so as to run from Pueblo to Greenhorn in eight hours, so that the citizens of Greenhorn may get their mails at a seasonable hour.

Gentlemen, is that interlined anywhere? Have these gentlemen ever complained that that was interlined or changed in any way? No. There was a petition which was not tampered with by anybody, asking for eight hours. That is expedition. There were these other petitions which they say were tampered with, asking for faster time and all that. Now, all of these were before the Second Assistant Postmaster-General, and they are finally driven to this, gentlemen of the jury. That he made an order for seven hours instead of eight as petitioned for. These petitions that he had before him, and upon which any one of you would have acted without suspicion, all ask for faster time, faster schedule, or something of that kind. And here was one which mentions specifically eight hours as the schedule, and they say he actually made it seven hours, just as though when he came to act upon these things he was bound to adopt the precise time that happened to be named in the petition, whether it suited the balance of the service or not.

What was the Second Assistant Postmaster-General required to do? Why, he had to decide whether he would increase the trips; he had to decide whether he would expedite the service; he had to get the best information that he could. Teller and Hill and Belford and all these petitioners

said, "We need this service, we must have this service." One set of petitioners say, "Give us eight hours;" others say "Give us more trips;" others say "Give us faster time." And so it goes. Now what was the Second Assistant to do? Why, to take these evidences of the necessity for the service, and then make such an order as would give the people the service they needed, and make it in such a way as to conform to the other service in that locality. Have we not come to a pretty pass in this case, gentlemen, when they stand here and argue to you that because one or two said seven instead of eight, as asked in one petition, that is an evidence of fraud, and all this, too, in respect of a little route only thirty-two miles long? It is not a mote in this vast system of mail service.

Well, now, there is another trouble in this case, gentlemen. Agate was put on this route. It was a post-office made by the First Assistant Postmaster General. I suppose he was in conspiracy with somebody to get a post-office out there. Probably he and Piper were in the conspiracy. Piper wanted to be postmaster, and I suppose that he and the First Assistant entered into the conspiracy to get up the post-office in order that Piper should be appointed postmaster, and defraud the Government out of his salary. But the First Assistant made Agate a post-office. He then sends word to Brady and says, "Brady, Agate is a post-office, and Piper has been appointed postmaster at Agate." Now, what happens? An order is made to put Agate on this route. That was the only way for it to get the mail. It was only two or three miles off of this route, and that was about the only way it could get the mail. Gentlemen, whatever else you do in this case, and for whatever else you may hold Brady responsible, do not hold him responsible for making Agate a post-office. But Agate got to be a post-office, and then the next thing was to get service upon it. An order putting that service on will be found at page 789 of this record. I see that this order was made by Brady. My recollection was that it was made by French.

Mr. DAVIDGE. A heavy gun.

Mr. WILSON. On the 10th of November, 1880, the corresponding clerk went in to Brady and carried to him a jacket having this indorsement upon it:

The office at Agate, Pueblo County, Colorado, is at present receiving special supply. It can be embraced in this route by increasing the distance three miles, and the contractor's pay \$369.90 per annum.

That is what the corresponding clerk said to Brady. Now comes Brady's order:

From December 1, 1880, embrace Agate in this route next after Saint Charles, increasing the distance three miles, and allowing the contractor and subcontractor \$369.90 per annum additional pay, being pro rata.

BRADY.

That is the way Agate got on this route. Then Mr. Piper, who was the postmaster at Agate, writes this letter, found at page 789:

AGATE, COLO., September 30, 1880.

Hon. THOMAS J. BRADY,

Second Assistant Postmaster-General:

DEAR SIR: Under date of April 20, I received orders from your office to supply this place with the mail as often as practicable for the pay allowed, the expense of so supplying not to exceed two-thirds of my compensation per annum. Allow me to say that it could not be done for that sum, and consequently I have not put on service.

Very respectfully, yours,

J. S. PIPER, P. M.

I am going to tell my Brother Ker something that he never before observed in this case, I will venture to say, and that is how careful Piper was not to tell the Second Assistant Postmaster-General what his salary was.

Mr. KER. He had the evidence in the mail-bills.

Mr. WILSON. Hold on, Brother Ker. That is the joke of it, if it is a joke. There are two ways, as I told you, of supplying these new offices. One is by a special supply; that is to say, the postmaster hires a man to carry the mail from his post-office to the route without having the regular contractor come by the new post-office. When the postmaster makes a contract of that kind, he is limited in the amount he can pay to two-thirds of his annual salary. For instance, if he hires you to carry the mail from Agate down to Greenhorn, where it would connect with this route, he can only pay you two-thirds of his salary. That is one way of doing it. The other way was to embrace it on the route. Piper had been instructed by Brady to put the mail on this route by special supply. He writes back to Brady most solemnly, saying "I can't get anybody to carry it for the amount that I would be entitled to under the law." Now, I do not know whether Brady thought that that was because the mail was so heavy that a man could not afford to carry it for the salary, or that he thought that Piper was not getting any salary at all. It might be either way. But Piper did not say anything about his salary. The truth was Piper was not getting any salary. There was no mail coming in there. These people had gotten up this post-office, when probably there was no necessity for it. My client is not responsible for that, however. But at any rate, he was getting no salary. Piper wrote that letter to Brady, and then comes this:

POST-OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT-POSTMASTER-GENERAL,
Washington, October 7, 1880.

This is addressed by French, Acting Second Assistant Postmaster-General, to the postmaster at Agate.

SIR: By direction of the Postmaster-General, you are desired to give answer to the underwritten inquiry by writing it opposite thereto, or on the next page, and returning this sheet, containing such answer, signed and dated, without delay.

Respectfully,

J. L. FRENCH,
Acting Second Assistant Postmaster-General.

To POSTMASTER AGATE,
Pueblo County, Colorado.

Then follows this:

Inquiry of Second Assistant Postmaster-General.	Answer of postmaster, Agate.
Would it be practicable to embrace your office on route No. 38135, from Pueblo to Greenhorn? How much would it increase the distance one way by the usually traveled road to change the service as noted above?	Dated October 13, 1880. It would. Answer, three miles.

That is the circular that was sent out to him by French, Acting Sec-

ond Assistant Postmaster-General, and he writes back that it would be practicable to put it on that route, and it would increase the distance three miles. At the bottom of this Piper says :

If we could have service on this route at this office once a week each way, say from the Saint Charles office on Saturdays to this office, and thence to the Greenhorn, returning on Monday, via this office and the Saint Charles, it would be satisfactory.

Very respectfully, yours,

J. S. PIPER, *Postmaster*.

Then comes this indorsement :

An order issued November 10, 1880, to embrace Agate on this route, increasing the distance three miles and the contractor's pay \$369.90 per annum. It now appears that the distance should have been increased eight miles. The importance of the office will not justify the expenditure. Agate should be made special.

That is the indorsement that the clerk made on the back of the jacket. Then this is the order :

From January 1, 1881, omit Agate from this route, decreasing the distance three miles and deduct from contractor's and subcontractor's pay \$369.90, being pro rata.

Allow contractor and subcontractor one month's extra pay on service dispensed with.

Now, there you have the history of Agate. Agate was put on that route. After the distance circular was sent out to the postmaster who had been appointed, not by my client, they found that the increase was three miles, and that \$369.90 was the pay for that addition, and Brady ordered it put on that route. They subsequently found out that it made a difference of eight miles, and Brady said, "Well, that office won't justify that, and therefore you will take Agate off of this route," and he cut it off. Now, they say he ought not to have allowed the one month's extra pay. Why not? There was the contract, which said he was entitled to it. This petty, trivial thing is paraded before you by the Government. You can see, gentlemen of the jury, that that is just one of these things that must be happening all over this country. Do you expect that a great, complicated net-work of routes running in all directions can be handled by hundreds and thousands of men in the way of contractors, subcontractors, postmasters, deputy postmasters, and all that, new post-offices being created, and all these things necessary to be done, and something of this kind not creep into such a system? Do you believe, gentlemen of the jury, that Brady, for his share of that pitiful sum of \$30, one month's extra pay provided for by the contract, would have made that order? I say it is contemptible. I say it is preposterous to suppose that that would be done. You see this thing just running along in the regular channel—a post-office made by the First Assistant, then that office being put on a route, then a distance circular sent out, disclosing that three miles was the distance, then an order made giving the contractor the additional pay for that distance, then afterwards ascertaining that the distance was eight miles really, then refusing to have it on the route because it would cost too much, and cutting it off. And they say that his action running through a course like that is indicative of fraud, to the enormous amount of one-twelfth part of \$369.90; Brady's percentage of which \$20 or \$30, or whatever it may be, on their theory, would be somewhere about \$6 or \$8.

That is all, gentlemen, I am going to say about that route. I am going to try to get through with another one before we adjourn.

No. 38134, PUEBLO TO ROSITA, COLORADO.

These gentlemen have not met with any petitions on that route that had been changed. If they have one lurking around that they say has been changed or tampered with by anybody anywhere at any time, I would like to see it just now. None have traveled up and down the line of this jury in this case of which I have any sort of recollection, and I am very sure none has been found. Now, gentlemen, that Pueblo and Rosita route has cut a pretty large figure in this case. The beginning of this will be found at page 870. It is a letter from W. H. Hyde, mayor of Pueblo, to the Postmaster-General himself. If it were not so late, gentlemen, I would get out a map with which to refresh your recollection about this route, but as I will have occasion to use a map in another connection, and as it is getting late in the afternoon and I know you must be weary, for I am very sure I am, I shall not take up your time in that way now.

PUEBLO, COLO., 4-28, '79.

Hon. D. M. KEY,
Postmaster-General, Washington:

SIR: A petition of the citizens of this vicinity has been forwarded to you urging that a daily mail line be put on between Pueblo and Rosita.

The petition represents the facts, and I hope you will be able to agree with us in respect to the urgency and importance of the service.

We in this section will highly appreciate your favorable action.

Very truly,

W. H. HYDE,
Mayor of Pueblo.

I want to bring your attention, gentlemen, to some petitions, in addition to what I have already referred to, that were before the Second Assistant Postmaster-General when he made the orders that were made in this case. The first is:

COLORADO SPRINGS, COLO., April 26, 1879.

Hon. THOMAS BRADY,
Assistant Postmaster-General, Washington, D. C.:

DEAR SIR: It is very important to the people of this part of Colorado that the mail service from Pueblo to Rosita be at once increased to seven times a week and that it be run at a quicker speed.

Rosita and Silver Cliff are filling up very rapidly with people from all sections, and the mail ought to be increased *immediately* to meet their wants, and I hope it will be done.

Very truly, yours,

THOMAS M. BOWEN,
Judge Fourth District.

Mr. DAVIDGE. Senator Bowen?

Mr. WILSON. He is now a Senator. He was on the stand, and I may have something to say of his testimony after a while. The next is:

PUEBLO, COLORADO.

To the Hon. THOMAS BRADY,
Second Assistant P. M. General:

SIR: The undersigned have the honor to state that, in their judgment, the mail service on the mail route between this city and Rosita, now being run three times a week, should be increased to a daily line with fast schedule time. It is now very slow.

The public interests of this section will be greatly subserved by this increase of service, and we believe, in view of the large population now supplied by this route, and the fact of the immense immigration now flowing in upon us by every train, that there should be no delay in having this done, and we shall hope to hear the order is made soon as we ask.

That is signed by sixteen people, and it is indorsed as follows:

Respectfully referred to Postmaster-General. The request of petitioners is reasonable and necessary, and hope the service will be increased immediately.

J. B. BELFORD, M. C.

I concur in the above.

H. M. TELLER.

Then follows another :

To the POSTMASTER-GENERAL,
Washington, D. C. :

The undersigned, citizens of Pueblo, Colorado, beg to represent that the new mining towns of Silver Cliff and Rosita are more accessible to this place than to any other railroad point, and that you have ordered seven times a week mail service from Cañon City to Silver Cliff, while we have only a weekly line.

We urge that you place us on the same footing as Cañon City. This is the natural and proper outlet for all trade and travel to the places indicated, and with a fast schedule of, say ten or eleven hours, and seven times a week mail to Rosita, it would prove of vast importance to the people of both places.

We trust you will put this service on immediately.

That is signed by a large number of people, and is indorsed as follows :

Respectfully referred to the Post-Office Department. This service as asked for is absolutely necessary, and I hope it will be ordered at once.

J. B. BELFORD.

I concur in the above.

H. M. TELLER.

Now, here is another :

GENERAL BRADY,
Second Assistant Postmaster-General :

SIR : The undersigned, citizens of Pueblo, Colorado, have the honor to respectfully but earnestly recommend to you the necessity of increasing the mail service on the route between here and Rosita to a daily line.

The extraordinary mining interest developing in this portion of Colorado, and the enormous increase of our population, and consequent increase and demand for proper and expeditious communication by mail, renders it necessary not only to increase this to a daily line, but to increase the speed also. It should be carried in half the time now occupied.

We hope this petition will receive speedy and favorable attention.

That is largely signed, and is indorsed :

Respectfully referred to the P. O. Department within petition of citizens and business men of Pueblo, Col., with request that this service be put on.

JAMES B. BELFORD.

I concur in the above.

H. M. TELLER.

And then follows a long slip that was cut from a newspaper, in which, you will remember, that the extension of the mail is spoken of:

It should be added—

It says—

to the above that the surplus money over and above the amount paid out on money orders remitted weekly from this office amounts to from \$1,500 to \$2,000, and there are thirty to sixty-five registered packages daily in transit. When complained to, the Post-Office Department replies that "owing to the limited appropriations allowed by Congress no changes looking to the enlargement of the mail facilities of Cañon City and other places similarly situated can be made." Congress should make a tour in a body to Colorado this summer and learn something.

They would learn a great deal by going out there. Then comes another:

Hon. D. M. KEY,
Postmaster-General:

SIR: We have the honor to call your attention to the mail route between this place and Rosita, and to request that the service thereon be increased so as to make it a daily line and fast time.

This increase should have been made long ago, and now in view of the great influx of population (every train arriving here is loaded) and the vastly greater necessity now than ever before for these additional facilities—

Your petitioners hope you will order the increase asked for.

Signed by twenty people and indorsed:

Respectfully referred to the P. O. Department. I hope this service will be increased as asked for, as the development of this part of the State is very rapid.

J. B. BELFORD.

I concur in the above.

H. M. TELLER.

I am not going to read any more of these, gentlemen. I have read you these petitions and indorsements upon this route for the purpose of showing to you how these Senators and Representatives were insisting upon this service being put on there, saying that it was needed by the people of that section. There are thirteen of these communications, and every one of these thirteen was on file when this order was made; every one of them representing that this service was needed, and Teller and Belford, whose attention was called to these very indorsements, tell you here upon the stand that it was needed; that they made those recommendations in good faith, and for the purpose, as they supposed and believed, of subserving the real interests of the people of that section. They have testified in regard to that here. Mr. Teller urged it in person; Belford urged it in person. These letters were dated as far back as April, 1879.

Now, gentlemen, I want to call your attention to one or two things that have been put into this case for the purpose, as I suppose, of inducing you to believe that this service was not needed. They brought a witness here by the name of Walters, and they have introduced a letter from a Mr. Monroe, who was postmaster. That letter is dated March 17, 1879, and is found at page 869:

GREENWOOD, COLO., *March 17, 1879.*

Mr. JAMES H. TYNER,
First Assistant Postmaster-General:

My duty to the department requires that I should suggest the discontinuance of the present mail service (weekly) from Pueblo to Rosita, as we now have a tri-weekly from Florence to Greenhorn, by which we receive all our mail at present, and while we should much prefer the route from Pueblo to Rosita, yet so long as we have the mail promptly by the other route, the service from Pueblo to Rosita is superfluous and a needless expense to the Government. I do not make this suggestion at the instance of any interested parties, but simply as a saving to the department.

I am, dear sir, yours, very respectfully,

A. Q. MONROE, *Postmaster.*

Indorsed:

P. M., Greenwood, suggests discontinuance of service.

That was dated on the 17th of March, 1879. There you have that one letter from Monroe suggesting that, while they would prefer the Pueblo and Rosita route, yet at his particular post-office they got their supply—this was the post-office at Greenwood—from another route, and therefore he thought that Pueblo and Rosita ought to be discontinued. He says we would prefer Pueblo and Rosita as a route, but “as we at Greenwood get our mail by another route you might just as well discontinue Pueblo and Rosita.” In opposition, however, to all that come these thirteen or fourteen petitions to which I have called your attention, with

all the indorsements upon them that I have read, asking not only that it be continued, but that it be made a daily service and on a fast schedule.

They have got another letter in here, and this letter, mark you, is dated May 8, 1880—this letter coming after the fact. It is a very interesting letter, on account of the man who wrote it. It is found at page 869:

GREENWOOD, COLO., May 8, 1880.

To the FIRST ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

DEAR SIR: We have received no daily mail by route 38134 since April 30, 1880, it having been carried to the former location of the office. While this office is located on the route on which the contract was let, they have persistently refused to deliver here. Both myself and postmaster at Rosita, Custer County, Colorado, also P. M. Ingersoll, at Pueblo, consider it a useless and expensive route to the Government, as this office is the principal one on route 38134, can be, and is now supplied by route 38169, which is ample to supply the demands of this office. We suggest that route 38134 be discontinued, and that Silver Park office (a precinct containing about fifty persons all told) can be supplied by a tri-weekly mail from Rosita at a trifling expense to the Government compared with the present.

Hoping the above will receive your earnest attention, I remain, yours respectfully,

J. W. WALTERS,

Postmaster, Greenwood. Custer County, Colo.

Now, gentlemen, you will remember something about that Mr. Walters. Recollect that Mr. Walters, after this order has been made, after these things have been done, and done, too, upon the faith of what I have already called your attention to, writes that letter. Why did he write it, gentlemen? Because he was the postmaster at the place known as Greenwood, which was on the line of this route. Mr. Walters, I believe, was a doctor or a druggist, and he had a farm about a mile and a half off of the route, and he undertook to carry the post-office at Greenwood down to his farm, so that the Greenwood post-office was circulating all over the country like a sort of *ignis fatuus*; Greenwood was not particularly located anywhere. But he says they got no mail at the post-office; that since a certain time the contractor had persistently refused to bring the mail to his office. Why? Because he had carried his office a mile and a half off the route—a thing he had no right to do. He had no more right to move that post-office than I have to go down here to-day and move the city post office over into Georgetown—not a bit. The law does not allow him to do it. Yet he had assumed to himself the right to do it, and had gone off down there, and because the mail did not come around to his post office, gotten up on his private account, he writes this letter asking that the whole service be discontinued. The complaint is that he did not discontinue it on the letter of this postmaster. Here General Brady had all the petitions and recommendations upon which he had a right to rely, as I shall show you after a while, and here comes along a letter from this postmaster, under the circumstances that I have stated. And they say to you that because Brady did not abolish that route, cut off that service, he must have been a rascal, and that he did not do it because he was carrying out a conspiracy to defraud the Government.

Mr. DAVIDGE. A conspiracy against the drug business.

Mr. WILSON. Yes; it was a conspiracy against this fellow's drug-store.

I have one other point on this, as to the question of arrivals and departures. I promise your honor, and I promise you, gentlemen, that I will finish in five minutes, and not return to this route on Monday.

They say that the adjustment and arrangement of arrivals and de-

partures was such that the mails had to lie over, and practically nothing was gained. If that is so, gentlemen of the jury, whose fault is it? I am ready to meet any question these gentlemen can present in any case. Was it General Brady's fault? Did you expect him to be down there seeing that those mails started at a particular time and arrived at a particular time? You will not require anything of that kind of him. Nor does the law, nor do the regulations, because the regulations have fixed it in another way. And how is that?

Just so soon as expedition is ordered on any route the very first thing that is done is for the corresponding clerk to send out one of these schedules for the postmasters and the contractor to arrange for the time of arrivals and departures. If I had the time I would read you one of these schedules. In another connection I may take occasion to do so. But that is the first thing they do. The postmaster at Pueblo knows just when the trains arrive at Pueblo. The postmaster at Rosita knows just the time of the arrival of mails and the departure of mails at Rosita. Therefore they send this circular out to those two postmasters and say to them, "Now, you and the contractor arrange the arrivals and departures on this route." And in those circulars they say to them, "Pay particular attention to making these arrivals and departures conform to the other service at your office, so that the mails will not be lying in your office, and so that when a man's letter comes to your office to go over this route it shall be picked up and taken on." Their attention is particularly called to that. Now they send out, and the postmasters and contractor say that it must start here and arrive there; start here at this hour, and arrive there at that hour; start from there at a certain hour, and get back here at a certain hour. And they put that down in writing on this circular and they send it back to the Post-Office Department. Now, what in the world has the corresponding clerk to guide him except this? What better evidence could he get? What better device could you make, gentlemen, to keep this system harmonious, than just that? When this comes back then the corresponding clerk puts that schedule on a jacket; he writes on the back of that jacket what it is that has been recommended by those two postmasters and the contractor, and he writes such an order fixing the schedule of arrivals and departures, and that is carried into the chief clerk. He checks it and carries it in to the Second Assistant, and he signs his name to it, the check mark being his guarantee that that thing is all right. And thus they fix the schedule of arrivals and departures.

And now, gentlemen of the jury, where that very thing was done, they bring a postmaster or an assistant postmaster here, who did not want to get up early enough in the morning, or who wanted to go to bed too early at night—that does not very often happen; they are more likely to want to sit up at night; it would be better for them to go to bed early—but for some reason or other of convenience to him or them they fixed up a schedule of arrivals and departures, as it is said here on this trial, which delayed the mail. That is what they say.

Do any of you suppose Turner knew anything about that when he made up his jacket? Is there any man here that will be uncharitable enough to suppose that William H. Turner, when he made up that jacket, knew that that schedule that had been made up by those two postmasters and the contractor was going to delay those mails? Why, nobody would believe that.

Does anybody here suppose that Thomas J. Brady, when, *pro forma*, he signed his name to that order that had been written on that jacket,

pursuant to what these postmasters and the contractor had done, ever supposed for a moment that it would delay the mails? What interest had he in delaying the mails? Did it add anything to the pay to delay the mails? Oh, no, gentlemen. It is one of those little things that has been picked up by the industry of these most industrious Government prosecutors to throw into this scale, hoping that by the aggregation of contemptible things like this they might be able to prejudice the minds of this jury.

That is all I have to say, gentlemen, as to that particular route. I expected to have been through by this time, and would have been very nearly through but for the interruption of yesterday. For, while there is a good deal of paper here in my notes, there is not much that I am going to travel through. Now, your honor, I am through to-day.

The COURT. Before adjourning I wish to mention one subject. It is manifest that there is going to be more argument in this case than I supposed we were likely to have. Judge Wilson is now fairly into his case, has got warmed up, and I suppose will give us a day or two more.

Mr. WILSON. Not more than one, I think, your honor.

The COURT. I hardly think it would be right for the court to hear more than one argument for each defendant. Judge Wilson is now speaking on behalf of his special client, General Brady, and there are other gentlemen who represent other defendants. I do not see how, with propriety and conformably to the rules and practice of the court, we can have more than one argument for each of the other defendants.

Mr. DAVIDGE. Your honor, I ought to make a remark in relation to this. We have acted upon the information of the court, and it would produce a great deal of inconvenience if you change that ruling already made. I do not think we shall occupy a great deal more time. Take this case of General Brady. Mr. Chandler will, I am very sure, not traverse the field occupied by Mr. Wilson; and so it is rather a division of labor than two arguments in relation to the same subject-matter; and that is so with regard to the Dorseys. We do not intend to inflict double arguments on the same subject-matter. I myself am watching the course of the argument with a view to economize time, as far as I can. Mr. Carpenter, I have no doubt, has familiarized himself with these routes, so far as the Dorseys are concerned, and I confess that I have not; I have been looking to him for that.

The COURT. I think, Mr. Davidge, no one knows better than yourself the practice of the court.

Mr. DAVIDGE. Well, but you told us we might adopt the other plan, and we have acted upon it, and now you take us by surprise.

The COURT. I said the defendants would follow, as many of them as——

Mr. INGERSOLL. [Interposing.] As many as chose.

The COURT. As many as chose.

Mr. INGERSOLL. That is what you told us and we have acted upon that.

The COURT. But that was intended, of course, to be within the ordinary rule. I did not suppose that probably all the defendants would care to be heard by separate counsel.

Mr. WILSON. Without interrupting your honor, I suppose it is not necessary to detain the jury.

The COURT. No. Gentlemen of the jury, you are discharged until Monday morning.

Mr. WILSON. [To the jury.] You cannot say I have never done you a good turn.

[The jurors left the box.]

Mr. DAVIDGE. I certainly shall not cover the same field occupied by another.

The COURT. If you understood me as saying anything on that occasion varying from the ordinary practice, it was perhaps my fault in not making myself clearer.

Mr. INGERSOLL. Would it be proper for the court to give us as much time to reply as has been occupied by the counsel for the prosecution, whether used by one person, or by two or more?

The COURT. That is a kind of practice that would be entirely new.

Mr. INGERSOLL. We have acted, or at least I have acted, on what your honor said before.

Mr. DAVIDGE. We have all done so.

The COURT. I have embraced this opportunity, Friday evening, at the end of the week, prior to the adjournment over till Monday, for the purpose of making this suggestion, as it occurred to me that possibly there might be a misapprehension upon the subject.

Mr. INGERSOLL. There certainly was a misapprehension if what the court says now is intended to be different from what was conveyed to us before, because we agreed among ourselves as to what part should be taken by the various counsel in the case.

The COURT. Oh, yes, I know; but all of the counsel are certainly familiar with the case after all this time.

Mr. DAVIDGE. Not with a record of this sort, your honor.

The COURT. This matter was talked over——

Mr. INGERSOLL. [Interposing.] I do not think there would be any time gained.

Mr. DAVIDGE. There would not be a minute gained.

The COURT. When it was suggested that the Government should have two speeches in reply, it was stated on the part of the Government that probably no time would be saved by confining the reply to one; but although I felt the pressure of the claim of the Attorney-General of what seemed to me to be an intimation of his wish, as representing the Department of Justice, to make a last speech in the case, and notwithstanding I was very anxious to accommodate him, and would have been glad to do so, in consequence of his reputation in the country and his eminent position at the head of the very department that is conducting this prosecution, yet I felt bound to say that there could be but one reply.

Mr. INGERSOLL. We did not object to his replying.

The COURT. That is the rule of practice, and I think I must apply it to your side now, as I did to the prosecution, and must say that you can have only one speech for each defendant.

Mr. DAVIDGE. Your honor deviated from that rule in regard to the opening.

The COURT. No.

Mr. DAVIDGE. I never in my life have heard of two opening arguments.

The COURT. I have.

Mr. DAVIDGE. Never in this court, and I have been here for a third of a century. There is no such precedent in the court.

Mr. INGERSOLL. I understood the court to say before that the attorneys for the defense, as many as thought proper, could answer, and it was upon that we acted.

The COURT. I did not reflect that some of the defendants were represented by double counsel, and the remark was made by me when I

was thinking that some of the defendants might not care to have counsel address the jury at all, so that my remark was intended simply to mean that such counsel for defendants as might choose to address the jury should have the opportunity to do so, not thinking that that would give two or more counsel the opportunity of speaking for the same defendant.

Mr. INGERSOLL. If the court insists upon a different rule from what we supposed, I presume that the defendants will have the right to select counsel to present their case to the jury.

The COURT. Of course. I do not care what counsel do it, but I think that only one counsel should be heard for one defendant.

Mr. INGERSOLL. For instance, Mr. Miner might want to employ me to present his case, and Mr. Dorsey might want to have it understood that Mr. Davidge should present his case.

The COURT. Those are private arrangements.

Mr. INGERSOLL. We have the right to make those arrangements, I take it.

The COURT. Of course, the court would not——

Mr. INGERSOLL. [Interposing.] The court would certainly allow as many speeches as there are defendants.

The COURT. I will allow each defendant to be represented by one counsel.

Mr. INGERSOLL. And you will allow that defendant to select his counsel.

The COURT. Of course; he has a right to do that.

Mr. DAVIDGE. Had not your honor better leave it as it is? We have acted upon your ruling.

The COURT. No; you have not acted yet.

Mr. DAVIDGE. We have. I have, your honor. I am speaking of what I know. I have paid no attention whatever to these routes, and at this late day am I to take up an intricate and complicated subject of this sort when I say I have not gone over these routes particularly?

The COURT. I think these routes are so much common ground that there will be nothing left undone amongst you in regard to them. The real defense of one is so much the defense of the others, and of all, in a case of this kind, that I do not see any propriety in changing the rule. There is some difference in the case of General Brady; his case is more distinguishable from the others, perhaps, than any one of the others from the rest. But still they all have their separate and independent grounds to some extent.

Mr. DAVIDGE. We will not take any more time, sir. We will guarantee that.

The COURT. Your guarantee is very good in some things. I do not know how much time you would actually take if there were two of you allowed to speak, and I do not know how much time might be saved if the rule is followed.

Mr. DAVIDGE. We will divide the field.

The COURT. I think I had better stand by the rule. I give you this notice, at any rate, and will consider of it until Monday morning. But I wished to give you this timely intimation.

Mr. INGERSOLL. The court may not feel so tired Monday morning as on Friday evening.

The COURT. It may feel more reluctant to start into a new week.

Mr. INGERSOLL. After you have heard me speak ten days I have no doubt you would like me to go on further.

The COURT. When I was a boy my old minister always preached

sixty minutes, and always maintained that he never knew a soul to be converted after the hour [laughter]; and I think if you cannot carry this jury, amongst you, with one speech for each defendant, they must be hard to convert.

Mr. INGERSOLL. It took fourteen days to open for the Government.

Mr. CARPENTER. I understand your honor to give this information now, and to say that you will not decide it entirely until Monday morning. I would be glad to make this suggestion in the case. Understanding that all of us were to argue the case, we have divided the labor, and we do not expect to travel over each other's ground at all. Nothing would be gained by wearying the jury in that way. We have prepared ourselves with that understanding, and we will get through it sooner in that way than if the new ruling is enforced against us.

The COURT. I know when this question was up as to the Attorney-General the other day, I remarked that I did not see much difference between one man speaking four hours and two men speaking for two hours each; that it would be the same time in either case; but you insisted upon the rule.

Mr. CARPENTER. We are not insisting upon anything, but we are saying that in good faith we have acted upon the suggestion of the court and divided this work among ourselves. And now there is this difficulty, for instance, none of the counsel representing the Dorseys are prepared to go over the whole case; we have divided our work, and each has taken his part.

The COURT. I shall not do so much injustice to your preparation or to your intellectual powers as to credit that story. I am sure there is not one among you who is not able to go over this whole case upon an hour's notice.

Mr. CARPENTER. Your honor thinks it is a very easy case.

Thereupon (at 4 o'clock and 27 minutes p. m.) the further hearing of this case was adjourned until Monday morning, May 14, 1883, at 11 o'clock.

MONDAY, MAY 14, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

The COURT. In regard to the question that was suggested before the adjournment of the court on Friday, whether the court will allow more than one argument on behalf of any of these defendants, I think it best that that matter should be disposed of now, so that counsel may have an opportunity to make their arrangements before the argument proceeds further. A few days ago, when something was said on this subject, the court, after assigning the place of the Government in the argument, remarked that the defense could be heard by as many counsel as chose to speak. That remark has been understood as meaning that any one of the defendants might speak through as many counsel as he chose to select. I do not think the remark ought to be understood in that way; at least the court ought to have explained it more fully. The meaning intended to be conveyed was that if any of the defendants chose to waive counsel they might speak, of course; that as many as chose to address the jury should have the privilege and the right to do so; that the court would listen to as many as should choose to address the jury; not that the court would depart from the usual

rule, if the practice was such as to deny any of these defendants the right of being heard by more than one counsel. The simple suggestion was that as many defendants as chose to be heard by counsel could have the opportunity. The question is whether in a case like this each defendant can be heard by two counsel. I do not see myself upon what ground that privilege could be accorded. If it were a case of burglary or a case of murder in which there were several defendants, such a claim could not be set up and maintained. Although the pleas might have been entered by each of the defendants severally yet, if the charge were one and the pleas, although severally entered, were the same, and the defense substantially the same, the practice is not, where three or four, for example, are indicted for murder or burglary or other crime, to allow each of the defendants to be heard by two counsel. If there were three, in such a case there would be six counsel, and if four, eight counsel. That has never been the practice in this court, and has never been the practice anywhere. In this case the crime charged is that of conspiracy, which in its nature is joint. Everything else belonging to the indictment is accessory to the main charge, and, although one may be acquitted, or two may be acquitted, there must be two in a case of conspiracy to justify the jury in finding a verdict of guilty. In that respect the indictment is not substantially different from an indictment in other cases which charges a joint offense. The fact that the defendants have each pleaded severally cannot make any difference, because each has pleaded the same plea and the issue is upon the indictment. It is a joint indictment. In the second volume of Tidd's Practice, marginal page 860, is the following passage upon this question:

When several defendants appear by separate attorneys and have separate counsel, if they are in the same interest only one counsel can be heard to address the jury, and the witnesses are to be examined by one counsel on the part of all the defendants in the same manner as if the defense were joint.

And he refers to a case in 4 Campbell, 174, which I have examined, and which fully sustains the doctrine that I have read, and to some other authorities which I have also looked at. In England, therefore, but one counsel would be heard, although the government would have the opening and the closing, too. But it has been claimed in this case, and the right has been conceded, that each defendant shall have the privilege of presenting his defense through his own chosen counsel. That is proper. If the case were to be tried upon the theory suggested by counsel in consequence of the pleas being several, as a several case against each of them, then the Government would be entitled to an opening speech and a closing speech as to each defendant. That theory, of course, leads to an absurdity, and is inadmissible. Such a thing would be unexampled, and would be very inconvenient. You could not try a case that way, and have an opening and a closing on the part of the Government as to each one of the defendants. They are all here, therefore, as joint defendants under indictment, and according to the liberality of our practice in this country—a liberality which is much larger than that of the English practice, which allows but one argument for the whole—we admit one argument for each defendant. I see that there may be some disappointment produced by this ruling; but where there are at least five arguments to be heard by able counsel, it appears to me that no injustice can result to any one of the defendants under this ruling. Of course there may be some interchange of counsel in consequence of the determination to which I have come. That I will leave to them. I shall not interfere

with any arrangement within this rule that counsel may make among themselves as to who shall appear. That I do not deem proper.

Mr. HENKLE. If the court please, inasmuch as I represent two of the defendants I suppose there will be no objection to my dividing the labor of representing those two with somebody else.

The COURT. The less said on that subject the better.

Mr. DAVIDGE. I will only state, your honor, that we all understood that in view of the character of the case you deemed it proper to depart—

The COURT. [Interposing.] I just stated that that was a misconception or it was an inadvertence probably in some degree on the part of the court in not explaining itself more fully. But if you will look at the remarks made by Colonel Ingersoll on that occasion you will find that he expressly declared over and over again as his understanding of the ruling that there should be one counsel for each of the defendants.

Mr. DAVIDGE. He said that, your honor, in connection with the proposition of one counsel for the Government.

The COURT. One counsel in conclusion for the Government.

Mr. DAVIDGE. We were talking also about the opening. You ruled contrary to the usual practice that the Government might have, in view of the character of the case, as many openings as it wanted, and thus it seemed to me only reasonable that a similar indulgence should be granted to the defense, and we acted accordingly. I now understand that the Government has had their advantage of the departure from the practice. They have had what I have never known to be permitted to the Government before—two opening speeches—and they have availed themselves of that permission, each speech covering the space of seven mortal days.

The COURT. Yes.

Mr. DAVIDGE. It is not for me to enter into any argument upon this subject. The fact is that there is so much of discretion in respect of a subject of this sort that I hardly regard it as within the purview of argument. I have seen, somewhere, contrary to what your honor read from that book, that the fact of bunching defendants does not interfere with their right to be represented by counsel under the practice of the court, and hence that even two counsel might be allowed. I now understand differently. I wish your honor had announced your decision earlier, because it appears to me that an adherence to the practice of this court would have confined the Government to one counsel. If we had known it earlier, too, we might have done this: We might have had a certain amount of time allotted to us and divided that time according to our discretion. Time appears to me to be more important than persons, although other gentlemen do not appear to concur with me in that opinion. I have had a notion from the beginning that there was something in this article of time, although I am very fast losing any respect for time and fixing my hopes upon eternity. Now, therefore, all I have to say is that we have heard the views of your honor, and in our own way we will, as it is our duty, endeavor to conform to the last outgiving of the court, and that is that each defendant shall have the privilege of being heard by one counsel.

The COURT. I presume it was not your intention to intimate that your hopes of eternity rested upon the eternity of this case.

Mr. DAVIDGE. There is something in the nature of this case to inoculate a man with a profound disregard of that article, time. I have never known anything like it. However, I do not think we will be found obnoxious to any criticism in respect of time. We will endeavor, whether

many or few argue this case, to bear in mind the fact that everybody is or ought to be interested in bringing the case to a speedy termination so far as practicable. If this case had been opened in an ordinary manner and an ordinary amount of time consumed, I do not think we would have had a single word to say in reply.

The COURT. From the respect I entertain for your learning and experience——

Mr. DAVIDGE. [Interposing.] You can find anything in these books, your honor. There are so many courts and so many different practices that I can go out and fetch in a book that will contradict what you have read.

The COURT. I don't think you can.

Mr. DAVIDGE. It is entirely a matter of practice. There is no more uniformity than there is in the regulation of one's household. Each man regulates his household for himself. I have my fashion and you have yours.

The COURT. That being the case, this household will be regulated as I have said.

Mr. DAVIDGE. We have to conform to your honor, of course. You regulate this household.

The COURT. In regard to the general practice, I will read from this book for the purpose of setting you right. You have spoken of what you have called an extraordinary privilege granted to the Government in opening the case with two counsel. The practice in England, to be sure, is somewhat different from ours. With regard to that practice this author, who is the highest authority on questions of practice——

Mr. DAVIDGE. [Interposing.] Who is it, your honor?

The COURT. Tidd.

Mr. DAVIDGE. There is nothing in that about criminal practice.

The COURT. Oh, yes, there is. It is full of criminal practice as well as civil.

Mr. DAVIDGE. The court of King's Bench, I think, in England.

The COURT. [Reading:]

When the jury are sworn the junior counsel for the plaintiff opens the pleadings; after which, if the proof of the issue rest on the plaintiff, as where the general issue is pleaded, the senior or leading counsel states his case to the jury, and after calling and examining witnesses in support of it the counsel for the defendant are heard, and if they call any witnesses, the plaintiff's counsel have the general reply.

You see according to the English practice the junior counsel opens the pleadings in the case to the jury, and he is followed then by a statement of the case and its facts by the senior counsel, so that two counsel for the Government open, and then the defendants follow, after which comes the reply by the Government. I think that an allowance of two counsel in this case to the Government was strictly proper. Proceed now, Mr. Wilson.

Mr. WILSON. [Resuming.] May it please your honor and gentlemen of the jury, I congratulate you this morning that you still live and give such evidences of physical and mental endurance. Notwithstanding the fact that when I began my address in this case I expected that my immediate associate as counsel for General Brady, Mr. Chandler, would follow me and present for your consideration matters which I had not intended to detain you with, I shall still endeavor not to disappoint the hope that I led you to entertain when I began, that my argument would be, comparatively and relatively speaking, not a very protracted one. I shall not very much, if at all, enlarge upon the views that I had intended to present at the outset, or the field over which at the outset

I proposed to travel. I find, however, gentlemen of the jury, in traveling over a case like this that I omit to say many things that perhaps others would think and do think I ought to more elaborately discuss. I met a gentleman on the street on Saturday, and the first thing he did was to criticise a portion of my argument, as perhaps you have criticised it, or as perhaps my associate counsel may have criticised it. He said to me, after looking over my argument in this case, "I find you have been discussing the question as to the number of letters that went through the mail. What has that to do with the case? Suppose there was only one letter in a mail-bag. It might be of infinite importance to have that letter go through," and he gave me an illustration. I mention it because I am about entering upon a field of this case and a part of the territory covered by this case which serves to make what was said to me important. I give it to you as a part of my argument, and by way of illustration: A registered letter is addressed to a certain point. It has a draft in it for \$250,000 to buy a mine. If it is a weekly mail the transaction fails. If it is a daily mail it goes to its destination, and the transaction is accomplished. There is a great business transaction, the importance of which can scarcely be overestimated, and yet it is all comprised in one little letter, the postage on which is a three-cent stamp. He said to me, "I do not think you elaborated that matter sufficiently." But I am not going to take up your time by alluding to it further this morning, gentlemen.

ROUTE 38145, FROM GARLAND TO PARROTT CITY, AND ROUTE 38156,
FROM SILVERTON TO PARROTT CITY.

When I closed on Friday afternoon, I had reached in the order in which Mr. Ker discussed this case, route No. 38145, from Fort Garland to Parrott City, and the next one in order that he referred to was the route from Silverton to Parrott City. I am going to consider these two routes in connection with each other in part, because these two serve to illustrate two or three important questions which I have been attempting to bring to your attention. When these gentlemen came before you to discuss this case they produced a little piece of paper about so long [illustrating], with a red line or a yellow line, or a black line, running across it indicating that particular route. They showed that to you as though that was the particular thing, and that alone which you had to consider in connection with it, and then after a while they passed from that and showed you another little piece of paper with another red or yellow or blue or black line drawn upon it indicating another route, and they dealt with these things as separate and independent things, whereas I say they are factors in a great problem, each one of them having a relation to the other. This serves to illustrate just what I have been contending for heretofore. It is valuable for another reason, gentlemen, that it shows to you how the department has dealt with all these routes, not as separate and independent things, but as parts and parcel of a vast system. And it shows another thing: it shows how, in the progress of affairs, railroads have obliterated star routes, and how the department has conducted itself with reference to this advance in the affairs of men—these great improvements that are going on all over the country, and how it is continually adjusting and readjusting, changing and rechanging the star-route system to make it conform to the great railroad system of the country. Now, let us look at the map for a moment, gentlemen. This is a route that ran from Fort Garland to Parrott City. Here is a map which was introduced in evidence. See how the route went originally.

Here is Fort Garland. You will remember the witnesses testified that when those routes were let the railroads were not in here [indicating]. Here is Pueblo [indicating]. Here is Fort Garland [indicating]. Now, this route ran down by way of Ojo Caliente, which is right here [indicating], and then around to Durango and Animas City. Remember that Animas City is only a mile from Durango. Then it came around down here [indicating], and through here to Animas City and across to Parrott City, which is right over here [indicating]. That was the condition of things when these contracts were let. Then the railroad from Denver down by way of Pueblo, which is here [indicating], was constructed down to Barrancas, which is right there [indicating], and Barrancas came to be the end of that railroad as constructed. It ran through Fort Garland, so that this railroad passed right over this route for a very long distance. On this map, also, is the route from Silverton to Parrott City. Here is Silverton [indicating] and here is Parrott City [indicating]. Now, here was a route from Fort Garland running around to Parrott City, and here was another route running from Silverton across to Parrott City. There were different roads through that country over which these mail carriers traveled, just as there were in the case of the route from Kearney to Kent.

I am not going to take up your time and consume my own with regard to that matter. By the way, gentlemen, you must not charge me with the half hour that was consumed this morning and with the hour and a half that went by a day or two ago. Do not charge that to me whatever you do. You will see, gentlemen, these two routes on the map. One started from this point [indicating], ran around here [indicating], and came out at Parrott City; and the other went from Silverton also to Parrott City. Over both of these routes these parties had the contracts, and since the contracts were let the railroads have been built just as indicated on the map and as shown by the testimony. Now, take the large map. This is the post-office map. Here we have Pueblo on this map [indicating] and here is Fort Garland. They have got the railroad marked on this post-office map. The route came on down here [indicating] to Conejos and Ojo Caliente. There was a little of it cut off because it went into Mexico. Then it comes around up here [indicating] and over to Parrott City. There were those two star routes that were running in the way that you see upon this map. Now, gentlemen, this route from Garland to Parrott City was two hundred and eighty-eight miles in length. Remember that. The first thing that you find happening in this record with reference to that route is that they cut it off at Ojo Caliente. The difference between Garland and Ojo Caliente was cut off this route, which is one hundred and sixteen miles. Why? Simply because they built a railroad there and it was no longer necessary. I want you to observe that the department is adjusting the service all the time in accordance with the changed condition of the affairs of the country—and I want to impress it upon your mind, for this record proves, gentlemen, beyond all sort of question, that all of the dealing with these routes by the department has been regular and straightforward—to conform the service to these changed conditions of affairs. On page 1074 we find the order introduced in evidence. The jacket is dated June 26, 1878:

That portion of this route from Garland to Ojo Caliente will be superseded by service on route 38163, saving one hundred and sixteen miles.

So far in red, now in black ink:

Curtail service so as to commence at Ojo Caliente, omitting Garland and Conejos, decreasing distance one hundred and sixteen miles, and deduct from contractor's pay

\$1,105.66 per annum, being pro rata. Allow contractor one month's extra pay on service dispensed with.

BRADY.

Could anybody complain of that? This railroad had been built down there, and so they curtailed the service on the star route one hundred and sixteen miles, and deducted from the contractor's pay the pro rata amount of money, but gave them a month's extra pay for the service dispensed with. Could anybody complain of that? I showed you, gentlemen, the other day, that the contract stipulated for it. It is exactly, therefore, in conformity with the needs of the country and precisely in conformity with the contract between the Government and the contractors. That was done by Brady. The next thing we find is this, on the 23d of January, 1879:

Curtail service so as to end at Animas City, omitting Parrott City, decreasing the distance eighteen miles, and deduct from contractor's pay \$171.56 per annum, being pro rata, and allow one month's extra pay on service dispensed with from February 16, 1879.

FRENCH.

That order was made by French. Now recollect, gentlemen, the last order that I read to you, which was cutting off the service at Animas City, taking off the distance between Animas City and Parrott City, was made on the 23d of January, 1879. Recollect that. On this Ojo Caliente route, as we commonly call it, on the 23d of January, 1879, they curtailed the route so as to make it stop at Animas City. That order was made by French. I have pointed out to you on the map the Silverton and Parrott City route. We find that on precisely the same day, the 23d of January, 1879, this order was made, as appears on the jacket:

Service on route 38145 has been curtailed so as to end at Animas City—

They stopped it right there—

decreasing the distance eighteen miles. Animas City can be embraced on this route—

That is, the route from Silverton to Parrott City—

by increasing the distance ten miles, which change would give the office at Animas City twice instead of once a week supply as at present.

That is the indorsement that was made on that jacket by the corresponding clerk. That indorsement went in to the Second Assistant's office, and then came the order in these words:

1st. Embrace Animas City next after Hermosa, increasing the distance ten miles, and allow contractor \$215.65 per annum additional pay, being pro rata, from February 16, 1879.

2d. Allow subcontractor \$330.43 per annum additional pay, being pro rata.

FRENCH.

Those orders were made by French. Gentlemen, just see how that worked. Here they found that by cutting off this Ojo Caliente route and making it terminate at Animas City, they would save eighteen miles of distance, and then by putting Animas City on the Silverton and Parrott City route, they would increase the distance on that route ten miles, so that in the aggregate there was a saving of eight miles, and these two orders were made on exactly the same day, cutting it off of one and putting it on the other. But now these gentlemen say that they had to go through Animas City any way on one or the other of these routes, and therefore there should not have been any increase of distance on

account of Animas City. But according to the distance schedules and the records, right upon what these gentlemen have shown you, it is apparent that while eighteen miles was cut off in one direction and ten miles was added in the other direction, the aggregate was a saving of eight miles, and the result was to improve the service, because it gave to Animas City by that operation twice a week mail, whereas before it only had a mail once a week. It saved money and gave additional mail facilities. Now, see how these things worked together. My client did not make these orders. They were made by French. But even suppose he did. Suppose French acted under Brady's direction. The record does not show any "Do this.—Brady." But suppose Brady had directed it or does it himself. What is there in it, gentlemen of the jury, from which you can extract anything against the management of this business on the part of my client?

You see it is impossible. They said, "Oh, but this service was not needed; they increased and they expedited on this Ojo Caliente route when it was not needed, and they increased and expedited on this Silverton and Parrott City route when that was not needed;" and they say Brady knew it was not needed. That is what they charge in the indictment. I want to show upon what we acted, and I want you to see whether there is anything in this record to indicate to you that this was not needed. I say that the evidence is overwhelming that it was needed; not merely the evidence that we had when those orders were made increasing and expediting the service, but the evidence that has been brought before you since that time shows that it was needed.

Although it seems to me, gentlemen of the jury, in justice to my client, that I ought to read all of these petitions, yet I am not going to trouble you in that way. I do, however, want to read enough of them to show you the necessity for that service. These routes went into what is known as the San Juan country; there were Silverton and Parrott City, and various other places in that country where these discoveries of precious minerals were made, and the people were going in there in droves. Business men were going there to invest their money in that kind of property, and men were going there with their herds of cattle; and business had become exceedingly lively in that region of country, so much so that the officials of the United States appealed to my client, appealed to the Postmaster-General, appealed to their Senators and Members of Congress and to their Delegates in Congress to aid them in getting needed mail facilities. Now, here is what Mr. Webster says:

SANTA FÉ, N. MEX., April 18, 1879.

Hon. T. J. BRADY,

Second Assistant Postmaster-General, Washington, D. C.:

SIR: I signed a petition to-day asking an increase of service on the mail route from Ojo Caliente, N. Mex., to Parrott City, Colo.

In addition to the reasons given in said petition, I desire to call your attention to the following facts and causes why the service should be increased to daily:

An appropriation has been made of \$30,000 for the purpose of building a military post at Pagosa Springs, Colo.—

That is the place where they put a post-office on this route, you remember—

Fort Lewis, and is now even a post of considerable consequence; its importance will be increased in the near future. This post of Fort Lewis is a part of this military district, with headquarters at Santa Fé. At present it takes two weeks, usually three, to communicate and receive answer, when with a daily mail, with speed increased, it should take but four days. The commanding general, Edward Hatch, and chief quartermaster, Major Dana, signed the petition very cheerfully, having

been annoyed so long by the vexatious delays of slow mails in important communications.

One result of the establishing of a permanent post at Fort Lewis has been to cause a large increase of population in its vicinity, and the necessity for rapid communication has increased with equal rapidity.

Very respectfully, your obedient servant,

ED. WEBSTER.

There is one specimen. Now look at that. Here is the Government of the United States appropriating \$30,000 to establish one military post on the line of this route; here are the headquarters of that military division at Santa Fé; here is the necessity of the Government being able to communicate freely and promptly between this important post and headquarters; and here is an official of the United States appealing to the Post-Office Department to give them reasonable mail facilities, not merely on account of the great interest which the Government has in communicating with its military posts, but because of the additional fact that many people are in there needing and demanding these mail facilities. He was not simply asking, gentlemen, for a daily mail. Oh, these gentlemen come here and say by the hour, "Why, somebody petitioned for daily mail, and he gave them daily mail and then increased the speed." Why, there are cases here where the mail was being carried along at the rate of two miles an hour, and these gentlemen would have you say that if you make it daily, that will do; that if you send out a mail every day and get one back, it does not make any difference whether it takes two weeks or four weeks to get through, not a bit; that it would be cheaper to have it go slow than to have it go through expeditiously; and therefore, because he put it at a reasonably fast time it must be an indication of fraud. But, gentlemen, this United States official who is making this appeal to the department does not say he wants it to go through at a snail's pace he says, "We want a daily mail, and we want it to be put through in order that the Government can communicate with its military post, and in order also that the people may have facilities for transacting their business."

Here is another:

SECRETARY'S OFFICE, TERRITORY OF NEW MEXICO,
Santa Fé, N. Mex., April 15, 1879.

The honorable the POSTMASTER-GENERAL:

SIR: In view of the rapid and increasing settlement of Northwestern New Mexico and Southwestern Colorado, with important mineral and agricultural interests developed and developing, I heartily concur in the efforts being made to establish daily mail service between Ojo Caliente, N. Mex., via Pagosa Springs, to Parrott City, Colo.

I have the honor to be, very respectfully,

W. G. RITCH.

Then follows a letter from Senator Chaffee, and then follow a large number of petitions. I am not going to take your time to read them, because what I have read is sufficient to indicate what these petitions contain, and they are substantially the same all the way through. There are fifteen of these petitions and letters. On the backs of these petitions as they were filed in the department, you find:

We respectfully recommend the increase of service herein prayed for.

H. M. TELLER.
N. P. HILL.

And the same thing is repeated on these various petitions. As the petitions came to them, they took them to the department and indorsed

upon them the fact that this service was needed, and asked that it be granted as prayed for by the petitioners. Several of these are addressed to the Postmaster-General in person. Here is one, at page 1094 :

To the Hon. D. M. KEY,
Postmaster-General :

SIR : We, the undersigned, citizens of El Rito and vicinity, supplied by mail route No. 38145, from Ojo Caliente to Parrott City, Colo., would respectfully represent that the service as now carried, viz, one time a week, is entirely inadequate to our wants in that behalf; that the country through which this route now runs is already thickly settled; besides an increasing immigration is steadily pouring into the country, and that the mail now is nearly always delayed, particularly third-class matter, in consequence of its great bulk and weight.

We would, therefore, very respectfully but most urgently request and petition you to have service on this route increased to at least three trips a week and on a shorter schedule; and we would ever pray.

Respectfully.

That is signed by Jaramillo, a witness whose testimony I may call your attention to in a little while, and some thirty or forty other people. Here is one, at page 1095, from Henry M. Atkinson, surveyor-general of New Mexico:

UNITED STATES SURVEYOR-GENERAL'S OFFICE,
Santa Fé, N. Mex., April 14, 1879.

Hon. D. M. KEY,
Postmaster-General :

SIR: The citizens of this Territory and Southwestern Colorado are very anxious for daily service on the route from Ojo Caliente, this Territory, via Pagosa Springs, to Parrott City, Colo.

This route supplies all Northwestern New Mexico and Southwestern Colorado, and the large population now in those sections fully justifies a daily service on that route, and if the same can be ordered by you it will gratify our citizens here, as well as confer a great benefit upon the citizens reached by said route.

Very respectfully, your obedient servant,

HENRY M. ATKINSON.

I am not going to read any more of these, gentlemen, because it would needlessly consume your time. I have simply selected these for the purpose of indicating to you two things: First, that there was a region of country into which a great many people had gone and which was rapidly settling up. It was a grazing country; it was a mining country; and it was of sufficient importance for these officers of the United States—leaving out of view entirely the citizens—to make these appeals to the department to increase that to a daily service and to put it through on faster time. And it was done.

Now let me go a little further in this case. One of the objections to this is that the schedule that was made was an impossible schedule; that they could not carry the mail upon the schedule time that was fixed. Well, gentlemen, in order to extract anything out of that, if it were true, it would be very important for them, I submit to you, to show that the Second Assistant Postmaster-General knew that it could not be done in that time. How do they seek to prove it? They have not proved it, but how do they seek to prove it? How do they seek to induce you to draw that kind of inference? Why, from the testimony of such men as Anthony Joseph.

Who was Anthony Joseph? He was a man who took a subcontract to carry that mail on that route. He took his subcontract knowing what that schedule time was. Anthony Joseph took his subcontract very low, too low, and he undertook to perform the service with a force of men and horses, the expense of which would come within the prices that he had agreed to carry it for. That is just where the trouble was. Anthony Joseph did not put on men and horses enough. If he had put on what

was necessary he would have carried it ; but he did not do so ; and therefore there were fines and deductions assessed against him. That is the way they tried to prove it, and that is the way they have tried to prove these things all the way through this case, gentlemen of the jury. But Anthony Joseph's letters themselves, which were put in evidence by the defendants, show that this service was needed just as it was put on that route. They say that the mails were of a character that required that it should be made daily and that it should go through speedily. The letters may be found at pages 1119, 1120, 1121, 1122, 1123, and 1138.

Here is the letter of January 6, 1879 :

JOHN W. DORSEY,
Washington, D. C. :

DEAR SIR: Your favor of the 22d of last month came to hand this day, and its contents have been duly noted. As regards your request to put stock on route No. 38145, from Ojo Caliente to Parrott City, and carry the United States mail once a week upon the same, commencing January 1, 1879, permit me to inform you that I cannot possibly comply with your request at present, as I have disposed of all my stock and have none on hand. If the service is increased to six times a week on said route I might contract with you to carry it ; but even then could not commence service before the 1st of March next, as it requires time to prepare for a proper service on the said route. I will undertake to carry the United States mail on said route six times a week for the sum of \$14,160, and commence the service on the 1st day of March, 1879. If the terms are acceptable to you, please inform me in due time. Awaiting an early reply, I remain, yours, &c.,

ANTHONY JOSEPH.

Next comes his letter of January 15, in which he says :

The distance from Ojo Caliente to Parrott City is two hundred and seventy-six miles, and the mails are large and heavy, so that I have to use two horses, one to pack the mail and the other for the mail rider ; and as soon as the military post at Pagosa Springs is established it will require a buckboard or coach to carry the mails on said route.

I read that, gentlemen of the jury, for the purpose of showing to you the character of this mail. Now, General Brady did not have that. I do not want you to understand that I am saying that he acted upon that letter, because he did not have it before him. But that is a private letter that Mr. Joseph wrote to Mr. John W. Dorsey. I read it for the purpose of showing that although these gentlemen brought Mr. Joseph here to try to show that there was something wrong about this route, yet, on his cross-examination, we were able to produce to him his own letters showing that the mails were large and heavy. In other words, we want to sustain our theory of this case, and do sustain it by their own witnesses, and by the letters that Joseph wrote showing that this was a large and heavy mail. It was an important mail route, and when Secretary Teller, then a Senator, and Senator Hill and these other gentlemen said to the Department, "It is an important mail route here are large and heavy mails going over this route, and these people are entitled to have these mails go through," it was not mere idle talk, but it was a truthful representation of the actual condition of affairs down there. And you will remember, gentlemen, I read to you the other day what his honor said on a former occasion, that even if you should say that these contractors induced these petitions—which they did not do in this case—yet they were fair petitions and they were true petitions, and they fairly and truthfully represented the condition of things. And now, because by client, as Second Assistant Postmaster-General, charged, as they say in this indictment, with the duty of looking after this mail service, curtailed where he could curtail, saved where he could save, and gave the people the mails they needed, you are to extract from that an indication that when he did it he was engaged in a conspiracy against this Government.

There is one other matter that I must mention in that connection. You have heard a great deal about Chama. They say to you, "Why, he made an order increasing the service over this entire route, whereas the party only carried the mail from Chama through, and there is a bold promontory sticking out into this ocean of fraud." Is there any truth in that, gentlemen of the jury? I want to show you just how these gentlemen are distorting the facts of this case. Now, what is the fact about that? General Brady telegraphed—to whom? To any of these conspirators? To anybody having any relations to this case? No, gentlemen. Mr. Sanderson had become the subcontractor on that route, I believe, for full pay. Mr. Sanderson is not in this indictment. Mr. Sanderson figures in a couple of these routes that I will call your attention to in a moment. But he was performing the service on this Ojo Caliente route. Mr. Joseph and Mr. Jaramillo threw it down and left it on the hands of this contractor to get along with as best he could. He found that he had made a subcontract that did not pay him, and no matter what the consequences were to the contractor, though it might cause that contractor to be declared a failing contractor, Mr. Jaramillo threw it down, and the contractor had to pick it up and go on with it, or be declared a failing contractor. And then Mr. Joseph comes in, and from whom does he get his subcontract? From my client? No. From Miner? No. Vaile? No. Dorsey? No. Any of these defendants? No. But he gets it from Sanderson.

Mr. KER. Joseph.

Mr. WILSON. Jaramillo, I am talking about.

Mr. KER. No; that will not do; neither one. Mr. Joseph was the first contractor, and he said he lost all he had, and had to give it up, and Mr. Dorsey subsequently paid him something. Then Jaramillo came in and took the contract, and Jaramillo paid \$500 to be released. Then came Sanderson with his subcontract, first for \$8,000, and then for \$18,000—not for full pay.

Mr. WILSON. Well, I do not care whether it was full pay or not.

Mr. KER. I do; I want it stated straight.

Mr. WILSON. You have got it stated straight now, and I accept your statement of it as being straight. Jaramillo gave \$500, was it, to be released from the contract?

Mr. KER. Yes.

Mr. WILSON. Jaramillo, living right there, knowing the schedule time, knowing the roads, knowing the mountains, the mountain passes, and streams, made a subcontract with the contractor to carry that mail. Well, he made it too low.

Gentlemen, I am not going to deny that those contractors were making the best trades with the subcontractors that they could, and if you think that I am here claiming that they possessed attributes different from ordinary business men you are very much mistaken, for I make no such claim. They were engaged, as I said to you, in a legitimate business, and they made subcontracts on the very best terms that they could, and they made them with a view to profits on them, as they had a right to do. Now, Mr. Jaramillo, with all these things staring him right in the face, took a subcontract out of which he could not make any money, and they say he paid Dorsey \$500 to get rid of his subcontract. And yet, because he did that, Brady is in a conspiracy; and because he did that, Dorsey is in a conspiracy. Here is what Mr. Jaramillo says, at page 1176:

Q. You are not able to state to the jury whether or not the proofs with reference

to this matter were ever sent to the department until after your release was filed?—
A. I am not sure.

Q. You are not able to state about that?—A. No.

Q. Do you know Mr. Sanderson?—A. Yes, sir.

Q. Who is he and what is he?—A. He is J. L. Sanderson & Co.

Q. What is his business?—A. Well, I have contracted with Mr. Sanderson to carry the mail.

Q. Who carried the mail after you threw it down?—A. I carried it for Mr. Sanderson.

This man threw down the mail. Then, when Sanderson became subcontractor, he made a new contract to carry it again.

Now, gentlemen, Brady telegraphed to Sanderson, at page 4346:

To J. L. SANDERSON,

936 Chouteau avenue, Saint Louis, Missouri:

You are hereby authorized to begin daily service from Chama to the nearest point on the Ojo Caliente route, 25 miles, and increase service to daily on Ojo Caliente route from the junction made to Animas City, from the 15th instant.

THOMAS J. BRADY,

Second Assistant Postmaster-General.

He was to carry from Chama to this point on the Ojo Caliente route, and then he was to increase the service from that point on to Animas City, and carry it daily. This was the telegraphic order pursuant to which Sanderson went on to perform the service. They say now that when the formal order was made, it was an order over the whole route, and thereby not these other defendants, but Sanderson was getting pay for a daily mail over a part of the route where he did not carry a daily mail, and that it was antedated. That is their point. It went back, you recollect, to the telegraphic order. He ordered him by telegraph to perform this service, and he did so. But when they came, gentlemen of the jury, to put the formal, regular order upon the record, then it was extended over too much of the line.

Now, what happened? At page 3056, gentlemen, are the deductions for that quarter. There you find that \$3,422.19 was deducted on account of that very thing, correcting the mistake about which these gentlemen have been making so much noise in this case.

Now, I pass on, gentlemen, to this Silverton and Parrott City route. They say the service was not needed there. I have shown you the circumstances of taking Animas City off of one and putting it on the other. They say that the service on the Parrott City route was not needed; that that was a fraud; and they say that Brady knew it was not needed. To show that the increase and expedition were justifiable under the facts in this case, on page 1856, I find this:

APRIL 24, 1879.

This is dated from the office of the Leadville Mining Company, 57 Broadway, New York. I guess most of you, gentlemen, know that there are a great many men in New York who are very much interested in mining property in Colorado and New Mexico. These people in New York are quite as much interested to get their letters to where their property is located and where their money is invested, as the people down there are in having their mails go from that point to New York or wherever their correspondents may be.

Hon. T. J. BRADY,

Second Assistant Postmaster-General:

DEAR SIR: Being one who with his friends have largely interested themselves in the mining interests of Colorado, I most respectfully urge upon you the importance of increased mail facilities from Silverton to Parrott City, and that the same be increased by making a *daily* and *fast* line between these two points. The population

around and between these two points is rapidly increasing, and will continue to do so for the coming year.

By increasing the mail service as suggested you will confer a great favor on the people now there, as it will upon the many thousands yet to be there the present season.

Very respectfully, yours,

A. McDONALD.

That is addressed to General Brady. Here is a letter to Judge Key:

HOUSE OF REPRESENTATIVES,
Washington, D. C., May 5, 1879.

Hon. D. M. KEY,
Postmaster-General:

SIR: I have the honor to transmit herewith letter from the State officers of Colorado, asking that the service on mail route from Silverton to Parrott City be increased to a daily, and on faster time.

This request is reasonable, and the order should be at once made to that effect, and I hope you will grant the request.

Very respectfully,

JAMES B. BELFORD.

The letter which is referred to, from the State officers, is as follows:

DENVER, COLO., April 28, 1879.

Hon. D. M. KEY:
Postmaster-General:

SIR: The undersigned, the State officers of Colorado, respectfully represent that the mining and agricultural interests of Southwestern Colorado are developing with extraordinary rapidity, and with this increasing immigration the necessity for better mail facilities is seriously felt.

We therefore have the honor to ask that the mail service from Silverton to Parrott City be increased to a daily line, and the route from Parrott City to Ojo Caliente, via Pagosa Springs, be increased to three trips a week, and we also ask that the time be made faster than it now is.

Hoping this will receive your early consideration, we have the honor to be,

FREDERICK W. PITKIN,
Governor of Colorado.

M. H. MELDRUM,
Secretary of State.

JOSEPH C. SHATTUCK,
Superintendent Public Instruction.

ROBERT G. HOWELL,
Secretary State Board of Land Commissioners.

HENRY C. THATCHER,
Chief Justice of Colorado.

WILLIAM F. STONE,
Associate Justice Supreme Court.

I am not going to take up your time, gentlemen, in reading more of these than simply enough to indicate, as I said a while ago, the character of the applications that were being made. You heard Senator Teller's testimony in regard to that, and Mr. Belford's also. Senator Teller told you how persistently he appealed to General Brady to do these things. So that you have here petitions upon petitions—many that I have not read—urging upon the department the placing upon this route the character of service that was placed upon it. Here were these large mails going in there; here were those vast business interests concentrated at those points, and I want to know if you are willing to say that in the light of these facts the action of General Brady is only consistent with guilt? Will you not, on the contrary of that, say that his action is entirely consistent with absolute innocence of the charge that they have made against him?

Now, coming back for a moment to the Ojo Caliente route, and this matter of what they call overpayment, the antedating of an order from

Chama, &c., to which I alluded a moment ago, you see, gentlemen of the jury, that no one of these defendants was interested in that. It went to this man Sanderson, and he was the man that the department was dealing with in respect to that matter.

Before I pass from this case I want to call your attention to another point that has been made here—and a great deal has been said about it—based upon the letter of the postmasters asking for increase of time, and that will be found at page 1858. That letter, gentlemen, I have no doubt—and I think the evidence warrants me in saying so—was written in the interest of Mr. Fred. Steineger, who was the subcontractor. But whether it was or not is not very material upon the point to which I wish to attract your attention. I will read that letter so that there may be no suspicion that I may be trying to avoid any point that is made by the prosecution in this case:

SILVERTON, COLO., *September 24, 1880.*

To the Hon. HORACE MAYNARD,
Postmaster-General United States:

The undersigned, Fred. Steineger, mail contractor from Silverton to Parrott City, in the State of Colorado, being mail route No. 38156, and citizens residing upon said mail route, respectfully request—

Notice the phraseology of this, will you—

and citizens residing upon said mail route, respectfully request you to issue an order changing the schedule time from Silverton to Parrott City from fifteen to twenty-four hours, from the 15th day of November until the 15th day of April of each year, until further orders, and that you fix the time of departure of the mail from Silverton at the hour of 10 a. m., and from Parrott City at the hour of 1 p. m.

Now, observe, and I think this bears out what I said a moment ago, that this was all done in the interest of Steineger. “*And citizens residing upon said mail route,*” &c.:

In support of this petition we have the honor to respectfully represent that during the period above stated, owing to the rigor of our winters here, heavy snow storms, snow slides, snow drifts, and the mountainous character of the country, all experience shows that it is physically impossible for any contractor to carry the mails over said route on the present schedule time, or in less time than twenty-four hours. Much of the time carriers on the route can proceed only upon snow-shoes. Hoping you will see the importance of these suggestions, we most earnestly and respectfully submit them to your consideration.

That is signed by the assistant postmaster at Parrott City, the postmaster at Animas City, and the assistant postmaster; also by the postmaster and assistant postmaster at Hermosa, and by the postmaster at Silverton, and by the late postmaster and county clerk at Silverton, and also by a large number of people. It is not very probable, gentlemen, that those people specially interested themselves to have the time of carrying this mail lengthened. It was of no importance to them. On the contrary, the quicker they could get their mail the better. But obviously Steineger got this up and sent it to the department for the purpose of having that time increased so as to lessen his expense and help him out of a bad promise that he had made to the contractor. That is evidently the fact. But will you bear in mind, gentlemen of the jury, when it was that the order was made increasing and expediting this service? That was made on the 12th of June, 1879, and it was made upon representations that I have already called your attention to. Now, when did these postmasters send in this letter that I have just read? Did General Brady have any such information as that before him when he made that order? No, gentlemen; that came in on the 24th of September, 1880. There was the interval from June, 1879, to September,

1880, that Mr. Steineger and these postmasters were allowing this order to go forward and be executed without one word. But after the experience of these many months, Mr. Steineger, finding that he had a losing contract, sends in that document to the department. But no such information to the department is to be found in this record until many, many, many months after this order had been made pursuant to the recommendation of such men as Senators Hill and Teller and Mr. Belford, all these other parties whom I have named.

But they say that subsequently Senator Hill wrote a letter supporting Steineger's application. These gentlemen were very particular to bring all these things to your attention and put them in such a way as that you would be led to believe that Brady had these things at the time he made these orders. There is not a word of truth in it. But they say that Senator Hill wrote him a letter asking to extend this time to twenty-four hours. When did Senator Hill write that letter? Why, he wrote it on the 8th of November, 1880, whereas this order had been made in June, 1879, more than a year before. And what did Senator Hill want him to do? If he had done, gentlemen, what Senator Hill wanted him to do, these gentlemen would be here singing a different song. They would have said to you, "Here is evidence of fraud." What did Hill want him to do? He wanted him to increase that time to twenty-four hours without change of pay. If he had increased it to twenty-four hours without change of pay, then these gentlemen would have come here and said that the speed has something to do with the compensation. The speed has a great deal to do with that, and if they could have come in here and pointed out a case where he had enlarged the time, as Senator Hill wanted him to do, and made no change in the pay, these gentlemen would have held that up before you as a glaring, open, bold, palpable evidence of fraud.

Gentlemen, here as well as anywhere else in this case, I want to call your attention to another thing that I think must have attracted your notice during the progress of this argument and presentation of this case on the part of the Government. These gentlemen have stood here and said to you I do not know how many times, "Just look at the original contract price of this service and see what they have run it up to." That is their argument and that is their pet phrase. "See how they have run it up." They have figured to you the original contract price and the amount which was paid after increase and expedition and they have called the latter amount a plain steal at least fifty times during the progress of the fourteen days of argument in the opening of this case. In other words, gentlemen, they utterly ignore the fact that the mails were carried faster and that they were carried more frequently. Take the very Silverton and Parrott City route which we have been considering. If you remember, Joseph said, "You could not carry that mail once a week. The bulk of the mail was so great you could not get through with it once a week. You must make it a daily mail to get that mail through." They say that everything between the original contract price when it was a weekly mail and when it was six times a week is a clean steal and all the additional service that was rendered by these contractors and subcontractors goes for absolutely nothing in the minds of these learned gentlemen. Take any one of these routes where the trips were multiplied and the speed increased and they say that everything between the one point and the other is nothing but a clean steal. Gentlemen, you have got to draw this line somewhere. The Second Assistant had to decide whether he was going to have more

trips or not. If he did order more trips and they were performed, that was not a steal, because the people got more mail. If the mail went through on faster time, it was not a steal, because the people got their mail quicker.

I am going to go through these routes as rapidly as I can, and now come to—

ROUTE 41119, FROM TOQUERVILLE TO ADAIRVILLE.

This is a route one hundred and thirty-two miles in length. On the 8th of July, 1879, there was increase and expedition on that route. What justification was there for the Second Assistant Postmaster-General to make that increase and expedition? I will give you a specimen of it:

Hon. D. M. KEY,

Postmaster-General, U. S. A., Washington, D. C.:

DEAR SIR: We, your petitioners, citizens of Kane County, Utah, would most respectfully represent that while neighboring counties are enjoying the benefits of a daily mail, the majority of the citizens of aforesaid county receiving their mail on route 41119 have only tri-weekly service, which is entirely insufficient to meet the wants of the people. This is also the main thoroughfare through Southern Utah, via Lee's Ferry, to Sunset, Ariz. Many rich mines are being found and developed, and the country is fast filling up and demands more mail facilities and a change of schedule from tri-weekly to daily service, seven times a week, and a running time of forty-eight hours. Your prompt and favorable consideration on this matter will greatly promote the growth and prosperity of this part of the country, and we, your petitioners, will ever pray.

That was signed by the chief clerk of the legislative assembly, by the county surveyor, and by a great many citizens. It was indorsed:

The increase asked for in this petition is greatly needed. The country between the points mentioned is rapidly filling up, and I understand valuable mines are being developed. I therefore heartily indorse the petition.

GEORGE Q. CANNON.

Here is another one:

SIR: We have the honor to submit for your favorable consideration the fact that the mail service on route 41119, from Toquerville to Adairville, Utah, is entirely insufficient for the wants of those now receiving their mail by this route, and to earnestly request that the service be increased to daily, seven times a week, and on a less schedule than now carried, that is to say, in about forty-eight hours.

You will see a point they make in a moment, gentlemen. The first petition asked for a running time of forty-eight hours, and this petition says in about forty-eight hours:

This service is absolutely necessary to accommodate the great number of persons supplied, and to dispose of the large amount of mail matter now carried over this route. The country is already thickly settled along this route, besides a large and intelligent immigration constantly pouring into this country.

JOHNSON, KANE COUNTY, UTAH, *May 24, 1879.*

That is signed by a great many people, and indorsed:

The indorsement which I have made on the accompanying petition I make on this and hope it will be in the power of the department to grant the request.

GEORGE Q. CANNON.

Who was the Delegate, as you know, from Utah.

Mr. Nephi Johnson, you will recollect, was the subcontractor who figured on this route. He, like Steineger, subsequently tried to get this time increased. He had made a bad contract. The point I am at is whether or not this service was needed, or whether Brady had a right to believe it was needed at the time he made this order. When

Mr. Nephi Johnson was on the stand these letters came out which he had addressed to Miner, Peck & Co.:

Since I sent you my bid, on the 19th, I have concluded that I will carry the mail, as per advertisement of the Postmaster-General of November 1, 1877, on route 41119, from Toquerville to Adairville, Utah, for the sum of (\$1,600) sixteen hundred dollars per annum.

I think that an increase of service could be got. For the last six quarters I have collected considerable more on the route than the present service costs, and the people are anxious for more service, and would willingly sign a petition for that purpose. Please to let me hear from you whether you award me the contract or not.

That is what Mr- Nephi Johnson was saying with reference to the needs of the people at that time. Here is another:

Your letter of May 6 is at hand, and in reply I will say that I will carry the mail on route No. 41119 for the sum of \$1,125 per annum, and route No. 41120 for the sum of \$140 per annum, which is my lowest terms. I have plenty of stock, and have a ranch near the center of route No. 41119, and can carry the mail for less than any other man in the country. The offer I make is \$400 less than what I had ought to carry it for and do myself justice.

Now, if you don't like my offer say so at once and it is all right.

He had made his bid too low. These contractors were seeking subcontractors, and they had come into correspondence with Mr. Nephi Johnson, and he made an offer which turned out to be too low. Here is another on the 6th of June:

Inclosed find contracts duly executed.

He had come to terms with them.

I shall send you a petition soon asking for some changes on the route, which I hope you will present to the Post-Office Department. The people have petitioned once for semi-weekly service on this route, but failed to get it. If you will present a petition for that purpose I will take the trouble to go over the route and get the signatures. The people should have more service, for the route has long paid for the present service.

Please send me order on the postmaster at Toquerville for the delivery of the mail. I think I should prefer to have my pay direct from the Post-Office Department, as it probably would save trouble and delay.

Yours, very truly,

NEPHI JOHNSON.

Gentlemen, I have read you those letters of Nephi Johnson, not because I am claiming that they were before General Brady at the time he made the order. I do not claim that. They were not before him. He knew nothing of them. But they confirm what had been represented to him by Mr. Cannon, the Delegate in Congress, and by these numerous citizens that were living along this Toquerville and Adairville route. They confirm the fact that that was an important mail route; that that country was settling up with people; that miners and graziers were going in there to ply their occupations, and needed and demanded their mails. That is the reason I present you these letters. That was the condition of things, that was the state of affairs, and that was the cause of the action of my client. It was an important route between Southern Utah and Sunset, Arizona. Anybody can see by taking the map that it was an important route. Here were daily mails connecting it with the daily mail running down to one end of it, and daily mails connecting with it here [indicating on map]. Anybody by taking the map can see that it was an important route. Having these post-office maps hanging right before his eyes, and then being appealed to by these petitions, is anybody going to say that it was not a proper thing and a thing he ought not to do? But they say these people only asked for forty-eight hours and he put that mail through in thirty-three hours, as I said a day or two ago. (I guess it was only a day or two ago, as I have not been

running quite a week.) Gentlemen, you see how utterly impossible it would be for the Post-Office Department to regulate the time according to the hours that might happen to be stated in a petition. One of these petitions says forty-eight hours, and the other says about forty-eight hours. But no matter if every petition had asked for forty-eight hours. The Post-Office Department has got to adjust the time, as I said, according to its system, and if they are going to expedite—just as in the Rawlins and White river route, to which I shall have occasion to refer after a while—if they are going to increase the speed on a route, should they increase it from two miles an hour to two miles and a quarter an hour? That would be ridiculous. It should be made three, or, as General Brady has said to you, a reasonably fast service is about four miles an hour. In all these cases he tried to get it to about four miles an hour. And yet, because he made it thirty-three instead of forty-eight hours, as named in the petition, they say that that is a badge of fraud. Mr. Nephi Johnson being on the stand was asked to explain the situation there. A portion of the petition was read to him, and then this question was asked:

This is a petition you addressed to the Postmaster-General, I believe?—A. Yes, sir.

Q. What were these adjoining counties that were enjoying the benefits of a daily mail that you referred to in this petition?—A. Iron County and Washington County.

Q. Will you take this diagram that you were shown yesterday, and tell the jury where, with reference to Toquerville and Adairville, Washington and Iron Counties are situated?—A. Washington County is west of Toquerville. Iron County lies north of Kane County. Iron and Garfield Counties join onto Kane. Kane County runs from Toquerville across to the Territorial line, and Washington County is west of Kane and Iron and Garfield Counties.

Mr. WILSON. Please step over and explain to the foreman of the jury, so that all the jurors can see.

The COURT. The jurors have maps and can understand from them.

Q. Washington County lies west of Toquerville?—A. Yes, sir. The county line is near by. Iron County lies north of Kane County, and north of the settlements represented on this map. Iron and Garfield Counties lie north, right adjoining.

Q. Those counties were getting daily mail while yours was only getting the limited service?—A. Washington and Iron Counties had daily mail.

Q. Where did those daily mails come from?—A. They came down from Salt Lake from the north.

Q. To where?—A. To Silver Reef, six miles from Toquerville.

Q. Six miles west of Toquerville?—A. Yes, sir.

Q. There was a daily mail coming down there?—A. Yes, sir.

Q. Where did the counties on the north get their daily mail from?—A. This same line that came down to Silver Reef came down through Iron County, and into Washington County coming from Salt Lake.

Q. Did it come into Toquerville, too?—A. Not at that time. It came to Silver Reef at that time.

Q. That was only six miles off from Toquerville?—A. Yes, sir.

Q. Was there any other daily mail farther to the east of any of these counties north of Kane?—A. No, sir.

Q. There were these two daily mails coming in and supplying these counties?

Mr. BLISS. Only one.

A. One general line of daily mail running through Iron County down into Washington County.

Q. It was one line that supplied two counties?—A. Yes, sir; at that time.

Q. This paragraph, that I have read from this petition which you say you circulated, you regarded as true when you circulated it and had it signed, did you?—A. Yes, sir.

That is one that was read a while ago.

Q. And it was sent on here in good faith for the purpose of securing this additional service?—A. Yes, sir.

Q. I find this paragraph also succeeding:

"This is also the main thoroughfare through Southern Utah via Lee's Ferry to Sunset, Ariz."

Will you explain on this map where Sunset, Ariz., is?—A. It is away to the

southeast. I don't know. I never have been there, but the travel from Utah, going into Arizona, goes down by Johnson and across at Lee's Ferry, eighty-five miles from Johnson.

Q. Describe on the map—

and so forth. Then he describes it:

Q. So that this route was over this main thoroughfare, running through the southern part of the Territory of Utah from Toquerville towards the east as far as Kanab?—

A. Yes, sir.

Q. So that the statement of this petition is an accurate statement?—A. Yes, sir; that is the way I understand it.

Q. The petition then proceeds:

"This is also the main thoroughfare through Southern Utah to Sunset, Ariz. Many rich mines are being found and developed, and the country is fast filling up and demands more mail facilities and a change of schedule from tri-weekly to daily service seven times a week, and a running time of forty-eight hours."

Is it true that rich mines were being found there?—A. When that petition was sent in it was in the height of a mining excitement. We had more than a thousand miners in the country then. They came in in April. They had discovered some mines near there and supposed they were good.

By the COURT:

Q. Near where?—A. Near Pahreah and some near Kanab.

By Mr. WILSON:

Q. Over towards the east end of this route?—A. Over towards the east end of this route. They came until April and staid until some time in June or the 1st of July, and gradually went away. Some were in there about three months.

Q. Are there any stock ranches through there?—A. Yes, sir; there are some stock ranches.

Q. How extensive are they?—A. There are two stock ranches between Rockville and Kanab, where they keep a great deal of stock.

Q. Cattle ranches?—A. Yes, sir.

Q. About how many did they keep on those ranches, so far as you know?—A. Well, there was three or four thousand head of stock in there.

Then, further along:

That is a stock-growing country in there. It is not a country that can be used much for farming. It is a stock-grazing country, and there are a good many ranches through it in different places.

Q. Along in the vicinity of this route?—A. Yes, sir.

Q. Were there a good many cattle kept in these other ranches that you have not thus far specifically spoken of?—A. Yes, sir; there was considerable many stock through the country.

Q. State whether the number runs up into hundreds or thousands of head of stock kept there?—A. It runs into thousands, or did at that time. There has been a great deal of stock taken out since then.

Now, gentlemen, that is the condition of that route, and those were the circumstances under which these orders were made. It was a route running over a great thoroughfare between Southern Utah and Arizona. It had these stock ranches upon it. It had all these interests to supply. These people sent in their petitions in the manner that I have indicated and asking what I have read, and their request was granted. I want to know if you are willing to say that the order in this case was made pursuant to a conspiracy or is evidence of conspiracy, or whether you will not on the other hand take that other idea which I say is overwhelmingly preponderant in this case, that it was done in the real interests of the people, not merely of that section of the country, but of all other sections of the country that might desire to communicate with that particular section. I am at the end of a route, your honor, and it is 1 o'clock.

The COURT. We will take our recess now.

At this point (1 o'clock p. m.) the court took its usual recess.

AFTER RECESS.

Mr. GREENE. (a juror). If it is agreeable to the court I would be glad if we could meet for two or three days during the time of the meeting of the Grand Army of the Republic at 10 o'clock in the morning and sit until 2 and then have an opportunity to be moving about. I believe it is agreeable to most of the jurors. I have spoken to them. There are two matters going on and I hold a very humble position on a committee of each one.

The COURT. The proposition is to meet at 10 o'clock and have no recess and adjourn at 2.

Mr. GREENE. That is it. Or as near to 2 as possible, if that would be agreeable to the counsel.

Mr. HORRIGAN (a juror.) I should like to know for how many days that will continue.

Mr. GREENE. For the next four days.

Mr. HORRIGAN. I consent to four days, but otherwise I will not consent to it. I would not like to make any objection to it, and I seem to be the only one in opposition to it. That is before banking hours and after banking hours. My busiest hours are in the morning and it is a matter of three or four or five dollars every morning to me. But I will consent to lose those three or four or five dollars to accommodate my friend Mr. Greene.

Mr. GREENE. I am very glad to know my fellow-juror's time is so valuable, and I am very much obliged to him for granting it. The racing meeting and the Army of the Potomac——

The COURT. [Interposing.] Put it on the ground of the Army of the Potomac.

Mr. HORRIGAN. That is a national holiday. We are going to have that anyway, according to Congress.

The COURT. If you were a lawyer I would ask you for the statute. How will it operate with counsel?

Mr. WILSON. I am perfectly willing to come at any hour and go at any hour so far as I am concerned, because I am pretty nearly through.

The COURT. I should like to know whether there is an able-bodied man to succeed you?

Mr. WILSON. I will say to your honor, that if it would be any accommodation to the jury I will make that arrangement for one day. I would just as soon come here at 10 in the morning and sit right on until night.

The COURT. When does the Army of the Potomac meet?

Mr. GREENE. Wednesday.

The COURT. When is the other occasion?

Mr. GREENE. To-morrow morning.

Mr. WILSON. Let me commence to-morrow morning at 10 o'clock, and speak until 2, if I do not conclude, although I think I shall finish before then.

The COURT. We will meet to-morrow morning at 10 o'clock.

Mr. WILSON. [Resuming.] Gentlemen, there are two routes that have been mentioned in this, route No. 38150, from Saguache to Lake City, and 38152, from Ouray to Los Pinos, as to which I am not going to occupy your time at all. The reason I will not occupy your time in regard to them is that this record shows that these parties had nothing to do with these routes so far as the practical working in respect of carrying the mails upon them is concerned, or with the increase or expedition. That was a matter that Mr. Sanderson was concerned in,

and although of course my client made whatever orders were made upon those routes, it must be apparent to you, gentlemen of the jury, that there was no such concert in respect of them as is charged in this indictment. Sanderson carried the mail, Sanderson furnished the affidavits, Sanderson got the money that arose from the carrying of the mail on these routes, and I cannot see how it can possibly be of any profit to you or to this case for me to occupy your attention in respect of these two routes. I shall, therefore, pass them over without comment.

Now, we come to a series of routes up in Oregon, to which I desire to call your attention. What I was saying this morning with reference to the Silverton and Parrott City and Ojo Caliente routes as being parts of a system and necessary to be considered in connection with each other, is quite as applicable to this portion of territory into which we are about to enter. I come especially, however, to

ROUTE No. 44155, FROM THE DALLES TO BAKER CITY.

I want you to look upon this map, which is the same one that we had when we were taking the testimony. Here you find The Dalles up on the Columbia River [indicating], and down here [indicating] is Portland. This river is frozen up five or six weeks in the year. The route ran around by way of Canyon City and out to Baker City. It connected with the system of mail service running on the Columbia River. When it got to Baker City it connected with the routes running up to Walla Walla and all those other points which have been so often mentioned in this testimony that it is unnecessary I should repeat them. When you get down to Canyon City you strike another route, which goes to Camp Harney, which you recollect is a military post, and then on down to Camp McDermitt, another military post. You will remember that just in this region of country is where a series of Indian difficulties occurred. One witness described how those Indians traveled. They started in here [indicating] and came around in here [indicating] and got into this country [indicating], and the troops pursued them. Here is Camp McDermitt [indicating] and away down below—I have no map to show it to you exactly, but I know you remember it—is Winnemucca. Winnemucca is a station on the Central Pacific Railroad. Mail originating anywhere in this section of country would either go around by way of San Francisco and then out over the Central Pacific Railroad and back up into this country, or it would go down in here [indicating] and down through this way. Going one way, as you will see, is a comparatively short route, while in the other direction it is a long distance. The mail from Camp Harney or from Camp McDermitt either had to come out this way [indicating] to the Central Pacific Railroad and then have speedy communication with all the outside world, or else it had to travel around to San Francisco, reaching, the Central Pacific, and come out. As to the mail at Camp McDermitt, you will recollect how one of the witnesses testified they sent it. I am simply giving you this little narrative because I do not want to take your time in going into detail, but when I mention it I am sure you will remember it. The postmaster said they had to send the mail from Camp McDermitt, away out here [indicating] and then it came down to the Pacific Railroad, and went over to San Francisco or went east, as the case might be. You recollect there was a good deal said in the testimony in respect of the mail still going in these indirect ways after that route had been established. It is one of the complaints in this case that there was not mail enough upon that

route. The difficulty was that the postmasters or the superintendent out there, who had charge of directing the course of the mail, did not properly attend to their business. There was no fault in establishing the route. I will come to that again. The difficulty was that the postmasters continued to follow in the beaten paths which they had been following. Here [indicating] is the route from Eugene City to Bridge Creek. Here is The Dalles and Baker City route, one in controversy, and here is the Canyon City and Camp McDermitt route, which is another that is under investigation. The Eugene City and Bridge Creek route runs from Eugene City out there [indicating] connecting with The Dalles and Baker City route. You see you have those three routes intimately connected with each other, so that the mail starting from here [indicating] would go directly over on to this route [indicating] and into this country [indicating]. If it originated here [indicating] it would go directly down into this country [indicating], or if it originated here [indicating] it would go away over into this country [indicating]. You see what a system this is and how important to have these various routes running in harmony with each other. You will see how important it was in another respect. Here is a rich region of country lying out here [indicating] and the mail came down here every day. Unless you had a daily mail running out here [indicating] that mail must lie for a week before it could go forward. Now one of the ways, as I have been trying to show you, to make this system harmonious and to give people their mail, instead of running a mail down to a particular point and then stopping it for a week, is to let it go forward. I think I have shown you the character of the country and the situation of these routes in respect of the country. This is a route which illustrates another thing: Here was a failure to put on service arising out of the relation between contractor and subcontractor. On this Dalles and Baker City route the contractor went on promptly and made his subcontract to put the service on that route on the 1st of July, 1878, as the contract called for. There is nothing improper in that. That was a thing that he had a perfect right to do, and he availed himself of that right to sublet the route and make his subcontract. He expected, as a matter of course, and as the evidence shows you, that the subcontractor would put the service on. He had made subcontracts with this same man as to several other routes, and expected the service to be put on, but the subcontractor failed, and when the 1st of July came, and he should have put the service on, he was not there to put it on. The consequence was that the contractor, as a matter of course, was taken by surprise, and his arrangements were all knocked awry by that operation, and he had therefore to commence anew to get that service on. He either had to go and stock it himself or had to get some other subcontractor to take that subcontract. That is one of the routes which was the occasion of Mr. Vaile's ultimately coming into this case, as you will remember. Here was the contractor who had done just what any business man would have done. He had made his contract with a man that was supposed to be perfectly responsible and reliable, and here he found himself confronted with the prospect of being declared a failing contractor just because of a failure of that subcontractor to comply with his subcontract. But I probably have said enough on this subject heretofore, and therefore I will not take up your time in regard to it. Now what does the indictment charge with reference to this route, gentlemen. It says, first, that he increased the service to four trips from the 14th of July, 1879, and then it says, secondly, that he fraudulently reduced it one trip, and gave a month's extra pay, that he fraudulently reduced it one trip. In the first place they say that he

put on four trips when they were not needed, and then they turn around in the next breath and say he took off a trip fraudulently. That is a queer state of affairs. If they were not needed he ought to have taken them off. They say he fraudulently took off a trip and thereby reduced the expense. Oh, but he gave a month's extra pay when he took off the trip. Gentlemen, the contract calls for it. I do not see how these gentlemen can urge upon you that it was a fraud to take off a trip when it was a fraud to put it on. It seems to me that I need not discuss that. Now as to giving a month's extra pay when the trip was dispensed with there is no escape from that, because, as I have shown you heretofore, the contract stipulates for that state of affairs exactly. But I will show you in a moment, I think, that there was no fraud in putting it on, and that he was justified in putting on these trips. On the 1st of August, 1880, it was increased to seven trips a week. A singular fact in connection with this indictment is that as to this particular route they have not complained of the expedition. It is the trips they complain about. The part of the indictment from which I read is found on page 1663 :

And afterwards, to wit, on the said twenty-seventh day of June, in the year of our Lord one thousand eight hundred and seventy-nine, at the county and District aforesaid, and within the jurisdiction of the said court, the said Thomas J. Brady did fraudulently make, sign, and file in the said office of the Second Assistant Postmaster-General a certain order in writing for increased and additional service in carrying the said mails, * * * the said increased service then and there not being lawfully needed and required, as he, the said Thomas J. Brady, then and there well knew, as aforesaid, and with intent thereby to defraud the said United States of America, which said fraudulent order in writing is as follows, to wit:

"Increase service four (4) trips per week, from July 14, 1879, and allow contractor \$41,440 per annum additional pay, being pro rata.

"BRADY."

Now you see there they say that he increased the service four trips. This was not for expedition, but simply multiplication of trips.

And afterwards, to wit, on the seventeenth day of April, in the year of our Lord one thousand eight hundred and eighty, at the county and District aforesaid, and within the jurisdiction of the said court, the said Thomas J. Brady did fraudulently make and file, and cause to be made and filed in the said office of the Second Assistant Postmaster-General, a certain order in writing for the reduction of the service of carrying the said mails on and over the said post route numbered 44155, and for the allowance of one month's extra pay, * * * the said reduction of service and allowance of extra pay not being for the benefit and advantage of the said United States of America, as he, the said Thomas J. Brady, then and there well knew as aforesaid, which said fraudulent order in writing is as follows, to wit:

"From May 1, 1880, reduce service one trip per week, decreasing contractor's and subcontractor's pay \$10,360 per annum, being pro rata, and allow contractor and subcontractor one month's extra pay on service dispensed with."

There they say he fraudulently reduced the service. First he fraudulently put it up and then he fraudulently reduced it, cutting down the cost over \$10,000, and that is complained of.

And afterwards, to wit, on the sixteenth day of July, in the year of our Lord one thousand eight hundred and eighty, at the county and District aforesaid, and within the jurisdiction of the said court, the said Thomas J. Brady did fraudulently make, sign, and file in the said office of the Second Assistant Postmaster-General a certain order in writing for increased and additional service in carrying the said mails on and over the said post route numbered 44155, and for the allowance of additional pay and compensation, * * * the said increase of service then and there not being lawfully needed and required, as he, the said Thomas J. Brady, then and there well knew, as aforesaid, and with intent thereby to defraud the said United States of America, which said fraudulent order in writing is as follows, to wit:

"From August 1, 1880, increase service to seven (7) trips per week, and allow contractor and subcontractor \$10,360 per annum additional pay, being pro rata."

That is what they complain of, gentlemen. That is what they com-

plain of in this indictment. First they say that the increase of trips was fraudulent, and then they say that the reduction of trips was fraudulent, and then that the increase of trips again was fraudulent. Those gentlemen have not a word in this indictment so far as the allegation of any overt act is concerned as to the expedition; not a word that there was anything wrong with the expedition.

The FOREMAN (Mr. Crane). Is it claimed that there was fraud in reducing the number of trips?

Mr. WILSON. That is what they say.

Mr. KER. The expedition was made more than three years before the finding of the bill, and consequently cannot be alleged as an overt act, although it is part of the proof offered here.

Mr. WILSON. Certainly I have not misstated it at all. [To the foreman.] What was the question you asked me? I beg your pardon for not answering it.

The FOREMAN. I understood you to say that they claimed that reducing the number of trips was a fraud.

Mr. WILSON. They aver it expressly.

The FOREMAN. Reducing the expenditure some \$10,000.

Mr. WILSON. Yes, sir. When he reduced it \$10,000 they argue that it was a fraud, and when he put it up again, that was fraud. Now my friend Ker comes here and says, "Oh, this expedition was made more than three years before the finding of the indictment, and therefore we could not put it in the indictment." That is what he says. In other words, if they had put that in the indictment they would have killed their case by the statute of limitations, and they are trying to cheat the law and cheat this jury by dodging the statute of limitations. In other words, they are not presenting this case to you as it is, but they are presenting it as they can patch it up, to avoid what they know is an insurmountable barrier in their way if they present it to you properly. Of course I am not going to misstate their case; I intend to meet their case. They claim that they have a right to go back of this period of the statute of limitations with regard to this expedition for the purpose of proving the expedition as a circumstance tending to show that there was a conspiracy between these parties. I think I state it accurately. They say that although they have said nothing about it in the indictment, they can go back to that period and show the expedition, and that that expedition is a badge of fraud. That is their point. Let us see if I can meet that, gentlemen of the jury. That expedition was from one hundred and twenty hours to seventy-two hours. Upon what did General Brady make the order? Let me present to you two or three petitions as set out in the record:

We, the citizens of The Dalles and Wasco County, State of Oregon, most respectfully petition and ask that the mail service on route No. 44155, from The Dalles to Baker City, Oreg., be increased to six times a week, and the running time on said route be expedited to seventy-two (72) hours. The above-named route is a very important route to the people of the State of Oregon, and the country through which it runs is rapidly filling up, and we, the undersigned, are satisfied that our request will not only be beneficial to this country, but also profitable to the United States, for the experience of the last Indian war has proven the same, as no communication could be had except by private carriers under heavy expenses. We therefore pray for the granting of the above petition.

That is very numerously signed, and it is indorsed as follows:

The prayer of petitioners should be granted. This service should be increased without delay. I earnestly recommend it for the reasons stated in the petition.

October 20, 1878.

JOHN H. MITCHELL.

Here is another :

We, the undersigned petitioners, do most respectfully ask that the mail service on route No. ———, from The Dalles to Baker City, may be increased to six trips per week, and the running time be expedited to seventy-two hours. This is a very important road to the people of Eastern Oregon, as it connects us with other counties and towns. It is also the most direct route to The Dalles and Columbia River, and the counties through which it passes are fast settling up with stockmen, farmers, and others. The last summer's Indian war has proved to us that a daily mail on this route would not only be a great benefit to the country at large, but would also be of great benefit to the Government.

There are a number of other petitions of like character.

In view of one thing connected with this case I must beg your indulgence while I go a little more into detail about the situation as it existed at the time this service was increased :

We, the undersigned representatives, residing in the counties through which mail route No. 44155, from The Dalles to Baker City., Oreg., passes, would respectfully recommend that the service be increased on said route to a daily service. The recent Indian raids through that section and the large immigration during the past year render this increase absolutely necessary. We also ask that the schedule of time be reduced to seventy-two hours.

That is signed by a number of the members of the legislature of the State of Oregon, and indorsed :

I earnestly recommend this service to be increased to daily.
November 12, 1878.

JOHN H. MITCHELL.

Now, on page 1676, there is a petition to which I wish to invite your attention. It is addressed to the Postmaster-General :

SIR: The residents of this part of Grant County, State of Oregon, who have their mail facilities at this, the above-mentioned place, and which vicinity for the last few years has been fast filling up with a permanent population, and are anxious, and, owing to the business and population, as compared with other places, are entitled to a daily mail each way on route No. 44155 (between Baker City and The Dalles via Canyon City and this place), which will also facilitate communication with the military post of Camp Harney, which is a permanent military point in East Oregon (in fact the only one), owing to the recent and expected Indian troubles, to say nothing of the numerous small mining camps in this vicinity.

Therefore we, the undersigned, humbly pray that you will take this petition into your earliest consideration, and grant the prayer of the undersigned petitioners.

That is signed by the postmaster and eighty-six others, and it is indorsed :

We, I hereby recommend the granting of the prayer of the within petition.

JOHN H. SLATER.

JOHN WHITEAKER.

Slater was the Senator and Whiteaker the Representative. Those are specimens, gentlemen, of the applications that were made to the Post-Office Department for increase of service, which was specially granted. They brought a witness here to testify, and I will read you a portion of his testimony with regard to the circulation of petitions, from page 1691 :

Q. Did you circulate any petitions around there for the purpose of getting signatures to them?—A. Yes, sir; I circulated one.

Q. Where did you circulate it?—A. I circulated one at Baker City.

Q. Did you get signatures to it?—A. I did.

Q. Did you circulate any anywhere else?—A. No, sir.

Q. Do you know of any being circulated any place else?—A. I believe I do.

Q. Where?—A. At Prairie City and Canyon City.

Q. Are you well acquainted about Prairie City?—A. I am.

Q. Do you know Mr. Jules Lebreton, the postmaster at Prairie City?—A. I do.

Q. Did you ever see him write?—A. Frequently.

Q. Would you know his signature?—A. I do not know that I would.

Q. You write yourself, I suppose?—A. Yes, sir.

Q. And read writing?—A. Yes, sir.

Q. [Submitting 26 L to witness.] Now, look at that and tell me if you know any of these people whose names you see there?—A. Yes, sir; I know nearly all those.

Q. They are good, reputable, respectable citizens, are they not?—A. They are, sir.

Q. Did you sign any of these petitions yourself?—A. Well, I could not say; but I rather think I did.

Q. Did you not sign this one?—A. I do not think I did. I might have. I would not be positive about it.

Q. Which one of them was it you did sign?—A. I could not say. I think I signed one petition, and probably more. I would sign anything to get a daily mail.

Q. You needed it out there, did you not?—A. Well, we thought we did.

Q. And you were honest about it, were you not?—A. Yes, sir.

* * * * *

Q. Who was the postmaster at Canyon City?—A. Edwin Hall.

Q. You knew of the petition being circulated at Canyon City, did you not?—A. I think I saw one circulated there. I think that is the petition I signed, if I signed any.

Q. Do you recollect whether Mr. Hall had signed the petition that you signed?—A. I do not.

Q. [Submitting 24 L.] See if that is the petition you saw out there?—A. Yes, sir; I think that is the petition.

Q. Do you think that is the petition that was circulated there?—A. I think so; to the best of my knowledge.

Q. You know the people who signed this?—A. The majority of them.

Q. They are good, respectable people, are they?—A. They are.

Q. And reliable?—A. As far as I know.

Q. What county do you live in?—A. Grant County.

Q. [Submitting 23 L to witness.] Now, see if this is the petition that you circulated?—A. I do not think it is.

Q. Do you know these people?—A. I know a portion of them.

Q. Where did they live?—A. Baker City.

Q. So far as you know, they are reputable citizens at Baker City, are they?—A. Yes, sir.

Q. You think this is not the particular petition that you circulated?—A. That is not the petition I circulated.

Q. What was done with the one you did circulate?—A. I do not know.

Q. After you got done circulating it, what did you do with it; who did you give it to?—A. When I got done circulating it, I gave it to L. P. Williamson.

Q. You presented it to such persons as you knew?—A. I presented it to everybody.

Q. And the persons who signed it were residents of Baker City and reputable people, were they?—A. Yes, sir.

Mr. BLISS. I object. That is questioning about a petition which is not here, and does not appear to have been here at all. If he will identify the petition I shall not object.

Mr. WILSON. All right.

Q. [Submitting 17 L to witness.] Now, look at that, and see whether that is the one you circulated?—A. Yes, sir; that is the petition.

Q. Do you know the people who signed that petition?—A. A portion of them.

Q. What proportion of them do you know?—A. I suppose I know probably one-third of them.

Q. This was signed at Baker City?—A. Yes, sir.

Q. As far as you know, are they reputable gentlemen?—A. They are.

Q. Did you sign this petition?—A. I could not say whether I did or not. Likely I did.

Q. You read this petition before you circulated it, or at the time you were circulating it, did you?—A. I think I did.

Q. What it stated was true, was it?—A. I considered it so.

Q. And you do now, do you not?—A. I have not read the petition. If it reads the same now as it then did, I do.

Q. Well, I will read it to you.

Then the petition was read.

That is correct, is it?—A. That is about the way the petitions generally read.

Q. Is that about the way the people felt out there; is that about true?—A. Yes; it is about true.

I have read that much, gentlemen of the jury, for the purpose of showing to you that these petitions to which I have been calling your attention are not bogus petitions, but petitions signed by the people who

profess to have signed them, by whom they purport to have been signed. Upon these petitions this service was increased and the speed expedited, as has been stated. Now, gentlemen, right in connection with that I want to call your attention to the Canyon City and Camp McDermitt route. As I have shown you on the map, the two unite at Canyon City. They had a witness on the stand here, a Mr. McBean, who carried the mail on the Camp McDermitt route beyond Camp Harney. They say this service was not needed! That is their point. They say Brady knew they did not need this service and therefore this was a fraudulent order. Don't you remember that McBean told you that when the mail only ran once a week over the Canyon City and Camp McDermitt route he was employed by the quartermaster of the Army to carry three additional trips for the benefit of the camp? Why was that? If this mail once a week was all that was needed, if it was ample, will you tell me why on earth these military men at Camp Harney were employing a man at \$270 a month to carry additional trips? If it was not needed do you not know that these military officers would not have done a thing like that? Leaving the people out of consideration, if the needs of the Government itself for the mail matter of this military post required that they should employ a special courier to make three additional trips, does it not prove beyond all sort of question that there were not enough mail facilities there? I say it does. Now, when we have proved that more were needed, how much more, gentlemen? We have got the number of trips up to four by the manner in which they were carrying that mail; not paying for it through the Post-Office Department, but paying for it out of another pocket of the Government at the rate of \$270 a month, and that was only supplying the immediate wants of the military. The general public had no advantage from it. The general public and the military were in want of mail and the military were having to supply themselves with extra trips for the purpose of meeting the absolute needs of the Government itself independent of the people. Now way down below Camp Harney was this other military post, Camp McDermitt, lying right in the same Indian country. It was these Indian troubles that made it necessary for the Government to have this extra service. Right down there below Camp Harney was Camp McDermitt and below that was Winnemucca on the Central Pacific Railroad. These gentlemen say "Oh, it would have been amply sufficient to have sent the mails out by these circuitous routes," and yet by running a line right straight down to the railroad they had free access, easy access, speedy access to all the world, especially to the city of Washington with which these military posts were in so much need of speedy communication. I think I have demonstrated that there was more service needed on this route. If I have done so, I want to know if you are going to stop to inquire whether it ought to have been three trips or whether Brady ought to have added two. If he made a mistake and put on one more than you think was needed are you going to infer that he was guilty of fraud and was engaged in a conspiracy when he did it? I say that thing is too absurd.

The COURT. How much of this route did the military service cover?

Mr. WILSON. From Canyon City to Camp McDermitt was seventy-five miles, I believe. That is my recollection about it.

The COURT. The whole length of the route was two hundred and forty-three miles.

Mr. WILSON. Yes, sir; and they paid \$270 a month for carrying seventy-five miles of that route, and it was paid out of the quartermaster's department. Here is a most extraordinary proposition put forward,

gentlemen. I believe that I will not stop to read to you the petitions that were presented on the Canyon City and Camp McDermitt route, because it is a weariness I know to you to listen to me as to the dry details of this case, and I feel that I ought to apologize to you for having already taken so much time. But there are two things that I must allude to in connection with The Dalles and Baker City route and this route, because you see I am grouping them together. They have found what they call a soldier's petition. They have found a petition that they say was signed by a lot of soldiers who were not on the route, and they say it is a fraudulent petition and that somebody filed that petition. You notice with what great particularity they called your attention to the indications that that is a manufactured petition. Gentlemen, let me grant for the purposes of this argument all that they claim about that petition and let us see where we are. Then we have a peck of petitions that cannot be complained of. We have petition after petition, recommendation after recommendation in this case, a great number of them, the integrity of which has never been assailed by mortal man, and which we have proven by their own witnesses are genuine petitions signed by people living along the route. Because they find one petition of this description they ask you to ignore the multitude which represent the truth in regard to the matter, and ask you to condemn everybody in this case because that petition is on file. I do not know whether the soldiers signed that petition or not. I know nothing about that. I know it is here in this case. They say there were no soldiers there. If I were going to discuss the matter I would argue to you from the testimony that there were soldiers there; but whether these particular ones were there or not, I do not care. I do not know. I do know that there are plenty of petitions, numerous signed by actual residents, representing the truth about that thing, and that upon those petitions my client acted.

Mr. KER. Of which route are you speaking?

Mr. WILSON. I am speaking of The Dalles and Baker City route. Is there any other petition you can attack except this?

Mr. KER. The one Miner wrote?

Mr. WILSON. I am talking about the soldier's petition. Is there any other on that route? If there is another, mention it. Now is the best time in the world. [After a pause.] Not another, gentlemen. Now take the route from Eugene City to Bridge Creek. My Brother Ker thought he had found something very startling in that case, and he argued to you with great earnestness that there was an indication of fraud in the fact that the distance between Mitchell and Bridge Creek had been cut off, which left Eugene City and Mitchell standing in the air, without any connection whatever with the outside world. That did look like a very singular sort of performance, and if it had been true it would have certainly shown a remarkable oversight on the part of somebody in doing a thing of that kind. But, gentlemen, it does not happen to be true, because Mitchell happened to be on The Dalles and Baker City route. It was also on the Eugene City and Bridge Creek route and the distance between Mitchell and Bridge Creek was covered by both routes, and that was an oversight by Mr. Brewer, who, I believe, was the corresponding clerk in charge of the section in preparing the advertisement. Just as soon as they got the distance circular out they found out the mistake. They found out that Mitchell was on both of those routes, and the result was to pay for the distance between Mitchell and Bridge Creek twice. Now, what did they do? Did these conspirators go on and get that pay twice? Did my client allow them to get that pay twice? No,

gentlemen. The first thing that you see done in the case is to cut off the distance between Mitchell and Bridge Creek, which makes the two routes come together, and there is no duplication of service or duplication of pay. Shall I annoy you by going into the petitions on the Eugene City and Bridge Creek route? I might refer you briefly to two or three of them just simply by way of illustration, but they are not attacked by anybody. Nobody says they are fraudulent petitions. Nobody says any fictitious names are signed to them. Nobody pretends that they are otherwise than signed by men who lived there and who desired that service. These gentlemen say we were bringing this about by means of fraudulent petitions—petitions signed by fictitious names, and all that sort of thing, and yet there has not been introduced here a syllable of testimony attacking any single petition, letter, or recommendation upon that route. The papers are indorsed by Senator Mitchell, and I believe also by the Representative, but I am not sure about that. Now, that was the situation, gentlemen. That was the condition of things when my client made these orders. You had testimony as to the amount of mail that went over these routes. These gentlemen think if it is ten pounds of letters that that is too trivial and inconsequential to merit the consideration of anybody. I do not think they ever stopped to consider that a pound of mail is thirty-two letters. They never stopped to consider those things, but they thought by proving that there was only ten, twenty, or fifty pounds of mail going over a route at a particular time, and it cost a good deal to carry it, that that would be enough to prejudice you against these defendants.

I will allude for a moment to another point that has been frequently made during this case. Don't you remember, gentlemen, that they made a nice calculation as to this very route, and said that if Brady had simply multiplied the trips and put on six trips he could have got this service for \$24,000, whereas by expediting and giving a smaller number of trips it cost \$30,000. My Brother Ker says to put on six trips would be better and cheaper than the other, and because he comes to the conclusion that six trips would cost a little less money, he thinks that is the course that General Brady ought to have taken. You heard what General Brady had to say about that. He told you that in his judgment to make a good service expedition was often more important than mere multiplication of trips. But I am not going to spend any time on that.

Now, in the case of the Canyon City and Camp McDermitt route, here is a petition which contains two pages of names of parties down in Utah. They do not live anywhere near this route. There is no question about that, gentlemen. I am not going to controvert it. I want to see whether you think that if every one of you or all of you were put together and boiled down into a Second Assistant Postmaster-General you would have ever suspected anything of that kind in connection with this petition? I will show you just why you would not. The petition is signed very numerously by people who do live on the route, and I can not conceive why they should have gotten in the other names purposely. I can conceive how it might have been done by accident, but there is no reason in the world why anybody should purposely have done it [exhibiting petition]. Here it is, containing a large number of names of persons who actually lived on the route. Down at the bottom is another very large number of names of persons who actually lived on the route and whose signatures are undoubted. There is no question about that. I will suppose that petition goes to you just as it is, and you are considering it along with a whole lot of

other petitions setting out the same thing in substance and as to the genuineness of which there is no dispute. Here is the body of the petition [indicating] and the genuine names are right on the back of the page itself. Then follow these other genuine names pasted on, and then follow the names of persons off the route. Now, here is this indorsement:

Having examined the foregoing petition and list of names, I find it correct in its statements, except that it affects the middle and southeastern section of the State; the north and northeastern section being supplied from Kelton by way of Boise City to The Dalles. The section, however, supplied by route 44160 is not less important to the section through which it passes than the Kelton route was to the section through which it passes, only a few years since. Therefore I recommend the granting of the prayer of this petition.

J. H. SLATER.

He was the Senator from Oregon, and he wrote that upon the very identical petition about which these gentlemen have had so much to say:

I concur in the foregoing.

L. F. GROVER.

I concur in the above request.

JOHN WHITEAKER.

Another Senator from Oregon and the Representative from Oregon. Just imagine yourselves boiled down into one Second Assistant Postmaster-General and that paper coming to you indorsed in that way, and what would you say to a Mr. Lawyer that would stand up afterwards and say, "Oh, you ought to have known that some of these names were the names of parties who lived in Utah instead of up here in Oregon?" Is not that too absurd, gentlemen? Here were numbers, as I have said, of other petitions asking the same thing, and then there is this petition, indorsed in that way by two Senators and a Representative, and sent in to the Post-Office Department. And yet these gentlemen, because they find some Utah names in there—how they got there I do not know—want you to condemn the whole thing.

Now, gentlemen, I want you to remember that this is one of the cases where there were mail bills. I want you to remember that the order they complain of was made in June, 1879. They say that these mail bills ought to have advised him that the service was not needed; that these mail bills showed that there was not much mail passing over this route. In the first place, gentlemen, you know very well that those mail bills came to the inspection division. They never came to Brady's attention until the chief of the inspection brought his attention to them because of some delinquency on the part of the contractor. When did those mail bills that they talk so much about come into the department? Here are a series of letters that they have put in evidence touching this subject. When are they dated, gentlemen? In November, 1880. Recollect that the order was made in June, 1879, if I have stated it correctly.

Mr. KER. What route?

Mr. WILSON. Eugene City and Bridge Creek. The order was made in June, 1879?

Mr. WILLIAMS. June 26, 1879.

Mr. WILSON. June 26, 1879. They brought in some mail bills on that route. When? The order, as I have said, was made in June, 1879. These mail bills commence in December, 1879, and they run on up for some time during December, 1879, and possibly longer; I am not going to say just how long. But what I call your attention to is this: that

the order was made when all these petitions were there, and when there was nothing to show the extent of the mail that went over that route; nothing whatever. And when they bring these mail bills in here they bring them in long after the order was made, and then for the first time, so far as we know anything about it, there was anything in the department which tended to show the extent of the mail which passed over that route, and that Brady saw those mail bills. Have they shown anything of that kind as to this particular route? Not a bit of it. And have they shown to you that after that period there were not many, many sacks of mail going over this route? Not a bit of it. But they find here at a particular period, long after the order is made, that some mail bills come into the inspection division, and they say that Brady ought to have known that those mail bills were in there, and because he did not know that they were in there it is an indication of fraud, and because he did not know that those mail bills that were subsequently put on this route would develop this thing that is an indication of fraud.

The COURT. How do you know the distance between Camp Harney and Canyon City?

Mr. WILSON. That is in the testimony of Mr. McBean, as I recollect it.

Here is the jacket (85 I) made up for the deductions when these parties were failing in their trips, and all that sort of thing. Look at both sides of it. There is not a word said in there about any mail bills, and this is what would be brought to Brady. The chief of the inspection division brings him that written in red ink, and tells him what there is there, and you see there is nothing about mail bills. Those mail bills were in his inspection division two or three months after this order was made, but his attention was never called to them in the world. They say he ought to have known about that. I ought to say that that jacket is for the quarter ending March 31, 1880. It had run nearly a year before even the jacket is brought to him. There is not a syllable in the records or file to show that his attention was ever called to it.

So it simply comes to this: looking at this map as he would look at it, of course; looking at these petitions; listening to these solicitations, personal and otherwise, he made this order, and the simple question is whether you will come to the conclusion that he did it for corrupt purposes, or did it for purposes that were contemplated by these petitions and asked for by these petitioners.

In connection with this Canyon City and Camp McDermitt route, gentlemen, you will remember that that is one of the routes on which they say that there was no separation of trips from expedition in the order. I have said all in respect of that that I desire.

But I want to say right here in this connection, gentlemen, one word further in regard to these routes we have just been talking about, and it is applicable to all of them—that these contractors never got any pay for service that they did not perform. Remember that. Relentlessly, invariably, as the reports were made to Brady by the inspection division of failure to perform service, their pay to that extent was cut off; and where temporary service was put on in consequence of the delay occasioned by failure of the contractor on The Dalles and Baker City route, you will remember that that temporary service was not paid for by the Government, but was paid for by the contractor.

In speaking of this Canyon City and Camp McDermitt route, you will remember that Mr. McBean said that the mail that he was carrying down there, when he was running this courier line, probably weighed

twenty or thirty pounds; twenty to forty pounds is the way he finally stated it.

I come, now, to

ROUTE No. 40104, MINERAL PARK TO PIOCHE.

I wish to give you an exact history of this route.

On the 23d of July, 1879, Brady made an order to take effect from the 1st of August, 1879, increasing the trips four per week.

On the 10th of April, 1880, having reduced the number of trips, he made an order allowing one month's extra pay.

The route is two hundred and thirty-two miles long, and was originally let at one trip a week. [Map shown to jury.] Here is Ehrenberg, away off down here [indicating]. Here is Yuma, on the Southern Pacific road; here is Mineral Park down here, and here is Pioche up here; there is the Union Pacific Railroad, and here is the Utah Railroad, running up to the Union Pacific. Prescott, Arizona, lies off here. This is the situation. The mail went down here until it got to Yuma, and then it found its way by the various mail routes around through this country about Prescott, and came over here to Mineral Park. From Ehrenberg on down there were frequent and speedy mails down to this point, but here was a stretch of country down in here where mails were only one trip a week and on slow schedule. That is the general situation.

The route was advertised and contracted for at one trip a week. On the 24th of December, 1878, it was increased two trips and reduced from eighty-four to sixty hours, that being less than pro rata. Here is the jacket, on page 1634:

Date, December, 1878. Territory, Arizona.

Number of route, 40104.

Termini of route, Mineral Park and Pioche.

Length of route, two hundred and thirty-two miles.

Number of trips, one.

Contractor, J. W. Dorsey.

Pay, \$2,982 per annum.

Citizens of Arizona receiving mail on this route petition for increase of service to three trips per week and reduction of running time from eighty-four to sixty hours. Hon. H. S. Stevens earnestly recommends the increase of service, together with expedition petitioned for. General John C. Frémont, governor of Arizona Territory, in a letter referring to the same matter, says: "The increased facilities asked for would be very beneficial to our people in that section and are very much needed by them, and I earnestly recommend this change," &c.

The increase recommended would not only prove beneficial to the offices on this route, but would be an advantage to several other offices located in Northeastern Arizona.

On the 21st of October, 1878, Mr. Stevens, the Delegate, wrote this letter (page 1635):

PRESCOTT, ARIZ., October 21, 1878.

Hon. THOS. BRADY,

Second Assistant Postmaster-General, Washington, D. C.:

SIR: I would respectfully recommend that the service on the United States mail route No. 40104, from Mineral Park, Arizona Territory, to Pioche, Nevada, be increased from one time a week to twice a week, so as to give increased mail facilities to the citizens supplied with mail on this route, and I hereby indorse any application of the citizens for increased mail service on this route.

I am, very respectfully, yours, &c.,

H. S. STEVENS,
Delegate.

And then another, on the same page:

Hon. THOS. BRADY,

Second Assistant Postmaster-General, Washington, D. C. :

SIR: I would respectfully recommend that the service on route 40104, from Mineral Park, Arizona Territory, to Pioche, Nevada, be expedited, so as the running time shall be sixty hours in lieu of eighty-four hours, the present running time; and would hereby indorse any petition of the citizens on said route for expediting the service on said route.

I am, very respectfully, yours, &c.,

H. S. STEVENS,
Delegate.

Then another, on page 1636:

TERRITORY OF ARIZONA, EXECUTIVE DEPARTMENT,
Prescott, Ariz., October 21, 1878.

Notice the dates, gentlemen.

Hon. General KEY,

Postmaster-General:

SIR: I learn that an application is about being made to increase the service on the mail route between Mineral Park, in this Territory, and Pioche, Nev., from once to twice a week, and that it is considered also very desirable to reduce the present running time from eighty-five to sixty hours.

The increased facilities asked for would be very beneficial to our people in that section, and are very much needed by them, and I earnestly recommend this change to the favorable consideration of the department.

I use this occasion to thank you for the advantages conferred on this place by the recent improvement on the route to Santa Fé.

Respectfully, your obedient servant,

J. C. FRÉMONT,
Governor, &c.

And here is a petition, on page 1638:

Hon. THOMAS BRADY,

Second Assistant Postmaster-General, Washington, D. C. :

We, the undersigned citizens, furnished mail by the United States mail on route No. 40105, from Ehrenberg to Mineral Park, in Arizona Territory, would recommend and request that said service be expedited so as to have the running time from Ehrenberg to Mineral Park only forty-eight hours in lieu of sixty hours, the present running time.

Recollect, we have got down to another route, Ehrenberg to Mineral Park, which is below. That petition is very largely signed. There are two petitions, but I have only read one. They are substantially in the same language, and they are signed by the same people.

The gentlemen of the prosecution argue to you that that is an indication that there is fraud in this case. Recollect that these two routes, the Ehrenberg and the Mineral Park, come together in just that way, and form a continuous line, running down to Yuma. How ridiculous it would be to increase the service down to this point of junction between the two lines and not increase it on the other. That would be an absurdity on its face; and most naturally the people who were seeking to get up that service, to get these increased mail facilities, would see at once that the department was not going to increase and expedite one of these routes without applying it to both, because it would be just going half way in doing that which was needed to be done. The great purpose was to get a through line connecting that railroad that ran down from the Union Pacific to the southern part of Utah, with Yuma on the Southern Pacific, and those two routes just lay end to end in that line. What was more natural than that the people who wanted this

thing done would see that they must increase and expedite both of them the same way. That would be the thing that would be necessary to be done. Hence they sent two petitions which were signed by the same people, and they are asking for the same thing.

Ah, but, gentlemen, they have discovered something here in connection with these petitions. I always have to hunt a good while before I can find it. They have discovered something here. They say that the word "Ehrenberg," in this petition was written over an erasure, and that Brady ought to have seen that. Look at those two "Ehrenbergs," and look at that writing, gentlemen. [The foreman of the jury held the petition up to the light.] I knew you would have to go to the light to find it, and you will have mighty hard work to find it then. Imagine yourself Second Assistant Postmaster-General for half a minute. Do not continue in that business more than half a minute, or Ker will be after you with a sharp stick. Imagine now that you are looking at that to detect an erasure.

Mr. KER. Show the jury both petitions.

Mr. WILSON. Well, I will do it. [Another paper was handed to the jury.]

Mr. KER. Rerdell wrote one and Miner the other.

Mr. WILSON. You are responsible for Rerdell; you may take care of him.

Mr. CRANE (foreman of the jury). There are a number of erasures.

Mr. WILSON. Do not forget to hold it up to the light, gentlemen, you won't see it unless you do, and I want you to see it.

Mr. CRANE. What else has been put there in the place of "Ehrenberg?"

Mr. WILSON. I do not know; I would like to know myself.

Now, gentlemen, recollect that one of these routes is not in this indictment; the other is. But the reason for petitioning for the mail between Ehrenberg and Mineral Park is just, it seems to me, necessarily the reason I have stated to you. These gentlemen said that there were mail bills went over that route for nineteen days, and they produced them in evidence, showing that there was no mail went over the route in that time.

By the way, I may say to you that with reference to mail bills General Brady suggested to Mr. Lake to get up something or other by which they could know whether these contractors were performing the service within the time they were required to perform it or not, and Mr. Lake got up this scheme of mail bills whereby a postmaster was required to put a mail bill in a sack when it started from the end of the route, and then a record was kept by the other postmasters until it came to the other end of the route. That enabled the department to know whether the mail had started on time and had gone continuously through. That was done for the purpose of protecting the department against any imposition on the part of the contractors. These mail bills were sent out on that route. General Brady tells you that the design was to make a through route there north and south between those two railroad systems, connecting at Pioche with the system of mails going out into Arizona. These mail bills went over that route for nineteen days, and here is a case where his attention was brought to the mail bills, because, when the reports came in from the postmasters, these mail bills showed how much mail was going over that route, and they found that for nineteen days that the route was in operation scarcely any mail had gone over it. Now what happened? On page 1643 is the entry on the jacket made by the inspection division in red ink, under date of January 22, 1880:

The mail bills received by the inspection division showing little mail matter passing over this route, as per files of said division, and that the service is most irregularly and inefficiently performed: Ordered, That service on said route be reduced from the 1st day of February next to what it was at original letting, both as to trips and speed, without one month's extra pay.

That is the order that was written in red ink by the inspection division. Now comes the order in black ink, signed by Brady:

From February 1, 1880, reduce service from seven trips per week to one trip per week, and increase running time from sixty hours to eighty-four hours, decreasing contractor's pay \$49,051.33 per annum, being amount allowed by orders bearing date December 31, 1878 (No. 11446), and July 23, 1879 (No. 6834), for increase of trips and expedition of running time, without one month's extra pay on service dispensed with.
BRADY.

Those reports for nineteen days showed that there was very little mail going over that route, and that the service was being very irregularly performed, and he took it off. They say he put it back again. But recollect, gentlemen, that his purpose was, and that is what these people had been petitioning for, to get up this through mail and speedy mail, but the contractor was not doing the service properly and no mail was going over it.

Now, what happened? That thing having been done, then Mr. Dillon, president of the Union Pacific Railroad Company, wrote this letter to General Brady:

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General:

SIR: The Utah Southern Railroad will in a short time be completed to Frisco.

That does not mean San Francisco, but a place down in that country called Frisco.

From that point to Pioche, Nev., there is already established daily mail service which will be rapidly taken up by our advancing railroad. From Pioche to Prescott, there is running a tri-weekly mail service on slow schedule. It is important that emigrants and capital from the East should have a more direct line of intercourse with the richly developing Territory of Arizona than the present circuitous route by California and Southern Pacific Railroad.

I therefore respectfully ask that the service between Pioche and Prescott be increased to a daily, thus giving us a continuous daily service from the Union Pacific Railroad to Southern Pacific Railroad at Maricopa Wells.

It is superfluous to add that the States and Territories yielding the precious metals would to-day be half a wilderness except for the intercommunication established by the Post-Office Department.

Respectfully,

SIDNEY DILLON,
President Union Pacific.

That is a better argument than I can make, although it is one I have feebly been trying to present to your mind. He says that this country out there would be a half wilderness but for the intercommunication that is afforded by the mails. There was a daily mail down to a certain point, and then off at another point there was a tri-weekly mail running beyond, and here was an intervening stretch where there was one trip a week on a slow schedule. He says, "We do not want that condition of things." Well, the people before he wrote that letter had said they wanted this additional mail; they had pressed it upon the department, as I have already said. Then Mr. Dillon wrote this letter. Now, General Brady declined to put it back to where it was before, but he did put it up to three trips, and that is what these gentlemen complain of.

Mr. KER. We do not complain about that in that way at all.

Mr. WILSON. Then let us hear what you do complain of, so that I may answer that.

Mr. KER. Judge Wilson, in arguing to the jury, first gave the order of January 22, 1880, to bring it back to one trip. He then read the letter of Sidney Dillon, dated on the 21st of July, 1879, and then made the statement to the jury that, acting upon that letter, he left it at three trips. The truth was that the record shows by this letter, if the judge had read it further down:

TURNER: Make up case Pioche to Mineral Park.

BRADY.

Dated July 21, 1879.

And based upon that letter alone, Brady raised the service from what it was by the order of July 23, 1879, four trips. Succeeding that order of increase of four trips came a letter from Horace D. Beene, a lawyer, and, acting upon that letter, it was brought down to one trip. And there is no letter or anything in the jacket, good, bad, or indifferent, upon which Brady changed his mind to make it three trips instead of bringing it down to one. The letter of Sidney Dillon was the only petition and the only thing upon which it was brought up to seven trips a week, upon which there was an allowance of \$29,733.33.

Mr. WILSON. I think Mr. Ker has made his speech before about the same way. He says there was nothing on file. He takes it for granted because they have one paper that that is all that the Second Assistant acted upon, and that everything that has gone before and was in the files was to go for nothing. That is the way they argue this case. Just like he picked out one petition on the Kearney and Kent route and said the whole thing was done on that, when I showed you the Hale and Nightingale letters and Seaman letters, and all those other papers which they think go for nothing. I have just shown you, gentlemen, that here is General Frémont's letter, dated October 21, 1878, asking for more service on this route. Does that go for nothing?

Mr. KER. They got it on that.

Mr. WILSON. Were those things exhausted when there had been an order made upon them? He says they got it on that.

Go a little further, gentlemen. Here are two letters from Delegate Stevens, one of them dated October 21, 1878, asking for increase of trips, and another dated in October, 1878, asking for expedition. These papers were on file, as well as the letter of Mr. Dillon, when this thing was done, and they continued to be on file as standing evidences that this service was needed. These gentlemen think that if one petition goes in there and there is action upon it, then it is *functus officio*, and if something turns up afterwards that petition is as dead as Julius Cæsar, and can never be looked after by the department for any purpose whatever. That is their theory of this case, and that is the way they argue this case. I say to you, gentlemen of the jury, that when the Second Assistant Postmaster-General is called upon to act in respect of any route, the whole record and whole files of that route up to that date are there for examination and consideration; and when he did this, then all these papers were there; and it is the merest nonsense, it seems to me, to say that all these papers are to go for naught and that they can pick out one paper as being *the* paper upon which the thing is done. He had all these papers to show the importance of creating that service, and upon them he acted. And yet, because the Second Assistant did not listen to Mr. Beene, why, of course, he must have been guilty of some fraud.

Mr. KER. He did listen to him, and put it down to one trip.

Mr. WILSON. Upon the recommendation of Beene?

Mr. KER. Upon a threat of Beene.

Mr. WILSON. Who is Beene? Beene is a lawyer living at a place called Ward, more than a hundred miles from this place, and I might with the utmost propriety, I think, argue that this Mr. Beene was some lawyer representing a rival contractor engaged in carrying the mail upon some other route that might be interfered with if there was more service put upon this route. In other words, if this mail were turned down through this country where it ought to go it might have the effect to cut off the service of some contractor on the other route who happened to be a client of Mr. Beene. But who is Mr. Beene? Do you know? Does my friend know who Mr. Beene is?

Mr. KER. He is dead.

Mr. WILSON. You say he is dead. You had Postmaster-General Key dead the other day, too. They killed Key off unceremoniously, but he happens to be holding the United States courts down in Tennessee—a pretty lively old corpse. That is the kind of argument you are treated to.

But they say he put this back on some one paper. Well, they expect you to utterly ignore the testimony of General Brady. They do not expect you to believe him at all. They say, "Why, gentlemen, we have indicted him, and having indicted him, he must come on this stand and testify, and if he does not, you must infer that he is guilty, or he would." And then when he does come on the stand and testify they say, "You must not believe him because we have indicted him, don't you see?" That is their logic. That is the way they argue this case.

Well, General Brady has testified. You have heard him testify, and you have seen him on the stand, and I am not going to stop to enter into any encomiums upon him at all in connection with this thing. He is there, and you heard what he said. Now, what was it? He said, "We wanted to get up a better mail system; I put this thing up or down in obedience to these petitions and because I thought it would improve the service in that part of the country; and I found that this contractor or subcontractor was not doing his duty in respect to the matter. My attention was called to the mail bills, and I saw there was no mail going over that route, and therefore I cut it down." But he says that Senator Plumb insisted that he was doing injustice to the contractor, and as he was anxious to make this an efficient service through there, he restored so many of these trips. That is the history of that. Now, they say he was engaged in a conspiracy when he was doing this. If he was in a conspiracy to make money would he not have availed himself of every reasonable opportunity to do it? When he could get a good excuse for doing it would he not do it? It seems to me so.

What transpires in this case? After he had put it back to three trips there came petition after petition to him, and some of them came through the White House, asking that it be put back to the seven trips. Mr. Gould wrote a very admirable letter and a very sensible letter on that subject. I am not going to stop to read those letters to you. There were also other indorsements came to him asking him to do this thing. But he declined to do it. Now, if he had been engaged in a conspiracy to put money in his pocket, there was the best opportunity in the world to do it, and yet he would not do it.

Ah, mail bills. Gentlemen, this service was restored to three trips and the expedition, and have the gentlemen brought you any mail bills since that time? Think of that for a moment. Is there anything to indicate to you that the policy that he laid down and was pursuing has not

proved the true policy? If there had been anything in all that department that would have shown, since he put on the three trips, that they were not fully justified by the amount of mail that went over that route, do you not think they would have been here? Have they anything of the kind? No, gentlemen. Since that service was restored there has not been a breath of testimony to show that the mail bags have not been loaded with mail going over that route into that country.

And now, gentlemen, there is another fact you know in this case perfectly well. It is in evidence here that on account of failure of that subcontractor to carry that mail as required, deductions were made from the pay, and they stand unremitted to this hour. Brady imposed the fines and deductions just exactly as they were reported to the inspection division by the postmasters along that route, and by the inspection division to him, without any variableness or a shadow of turning in every case, and there are thousands and thousands of dollars that have been taken from the pay of those men for their failure to carry that mail in accordance with the requirements of their contracts, and they stand unremitted to this hour, or at least stood unremitted as long as he remained in the Post-Office Department.

The COURT. Gentlemen, I wish you would bear in mind that we meet to-morrow morning at 10 o'clock.

Mr. CRANE (foreman of the jury). Shall we sit four hours?

The COURT. That is what I understand; if you can stand it and if the counsel can stand it.

Mr. WILSON. I can stand it.

Mr. GREENE (a juror). I withdraw my request, if your honor please. I believe it would not be agreeable to all parties.

The COURT. Then we had better meet at the usual hour, had we not?

Mr. HARRIGAN (a juror). I do not object to it, your honor.

Mr. GREENE (a juror). I withdraw my request.

The COURT. Day after to-morrow we may make some change, but it will be understood that we meet to-morrow at 11 o'clock.

Thereupon (at 4 o'clock p. m.) the court adjourned until to-morrow morning at 11 o'clock.

TUESDAY, MAY 15, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. WILSON. [Resuming.] Gentlemen of the jury, in trying to hurry through these routes I think I may say as much for the purpose of relieving you as for the purpose of relieving myself, I find that some things I possibly ought to have said I have omitted to say. Doubtless when I am done there will be many things that I shall feel I ought to have said and possibly many things that you may feel I ought to have discussed that I will have omitted. I want to call your attention back this morning, gentlemen of the jury, to the Mineral Park and Pioche route, just to make one statement that is shown by the record in this case, and that is that when it was discovered that the subcontractor was not performing this service in the manner which was contemplated at the time the expedition was made, Brady not merely cut off the service, but refused to allow the month's extra pay, as he had not performed

the expedition, as it was his duty to do. I want, also, this morning, gentlemen of the jury, to bring your attention to one other matter in this case. A great deal has been said and a great many petition shave been shown to you, and I have taken pains to bring your attention to the petitions that were presented and on file before the Second Assistant Postmaster-General at the time these various orders were made. There is a paragraph in the body of these contracts which shows that petitioning was the only method they had, and was a method that they peculiarly had to resort to for the purpose of getting that which they needed. Let me read you a paragraph from one of these contracts:

They—

That is, the contractors—

also undertake, covenant, and agree with the United States of America, and do bind themselves, jointly and severally, as aforesaid, to be accountable and answerable in damages for the person to whom the said contractor shall commit the care and transportation of the mail—

They bind themselves to be responsible for all the misconduct of the carriers and all the misconduct of the subcontractors—

and his careful and faithful performance of the obligations assumed herein, and those imposed by law, not to commit the care or transportation of the mail to any person under sixteen years of age; to discharge any carrier of said mail whenever required so to do by the Postmaster-General.

Now mark this, please. They bind themselves—

not to transmit by themselves, or either of them, or either of their agents, or be concerned in transmitting commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail.

You will observe, gentlemen of the jury, the character of that stipulation of the contract. You will observe what they bind the contractor to do. He shall not carry any commercial intelligence more rapidly than the mail carries it. If a stage is running over one of these routes and the proprietor of that stage line is carrying the mail, he shall not carry any commercial intelligence more rapidly than the mail is carried; and if the mail is going over that route at a speed of a hundred hours for a given distance and he is running a stage over that same route in sixty hours, he is not permitted to carry commercial intelligence any more rapidly than he carries the mail. Now, gentlemen of the jury, do you not see that the people were deeply interested in having these mails carried as speedily as the commercial necessities of the country required them to be carried? How were they to get those privileges? How were they to get this commercial intelligence? They were required to get it through the mail, for if the party himself carried it he could not carry it any faster than the mail. How then, I ask you, were the business men living along these various routes to get their commercial intelligence as speedily as they needed it, otherwise than by pointing out to the Government that these mails were slow, and that they were getting their commercial intelligence tardily? Inasmuch as the Government would not allow it to be carried any faster than the mail was carried, therefore they were obliged to go to the Government, and say, "Give us a faster mail." So you see that the very provisions that they put in these contracts compelled these people to petition the Government, which would not allow a private carrier to bring their mail to them, to give them speedy mails.

Now, gentlemen, I pass next to the consideration of

ROUTE 40113, FROM TRES ALAMOS TO CLIFTON.

That was a route one hundred and ninety-seven miles in length which was let for one trip on a schedule of eighty-four hours. I will not take the trouble, gentlemen of the jury, to point out to you on the map this route from Tres Alamos to Clifton. You will remember from the testimony that it connected the various military posts. You remember from the testimony that Tres Alamos is on the Southern Pacific Railroad. You remember that Wilcox is a station on the Southern Pacific Railroad; that this Southern Pacific Railroad as it progressed ran right over this star route and finally reached Wilcox. You remember now, when the railroad reached Wilcox, the star route was terminated at Wilcox and thereby that much of this star route service was abandoned or discontinued.

Mr. BLISS. Mr. Wilson, I think there is no evidence that the railroad ran over any portion of the star route in connection with Wilcox. When the railroad was completed Wilcox turned out to be a station.

Mr. WILSON. If the gentleman will turn to the testimony of Mr. Ray P. Eaton he will find that I have stated it exactly as it is.

Mr. BLISS. I think not.

Mr. WILSON. Just exactly as it is, and I beg that some of my associates who are to follow me will take up that testimony and read it if there is any dispute about it.

The COURT. Whose testimony is it?

Mr. WILSON. The testimony of Ray P. Eaton, the inspector of the Post-Office Department, who was out there looking after this business. On the 3d of June, 1879, two trips were added, and it was expedited from eighty-four to forty hours from the 16th of June, 1879. You remember now, gentlemen, the order was made on the 3d of June, to take effect on the 16th of June, 1879. On what was that done? Has anybody attacked any petition, any letter in respect of that route?

Mr. KER. We attacked three.

Mr. WILSON. What three?

Mr. KER. 9 O, 11 O, and 12 O.

Mr. WILSON. Here is 9 O, gentlemen. I will read it to you:

Hon. T. J. BRADY,

Assistant Postmaster-General:

The undersigned, military officers of Camp Grant, Arizona, and citizens of the same place, beg most earnestly to urge that you immediately order upon the route from Tres Alamos to Clifton a daily mail with a fast schedule. We ought to have better mail facilities, and we believe if you were cognizant with all the facts you would at once order a daily service.

Hoping that you will consider this petition immediately and favorably,

We are, respectfully,

A. K. ARNOLD,
Major Commanding, Fort Gray.

Look at it, gentlemen of the jury [exhibiting petition to jury]. Not a suspicion that a single signature to that petition is a fraudulent signature; not one. Look at the writing of the body of it as it passes around.

Mr. KER. Stephen W. Dorsey.

Mr. WILSON. Stephen W. Dorsey what?

Mr. KER. Wrote that petition.

Mr. WILSON. You say Stephen W. Dorsey wrote that petition. By whom do you prove it?

Mr. KER. By Rerdell.

Mr. WILSON. By Rerdell, gentlemen. Is that attacking that petition?

Mr. BLISS. It is undenied by Dorsey on the stand.

Mr. KER. It is undenied. Rerdell says he saw him write it in April, 1879.

Mr. WILSON. There it is, gentlemen. After you have looked at that petition and seen it for yourselves they say to you that Brady ought to have known Stephen W. Dorsey wrote it. You do not know to-day, gentlemen of the jury, that Stephen W. Dorsey wrote it. All that you know upon this subject is what Rerdell said about it, and the first that was ever known was when Rerdell swore to it. They say that Stephen W. Dorsey did not deny it. I am not prepared to say, gentlemen of the jury, whether the question was asked him or not. My recollection is that the question was not asked him; but if it had been, he could not have told. However, that is neither here nor there for the purposes of my argument. There were all these people petitioning for this service. Suppose Dorsey did write it; what of it? Hadn't he the right to write it? Has not this court said he had the right to write it? What is there in it? Now, let us take the next petition they say they attack. Here it is:

Hon. D. M. KEY,
Postmaster-General:

SIR: We ask leave to present this, our petition, for an increase of mail from Tres Alamos to Clifton, from one trip to three times a week.

This line runs a long distance along the Gila River, and has seven offices distributed on it, including the terminals.

It supplies a large mining population, which is constantly increasing, as well as the agricultural sections on the Gila River. Camp Grant is also on this route, and this is the only source of supply.

We are satisfied that if you will investigate this matter you will order an increase and direct the carrier to make faster time.

Hoping our petition will receive immediate action, we are, &c.

Then follow the signatures. I see that one of the signers is the pastor of a church. Look at that petition, gentlemen. [Exhibiting petition to jury.] It is 11 O.

Mr. KER. Written by John A. Sibbald, Dorsey's secretary.

Mr. WILSON. He says it is written by John A. Sibbald, Dorsey's secretary. Suppose it is, gentlemen of the jury, what of it? Is it possible that a Second Assistant Postmaster-General is to be condemned because he did not know who wrote the body of a petition, when every signer to that petition is an honest signer, and nobody pretends that it is otherwise? Is it possible that Stephen W. Dorsey, conceding that he had it written, is to be condemned because he wrote a truthful petition? I will show you in a moment that it is a truthful petition. Here is another one they attacked, 12 O:

Hon. D. M. KEY,
Postmaster-General:

SIR: We ask leave to present this, our petition, for an increase of mail from Tres Alamos to Clifton from one trip to three times a week. This line runs for a long distance along the Gila River, and has seven offices distributed on it including the terminals. It supplies a large mining population, which is constantly increasing, as well as the agricultural section on the Gila River.

Camp Grant is also on this route, and is the only source of supply. We are satisfied that if you will investigate this matter you will order an increase and direct the carrier to make faster time.

[Exhibiting petition to jury.] There are the signatures to that petition they say they attacked. What is the ground for attacking this petition? That somebody else other than some man who signed it wrote the body of it. Is that the vital question? I want to call your attention to those indorsements.

Mr. KER. James W. Donnelly wrote that petition.

Mr. WILSON. I don't care who wrote it. The question is, is it true?

Mr. KER. No.

Mr. WILSON. He says that the statements in this petition are not true. Let us see whether they are true or not. Gentlemen of the jury, let me turn to the indorsement on petition 12 O. Here it is:

Respectfully referred to the Post-Office Department with the recommendation that this increase be made.

JOHN G. CAMPBELL,
Delegate.

11 O is indorsed:

The within petition is based upon good reasons, and I hope the department will order the increase.

JOHN G. CAMPBELL,
Delegate.

These petitions in that form are unassailed as to the integrity of the names upon them and the integrity of the men who are represented by those names; unassailed except that now the counsel for the Government say that these petitions are not true. We will see whether they are true or not, gentlemen of the jury. I have here a letter from a gentleman who happens to be United States attorney for New Mexico. Let us see what he says about it. I read from page 1798:

SANTA FÉ, N. MEX., May 15, 1878.

Hon. D. M. KEY,
Postmaster-General:

SIR: I would respectfully beg leave to call your attention to the needed mail facilities between New Mexico and Arizona on account of the rapid settlement of each. For years the ranches of the Rio Grande Valley have supplied Southern and Eastern Arizona with produce, and this demand is daily growing more important. The business transacted between the two Territories is so rapidly increasing as to demand increased mail facilities, and my attention has been called to the inadequacy of the service on mail route between Clifton and Tres Alamos, Ariz. It is claimed that the Gila River settlements at present have a business along said route to justify a daily service, and that the present weekly is wholly inadequate to supply the wants of the settlers along the line. If it is possible for your department to increase the service on said route and order *fast time* on same, it would greatly benefit the people along the line for you to do so.

Hoping you may be able to benefit the section of country referred to by supplying increased service with fast time on said route,

I have the honor to remain, very respectfully, your obedient servant,

SIDNEY M. BARNES,
United States Attorney for New Mexico.

Now, there is a high Government official saying in substance what is said in these petitions.

Mr. KER. What has New Mexico to do with Arizona?

Mr. WILSON. These gentlemen ask, what has New Mexico to do with Arizona? Why, Mr. Sidney M. Barnes has just told you what New Mexico had to do with Arizona. My Brother Ker thinks there is no place on this earth except Pennsylvania, unless it might be Philadelphia, and he never has had a mind broad enough to get outside of the State of Pennsylvania, except when he came over here to Washington to try this star-route case.

Mr. BLISS. What does the evidence show as to any connection between Arizona and Santa Fé?

Mr. WILSON. Shall I read Sidney M. Barnes's letter again?

Mr. BLISS. The evidence of the witnesses on the stand.

Mr. WILSON. Oh, gentlemen of the jury, these gentlemen are trying this case upon what they bring there before you now. I am trying

this case upon what General Brady had before him. These gentlemen do not seem to be able to appreciate the difference between the two. They do not seem to be able to comprehend that if his honor here tried a case and decided it upon testimony before him and decided it in good faith, that if afterward somebody came in and showed something that contradicted some of the testimony that may have been before his honor, that therefore his honor is not to be condemned for having made a wrong decision. That is the way they are trying this case. I am arguing this case now, you will understand, and I told you so at the beginning of going over these routes, upon what Brady had before him, and which I present to you, and not what these gentlemen have by their drag-nets hauled in before this jury. Here is another letter:

HOUSE OF REPRESENTATIVES,
Washington, D. C., April 16, 1879.

Hon. D. M. KEY,
Postmaster-General:

SIR: I have the honor to call your attention to the inadequate mail service on route 40113, from Tres Alamos to Clifton, Ariz., and to request that the service on this route be increased to at least three times a week and on a shorter schedule. The mail over this route is supplied from the main route running west, and which is a daily mail; and it is certainly a hardship to those dependent on this route to have their mail only once a week. There are now, including the terminal offices, eight post-offices on this route, and I trust you will see the urgent necessity of ordering the increase asked for.

Very respectfully,

JOHN G. CAMPBELL,
Delegate.

They say these petitions, written as they claim by Dorsey, by Kellogg, and by Sibbald, are not true. Here is a letter dated the 10th of March, 1879:

SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

SIR: I respectfully call your attention to mail route No. 40113, between Tres Alamos and Clifton, Ariz. The contract heretofore has sub'd for three and six months. The latest contract was sub'd for a period of three months, from February 1 to April 1. The general opinion of the public is that the contractor will fail to make another subcontract in time to carry the regular mails from April 1.

Now, why was this postmaster thus particular to call attention to the fact that these short subcontracts were being made? It was because of his fear that something would happen to prevent the mail from being carried, as you will see in a moment.

Public opinion rises from the following facts: J. W. Dorsey, the original contractor, contracted with the Post-Office Department to carry said mail between Tres Alamos and Clifton, at \$1,400 per annum; the said contractor has made a subcontract with L. M. Wood, at the rate of \$2,600 per annum. As there was some little trouble at the beginning of this, the first quarter, about said contract, I feel anxious about the subcontract. Under the present circumstances it does not appear as if the contract will be successfully carried out. In case of a failure of contractors, please direct what course I shall pursue in the matter. The mail is increasing very much lately between Tres Alamos and Clifton. It would be a serious drawback to citizens and Government officials should the mail be stopped for a week or so.

Oh, once-a-week service is good enough for these gentlemen. Once a week will do for these Government prosecutors; but this postmaster tells you it would be a serious inconvenience and a detriment to the people living there if it should happen to stop for even a week or so:

Something should be done to secure the transportation of the mail should the present contractor fail.

Here he was anticipating this matter because of what? Because of the importance of that mail. They say it was not needed, and I read

you this letter which they have put in testimony for the purpose of showing you that the mail was needed there, and just such a mail as was given to them by my client. Here is a letter dated the 6th of May, 1879, which we had to put in evidence as they left it out:

Hon. D. M. KEY,

Postmaster-General, Washington, D. C.:

SIR: I have the honor to respectfully ask your attention to the postal arrangements of the Government here, which are inadequate to the wants of this post and the citizens living adjacent thereto, one weekly mail between this and Camp Grant, over a long and circuitous route, being our only regular communication with the outside world. It is so indirect that very nearly two days are occupied in its transit between the two points, a distance of less than fifty miles. In my opinion (which is concurred in by all the officers at this station), the interests of the public would be greatly benefited by the establishment of a daily mail, or at least a tri-weekly one, to the distributing office of this district, over a line more expeditious than now used. Greater facilities would, I think, in this instance be accompanied by increased receipts, which would counterbalance the additional expense thereby incurred.

The country in this vicinity is being steadily settled up, and would seem to demand from the department more consideration than has hitherto been extended to it.

I am, very resp'ly, y'r ob't ser't,

M. H. STACEY,

Capt. 12th Inf'y, Bvt. Lieut. Col., U. S. A., Com'd'g Post.

Then follows another one on the 23d of May:

Hon. THOS. J. BRADY,

2nd Asst. P. M. General, Washington, D. C.:

SIR: Owing to constant increase of population along the mail route from Tres Alamos to Clifton, by reason of the mining and farming interests, and for the convenience of the post of Fort Grant, I would respectfully recommend an increase of mail facilities to a daily mail. At present we are supplied with but only one regular mail per week by the Post-Office Dept., which is inadequate to the wants of the citizens and soldiers along this route.

Hoping that the department will favorably consider this application, I remain, very respectfully, your obedient servant,

A. K. ARNOLD,

Major 6th Cavalry, Command. Post of Fort Grant.

Then follow after that, gentlemen, petitions to the same effect, signed by a very large number of people. You remember, gentlemen of the jury, that all these were before the Post-Office Department when the orders were made. I come now to one I want especially to call to your attention:

CAMP GRANT, ARIZONA, Dec. 28, 1880.

Hon. THOMAS J. BRADY,

Second Asst. P. M. General:

SIR: The mail route, 40113, from Tres Alamos to Clifton, should be curtailed to embrace and begin at Wilcox, omitting Tres Alamos, decreasing distance 28 miles.

There is great need of a daily mail on this route from Wilcox as far as Camp Thomas, a distance of 67 miles.

Great need of a daily mail, gentlemen; mark that.

The route supplies a very fine stock country, in which are a great many ranches, besides the military posts, whose mail is large and important, and should by all means be extended to Globe, by San Carlos Indian Agency, daily.

On former occasions I have urged the establishment of service from Camp Thomas by San Carlos to Globe, a distance of 70 miles, and I now respectfully renew the recommendation.

The business of Globe and San Carlos is principally with the East, and the mail for those points should leave the railroad at Wilcox, saving in distance at least 100 miles, and over one of the best natural roads in the country, instead of being packed over the mountains from Florence.

Norton & Stewart run a tri-weekly line of four-horse coaches from Wilcox to Camp Thomas via Camp Grant, and a buckboard from Thomas to Globe, but will put on coaches the entire distance if service be ordered.

Globe is an old mining camp, and contains nearly 3,000 persons; has fifteen large stores, one bank, and two weekly newspapers, but until recently has not kept apace with the times, partly because of lack of proper mail facilities and of the great and rapid development of the Tombstone district.

See how these things spread, ramify, and work into each other.

Recently, however, eastern capitalists have turned their attention to Globe, the result of which is largely increased business and the consequent demand for increased mail facilities.

This should and will be the important route into the Globe district, and whatever may be the merits of the Tucson or Florence routes, there can be no question but this, in point of business importance and in economy of service, is vastly superior.

It would be more advantageous to the department if the whole line could be operated as one route with a schedule of 28 hours' running time; but if not that, a schedule of 14 hours from Thomas to Globe should be required.

I am, very respectfully, your obedient servant,

RAY P. EATON,

a man sent out by the department to look after the mail service in that region of country, who traveled over it, and made this special report to the department in respect of this very thing. But that is not all, gentlemen. We have now this in the case:

RAILWAY MAIL SERVICE,
OFFICE OF SUPERINTENDENT OF 8TH DIV.,
Tucson, A. T., Dec. 21st, 1880.

HON. THOS. J. BRADY,
2d Ass't P. M. General, Washington, D. C.:

SIR: I would respectfully recommend that route No. 40113, Tres Alamos to Clifton, be changed to begin at Wilcox instead of Tres Alamos, decreasing distance thirty (30) miles. The mail for this route now leaves the railroad at Wilcox. A post-office has been established at Wilcox, and the postmaster expects to receive his mail key in a very few days.

Now, gentlemen, I am not going to take more of your time in discussing the necessity for this service. We have the testimony of Mr. Ray P. Eaton.

But you recollect that there were nine sacks of mail on that route, and you recollect what General Sherman told you as to the importance of having mail facilities out there. Here was this San Carlos Indian Agency, and here were all these military posts—this route running right into that nest of Government posts. You have not merely these petitions and letters from the officials of the Government urging this upon the department, but you have the testimony of one of the Government's agents, who is brought upon the stand here and swears before you as to the large mail that went over that route, and the importance to that section of country of having these mail facilities.

Q. What, if anything, did you observe at Fort Grant with reference to the mails, or at any other point along that line, with reference to the amount of mail matter carried over it?—A. There was a great deal of mail matter going over it—a number of bags. I think I counted nine in one day. [Page 3334.]

Now, gentlemen, just see how General Brady has all the time been making this service conform, as I said a day or two ago, to the changed condition of affairs. Here is McKusick, whose letter I last read to you, with reference to the post-office at Wilcox. That was the point to which, as you will remember, the Southern Pacific Railroad had been extended. You will recollect that Mr. Eaton tells you that there was some little trouble about getting the railroad to carry the mail. Why? Because they were not running their regular trains, but were only running their construction trains and did not want to carry it. But they got the railroad company to carry it out as far as Wilcox, and just as soon as

he could, as the order shows—which I will not stop to read—he cut off this Tres Alamos and Clifton route at Wilcox, saving that twenty-eight miles. Now look at that case, gentlemen of the jury, and it is about a fair specimen. Look at the testimony of General Sherman, the testimony of Major Eaton, look at all these petitions, and then say, if you can, that General Brady has done anything there that he was not entirely justifiable in doing; and say, if you can, that Stephen W. Dorsey, even if he procured every one of these petitions, letters, and reports to be written, made, and sent to the department, had done anything that was wrong in respect of this matter. Why, is a man to be condemned because he aids the people in getting that which they need, and because he aids the Government in getting that which it needs? Here is a remarkable spectacle, gentlemen of the jury. These military officers, United States attorneys, and post-office inspectors recommending the Post-Office Department to do this thing, and then the Government coming here and prosecuting its officers for doing what its officers recommended it to do. That is the attitude of this case.

No. 38140, TRINIDAD TO MADISON.

This route was forty-five miles long; was advertised and let at once a week.

One of the objections to this is that Raton was put on this route instead of supplying it from Pulaski. What I am going to say now, gentlemen of the jury, is not a repetition of what I said about Raton a while ago. I will not stop to produce that map again before you. I apprehend you recollect something of the nature of that country. Their point is this, that he put Raton on this route from Trinidad to Madison instead of supplying it from Pulaski. Perhaps I can, without using the map, recall it to your minds. You recollect the railroad came down to a point called Pulaski and ran around to Trinidad. You recollect that Trinidad was the county-seat. You recollect that Raton was about twelve miles from Pulaski on the railroad. And you will also recollect that putting Raton on this particular route increased the distance about twenty or twenty-two miles. And you will, therefore, see that Pulaski on the railroad was a nearer point to Raton. The mail would have traveled about twelve miles by going from Pulaski down to Raton, and about twenty-two miles going from Trinidad out to Raton. They say that he ought to have supplied that post-office from Pulaski; that it would have cost less to make a special supply.

Now, let me go back and repeat what I said in the beginning of my argument as to the mode of supplying these new post-offices. There are two ways of doing it. One is by a special supply, and in that case you can only pay two-thirds of the salary of the postmaster to the carrier. That is to say, if the postmaster at Raton had undertaken to supply his office from Pulaski by a special supply, he could only pay the carrier two-thirds of the amount of his (the postmaster's) salary. You have it in evidence before you by the postmaster himself that his salary was somewhere from \$12 to \$16 a year. I would like to find the man—or rather, I would not like to find the man, for I think he would be a fit subject for an insane asylum—who would undertake to supply the mail from Pulaski to Raton, eight miles, once a week, for a whole year, for two-thirds of \$12 to \$16. Could you find a man to do it? No, gentlemen. You could not extend the route from Pulaski down to Raton. And why? Because that was a railroad route, and you could not build a railroad down there so as to supply Raton by railway mail service.

What was left to be done, then? You could not do it by a special supply, because nobody could be found who would carry it for the compensation. What was to be done? Why, put it on this route from Trinidad to Madison, almost in the line of which it lay. That is the only way that it could be done.

Now, gentlemen, this affords me an opportunity to illustrate the character of this prosecution and the manner in which the testimony in this case is distorted and perverted to pernicious purposes. How many times did these gentlemen tell you that Teller had recommended this to be put on from Pulaski, and that DeBusk had recommended it to be put on from Pulaski? And they said, although Teller recommended, and although DeBusk recommended, Brady disregarded their recommendations and put it on this route, making it cost the Government more money, and that is an indication that he was in the conspiracy. That is the way they have argued this to you. Gentlemen of the jury, I want to read you DeBusk's letter and Teller's indorsement on it, at page 1027:

RATON, LAS ANIMAS COUNTY, COLORADO,
September 18, 1878.

To the POSTMASTER-GENERAL:

DEAR SIR: A post-office was established at this place in March last, and I was appointed postmaster. This office was established to accommodate the lowermost section of a rich valley thirty-five miles in length, extending eastward from the town of Trinidad, but no mail service has yet been ordered.

Recollect that it was established in March, and this was written in September, and no mail service had yet been ordered.

The community to be accommodated has for two years past received their mail from Trinidad, twenty-two miles distant, in a private sack at great inconvenience.

The people here (cattle men mostly) have business transactions to the extent of certainly not less than \$50,000 annually.

Now you are not going to say, gentlemen of the jury, that they did not need a mail.

They have one school and church building, costing \$2,000; one high-school, fifty-one pupils enrolled; one resident clergyman; well-improved farms, with Government title, etc.

That was that community, gentlemen of the jury. These gentlemen say that because these men did not live in Philadelphia or New York, although they did have a school, a church building, and a high-school, and were doing a business of \$50,000 annually, they ought not to have any mails; and especially they ought not to have any mails unless they could find some fellow who would carry it for two-thirds of \$12 or \$16 a year.

The newly-finished branch of the Atchison, Topeka and Santa Fé Railroad passes within ten miles of Raton post-office. Pulaski post-office is twelve miles distant from Raton, and directly on this line of railroad.

Recollect, as I said, Pulaski was off to the north, and the railroad circled around and came down to Trinidad. Do not forget that.

The object of this communication—

Now I come to the point I am after, gentlemen—

is to petition for mail service twice a week, if not from any central point to Raton, at least from Pulaski post-office, on the Atchison, Topeka and Santa Fé Railroad, to Raton, a distance of twelve miles.

Very respectfully,

S. W. DEBUSK,
Postmaster.

CENTRAL CITY, COLO., *September 23, 1878.*

Respectfully requested that prayer of this petition be granted, and the service increased as asked for.

H. M. TELLER.

Now, gentlemen, what did this postmaster ask them to do? He said to them, "If you cannot give us this mail from a central point to Raton, then pray give it to us from Pulaski." They wanted their mail from a central point; that is what they were driving at. What was that central point? They had been getting their mail for two years at great inconvenience, by private conveyance from Trinidad, their county-seat, and Mr. DeBusk told you on the witness-stand that the county-seat was the point at which was concentrated all the business of that region. There is where their business was; there is where they did their trading; and they wanted it to that central point, their county-seat; that is where they wanted it, if they could get it, but if they could not get it from there they wanted it from Pulaski. They could not get it from Pulaski, as I have shown you, because nobody could be found who would give them this special supply for the amount of money that the postmaster could agree to pay for it. And hence, and properly, as I am sure you will say, this post-office was put on this route as the only practical mode by which this service could be rendered.

And yet these gentlemen come here and say to you that because that was done, Brady must have been in a conspiracy to get his share of the increased pay that would result from the lengthening of that route for about twenty-two miles.

Now, gentlemen, that was expedited, but I am not going to stop to read you the petitions. Here are letters from Belford, from Chaffee, and nine or ten others, asking that this thing be done, and the Post-Office Department did it. My client made the order, and I say he did right in making it, and if he did right in making it, then, gentlemen of the jury, you cannot condemn him for doing that which was right.

Now let us go to

NO. 46132, JULIAN TO COLTON.

I want to hurry through this just as rapidly as I can.

This route was one hundred and twenty miles long; was advertised and contracted for at once a week; increased to two trips a week; and expedited from fifty-four to twenty-six hours.

And this case, gentlemen of the jury, serves to illustrate something of the methods of this prosecution. Here is a very novel objection made to the conduct of General Brady in respect of that matter. There were a large number of petitions. I will simply read one, found at page 1814:

To the Hon. D. M. KEY,

Postmaster-General, Washington, D. C. :

The undersigned, citizens of California, respectfully represent that route from Colton to Julian, No. 46132, is a very important route. It is the only communication from the rich mines at its southern terminus to the Southern Pacific Railroad, and more frequent and more rapid mail communication is necessary.

That a new road has been opened from the San Jacinto Valley, and the same is being rapidly settled. That route, number 46130, has no railroad communications, and that by this change close connection will be made.

We therefore petition that the service on that route be made tri-weekly, and that the schedule be reduced from the present running time to thirty-six hours.

Then there is another petition recommending the same thing. Mr. Newton Booth, a Senator, says on the same page:

UNITED STATES SENATE CHAMBER,
Washington, April 10, 1877.

Hon. D. M. KEY,
Postmaster-General:

DEAR SIR: I respectfully ask your favorable consideration of the inclosed petitions for increase of service on mail route 46132, from Colton to Julian, in California.

Your obedient servant,

NEWTON BOOTH.

I concur in the above recommendation.

J. T. FARLEY.

Then follows a petition or two, and then this:

To the Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General:

DEAR SIR: We, postmasters on routes 46130 and 46132, respectfully recommend above increase of service on mail route 46132 as necessary, in order to make connection at Temecula with route 46130, and for the accommodation of the business interests of parties on the routes.

That is signed by the postmasters along the line, with one or two blanks.

Now what is the objection to this, gentlemen? I am not going into a discussion of the question as to the necessity of the service, for what I have already said with reference to these other routes is equally applicable to this. But what is the main objection to this, and the one about which there has been the most talk? Why, they say that these petitioners ask for thirty-six hours and Brady made it twenty-six hours. So they say that there must have been something wrong about that; that that reduction of ten hours could not have occurred unless there was some fraud lurking around in this thing somewhere; and, gentlemen, they paraded before you this paper (6 P) and I will read it:

CHICO SPRINGS, NEW MEXICO, December 30, 1878.

Hon. THOS. J. BRADY,
Second Assistant Postmaster-General:

SIR: I hereby offer to carry the mail on route 46132, Colton to Julian, once a week, on a reduced schedule of twenty-six hours—

It was originally written thirty-six hours—

for an additional compensation of \$1,782 per annum, being less than pro rata; or three trips per week, and reduce schedule of thirty-six hours, for an additional compensation of \$7,722 dollars per annum, being less than pro rata for expedition, and pro rata for additional trips.

Respectfully,

JOHN M. PECK.

That was originally written to conform to the petitions that had been made. Now, what happened in respect to that, gentlemen? Why, they made an offer to do this work for so much money less than it would be according to the affidavit they had filed as to the men and horses. Now, Brady made the order for twenty-six hours, and for precisely the same pay. Whenever you reduce the schedule, whenever you shorten the time, you increase the pay. Here they offered to do it for a certain amount of money in thirty-six hours, but he made them do that for the same money in twenty-six hours. Now, how did he defraud the Government in that respect, gentlemen of the jury? He simply got that mail through there ten hours sooner for precisely the same money that they had offered to do it for on the longer schedule of thirty-six hours. Now, how did he cheat the Government in that respect? I can see, gentlemen of the jury, and I think you will see, just exactly how that "twenty" happened to be written in there. [6 P handed to the jury.]

Look at the ink with which it was written. The word "thirty" is stricken out and "twenty" written over it, and I think I will show to your entire satisfaction just how that happened to be done. This pale ink was written at a different time; there is no sort of doubt about it.

Listen to this letter from Mr. Miner, found on page 1824:

WASHINGTON, D. C., July 25, 1879.

J. CHAUNCEY HAYES,
San Luis Rey, Cal.:

DEAR SIR: Yours of 14th received. The telegraph got my message mixed, it seems, as it was written twenty-six. We tried hard to have schedule made thirty-six hours as petitioned for, but could not prevail on the department to make it so. We therefore had to accept twenty six hours. We are willing to pay you four thousand per annum for three-trip service twenty-six-hour schedule. If not satisfactory we will make some other arrangement.

Respectfully,

JNO. R. MINER.

Now, do you not see how that was done, gentlemen of the jury? Miner, or somebody else connected with the management of this route—I will take it for granted that it was Mr. Miner, as he was the man who was attending to this business in the department very largely—Miner had tried to get it upon a schedule of thirty-six hours for the pay they proposed, but Brady had said, "No, I won't do it;" and he compelled them to carry it for that money on a schedule of twenty-six hours. Now, if he were in any conspiracy with these gentlemen and they were mutually trying to get money from the Government, the needs of the country and the service being an outside consideration, do you suppose he would have been higgling with Miner to get that through in twenty-six hours instead of thirty-six? What would he have cared about that? They would have made more money on thirty-six hours than they would on twenty-six, because it costs more money to run a mail through in twenty-six hours than it does in thirty-six. But here is this conspirator conspiring against his coconspirators, according to the theory of these gentlemen, for they cannot talk about these defendants otherwise than as conspirators.

Mr. CRANE (foreman of the jury). What is the point they claim on that? I have forgotten.

Mr. WILSON. The point claimed was that they had altered that, and that Brady had made the schedule twenty-six hours when they only petitioned for thirty-six hours. That is their point on that. Now I say that he made it twenty-six in the interest of the Government and in the interest of the people.

Mr. BLISS. How about the affidavit? You are stating what we claim.

Mr. WILSON. I will come to those affidavits after a while, in the due course of time.

Mr. BLISS. All right.

Mr. WILSON. But what I want particularly to call your attention to is this: He simply says that he puts in his proposition for the thirty-six all the way through there, and when Brady would not take the thirty-six, then he wrote in the word "twenty" over "thirty," and so changed the proposition as to make it twenty-six instead of thirty-six hours, and for precisely the same sum.

Now, gentlemen, I come to

ROUTE No. 46247, REDDING TO ALTURAS.

That route was one hundred and seventy-three miles long, advertised twice a week, and one trip was added, and on the 3d of December, 1878, it was increased to six trips a week and expedited from one hundred and eight to seventy-two hours.

Now, what was that done upon, gentlemen? It was done on a vast number of petitions, none of which are attacked. I am only going to give you just enough to illustrate the situation. I find this on page 1233:

To the honorable ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

Application for mail service six times a week from Redding, Shasta County, California, to Alturas, Modoc County, California, is, in my opinion, a proper one at this time on account of the country traversed by said route, the settlements already made thereon, and the impetus it will give to the settlement of such an extensive country. For we know that people of means and intelligence are loth to emigrate to a country that is deprived of frequent and rapid communications with the old and thickly settled portions of the country.

Respectfully,

C. C. BUSH, *Postmaster.*

REDDING, *August 17, 1878.*

And this on page 1234:

To the honorable SECOND ASSISTANT POSTMASTER-GENERAL:
Washington, D. C.:

We, the undersigned, citizens residing on mail route No. 46247, from Redding, Cal., to Alturas, Cal., respectfully petition for an increase of mail service on said route, increasing the service from three trips per week to six trips per week, believing the same to be necessary on account of the large increase of population on said route. All of which is most respectfully submitted.

It is indorsed:

I earnestly request that the prayer of the petitioners be granted.

J. K. LUTTRELL, M. C.,
Third Dist., Cal.

And this on the same page:

To the honorable SECOND ASSISTANT POSTMASTER-GENERAL,
Washington, D. C.:

We, the undersigned, citizens and residents on mail route No. 46247, from Redding, Cal., to Alturas, in California, respectfully petition to the Post-Office Department to reduce the time of schedule by expediting the time from one hundred and eight hours to seventy-two hours. We think by reducing the schedule would be a benefit to the Government by increasing of the mail on the above-named route. All of which is most respectfully submitted.

It is signed by a long list of petitioners, and is indorsed:

I request that the prayer of the petitioners be granted.

J. K. LUTTRELL, M. C.,
California.

And then follow a number of others, gentlemen of the jury, the concluding part of one of which is:

Your petitioners feel that in justice to the present and increasing wealth and population of this section that route No. 46247, from Redding to Alturas, should be increased to six trips per week, each way, and the time reduced to seventy-two hours between those points, and for which your petitioners will ever pray. [Page 1237.]

There are a number of others of a like character, which I will not take up your time to read.

At page 3239 is a significant petition:

REDDING, *May 1st, 1880.*

To the Hon. SECOND ASS'T POSTMASTER-GENERAL,
Washington, D. C.:

We, the undersigned, citizens residing on mail route No. 46247, extending from Redding to Alturas, Cal'a, respectfully represent as follows: That the present route extends over and through a country that is increasing rapidly in population, and the amount of mails transported over said route is between 500 and 600 lbs. per day, and still increasing. That said route is numbered a distance of 179 miles in length, and a large portion of the residents and settlers of Southeastern Oregon obtain all their

mail by this route. Wells and Fargo have a daily express and numerous offices on this route, and the facility thus afforded us for transmission of money is very beneficial, and that we view with alarm the order to reduce the mail service on said route from six (6) to three (3) times per week. Wherefore we, your petitioners, respectfully ask that said service be not reduced, but that the same be allowed and kept at least six times a week as heretofore.

And we, your petitioners, will, as in duty bound, ever pray, &c.

Here is another of like character, indorsed by Mr. Luttrell, M. C., and also by Senator Farley and by Mr. Wigginton. Then this, on page 3233 :

RAILWAY MAIL SERVICE,
OFFICE SUPERINTENDENT OF 8TH DIV.,
San Francisco, Cal., August 16th, 1880.

Hon. THOS. J. BRADY,

Second Ass't P. M. Gen'l, Washington, D. C. :

SIR: I desire to call your attention to service on the following routes, to wit: Route No. 46267, Willow Ranch to Reno ; six times a week. Route No. 46207, Susanville to Lake View ; six times a week. Route No. 46247, Redding to Alturas ; three times a week. This route is of more importance than all the rest, while route No. 46267 runs through a very sparsely settled country, almost without post-offices, and with small settlements, from fifty to one hundred miles apart. Again, we have a very singular condition of things by having six-times-a-week service from Alturas to Lake View by route No. 46207, while there is only three-times a-week service from Alturas to Redding, through a thickly settled country, with important post-offices along the entire line. I know of no reason why the service should have been reduced on route No. 46247, Redding to Alturas, and would therefore recommend that it be increased to six times a week. I will also add that this increase of service herein recommended has not been asked of me by the contractor, nor has it been petitioned for by the people along the line, to my knowledge, and I make these recommendations from my own personal knowledge of the situation.

Very respectfully,

H. J. McKUSICK, *Sup't.*

Mr. BLISS. Are not all those after the order? The order that was attacked was the order for expedition. Are they not weeks and months after ?

Mr. WILSON. Of course they are after. I have read these petitions—though I have not read the half of them—for the purpose of showing to you, gentlemen of the jury, that the people desired that service and that it was needed ; and we have the testimony of the man who carried the mail, in which he stated that there were from five hundred to six hundred pounds of mail going over that route. I read to you those petitions for the purpose of showing to you that General Brady was justified in making this order, because the condition of things demanded that it should be made ; and now I read you these which come after which confirm what was on the record at the time he made those orders, and that is why they are here. I am not pretending that these subsequent communications were communications that he had before him when the order was made, but I do contend this: That when it was proposed to cut down this service that had been thus increased and expedited, then came the protests from the people, the protests from the Senators and Representatives, and the protest from the superintendent of the railway mail service in that section. That is why I use it, and I presume that it was just simply because they do confirm these petitions that these gentlemen did not bring these things into the evidence in this case.

Mr. BLISS. Now, Mr. Wilson, I shall claim the right to correct you. We attacked that order for expedition because the mail was already being carried on fast time. We attacked the payment for expedition under such circumstances.

Mr. WILSON. If the gentleman had held his peace for just about a

minute he would have seen that that is the very objective point to which I am coming, and the very thing I am going to answer in this case, and I think I will answer it to the satisfaction of this jury.

Major & Culverhouse were running a stage line over this route, and this proves exactly what I have been saying about that country. The condition of things in that country would not permit of Major & Culverhouse dragging their stage-coaches along there at two or three miles an hour. That would not answer the needs of that people any more than a train from here to New York at fifteen miles an hour would answer the demands of the people who travel over that road. Consequently, while this was one hundred and eight hours under the contract, Major & Culverhouse were hauling their stages through that country in sixty hours, and they had taken the subcontract from these contractors. There was no complaint about the way this was advertised and about the way the contract was let. Nobody attacks the integrity of this advertisement. But, acting upon the best light they had in the department, they advertised it at one hundred and eight hours and let the contract at one hundred and eight hours, and there was this stage-coach line going through in sixty hours. Of course they threw their mails upon these coaches that were going through in sixty hours, and that gave the Government the benefit of carrying the mails in sixty hours when they were only getting pay for carrying it in one hundred and eight hours. Who knew about that in the department? Have they brought anybody here who tells you they knew about that? No, gentlemen. On the contrary, when Mr. Major was on the stand we asked him the question "Did you communicate in any way to the department that you were running through there in sixty hours instead of one hundred and eight?" And he answered "Why, no." There was no information of that kind in the department. But here came all these petitions to the department saying, "You have contracted to carry this mail in one hundred and eight hours; now it ought to be sixty, or it ought to be seventy-two, or it ought to be reduced; this is not right, we ought to have these mails faster." Very well. These petitions all came in, and their request was granted. Now, these gentlemen say that because the subcontractor was already carrying at the speed to which it was expedited, and because the Government was getting that service for nothing, it was a fraud upon the Government to pay for this expedition. Any private individual who would do business in that way would be written down a rascal.

Mr. BLISS. Did the man who performed the service get the money, or did these parties here in Washington?

Mr. WILSON. You had fourteen days to discuss this case in the opening.

Mr. BLISS. You stated—

Mr. WILSON. [Interposing]. I do not care who got it; it makes no difference who got it. Why, gentlemen of the jury, the law itself contemplates that there may be subcontracts, and the law itself contemplates that the contractor may make a profit by letting his routes to the subcontractor.

Mr. BLISS. These parties made \$18,000.

Mr. WILSON. I do not care how much it is. That is just the vice of this whole case—because a contractor makes some money by subletting his contract it is an evidence of fraud, according to their theory.

What does this subcontract law provide? Why, gentlemen, it provides that the subcontractor shall get his pay from the Government and

the balance shall go to the contractor—thus contemplating that the man who takes the risk shall be permitted to make money out of this business. Why, is it not an amazing position that these gentlemen take in this case? Here is a contractor agreeing to carry the mail for four years, summer and winter, be responsible for it, pick it up whenever it is thrown down—and the subcontractor may throw it down whenever he pleases—and yet these gentlemen say that the man who does that shall take all this risk without any possibility of profit. And they find one case or two cases, or nineteen, if you please, out of one hundred and thirty routes, where the contractor makes some money by making advantageous contracts with subcontractors. But they take no account of the money that the contractor loses on the other of the one hundred and thirty routes outside of the nineteen. That is really the complaint on this Redding and Alturas route, I grant you. They say it was expedited when it was already being carried on fast time. It was already being carried on fast time, I grant you, gentlemen. It was being carried by the subcontractor in the time to which it was expedited, we will say, for I will not pretend to speak with precise accuracy about that, and the Government was getting the benefit of that fast service which these parties never contracted or agreed to make. They could have stopped any hour if they pleased; they could have put that five hundred or six hundred pounds of mail on a buckboard and hitched a couple of mules to it and carried it through in one hundred and eight hours. They could have done that at any time, and the Government could not have complained. Then the Government would have been compelled to expedite it; they could not help themselves, unless they had absolutely disregarded the needs of that country. And that is held up to you here as a badge of fraud and an indication of conspiracy.

I heard a man making a speech over here in the Post-Office Department one day when I happened to go in. He was just concluding his argument, and he wound it up by saying that if the Government of the United States could be resolved into an individual it could not keep out of the penitentiary for three weeks. And if this is the principle upon which its affairs are to be administered, as these gentlemen contend for, it ought to go to the penitentiary for the balance of its natural life. [Mr. Bliss here addressed a remark to Mr. Wilson which was inaudible to the stenographer.] It will be a long time before you get anybody into the penitentiary on account of this case.

I might elaborate this further, gentlemen, to show you the importance of this route, by calling your attention to the testimony showing the daily mails with which it connected; but why should I? You have heard the testimony. You know there were daily mails by rail and by stage on the various mail routes connecting with this, and you have heard read what these petitioners have represented to the department, and upon which it acted; and you have the additional fact that here was five hundred or six hundred pounds of mail matter daily going over that route.

I pass from that to

ROUTE NO. 38113, RAWLINS TO WHITE RIVER.

This route was advertised as being one hundred and eighty miles long, but was subsequently ascertained to be one hundred and sixty-five. The contract was originally let for once a week. On the 1st of May, 1879, there was an order made increasing it to two trips. From the 12th of May, 1879, it was expedited from one hundred and eight to forty-five hours.

You, perhaps, notice, gentlemen, that this contract and others ran a long time before there was any change made in the service. If these parties had from the beginning been in a conspiracy to rob the Government they were a long time commencing operations, so far as this route is concerned, because the service went into operation on the 1st of July, 1878, and not until May, 1879, was there anything done in respect of changing the service on this route.

Now, let us see what were the considerations that moved Brady to make the order changing service. The prosecution say that it was the money that was to accrue to him. I say it was his consideration for the public welfare.

What was the situation as to this route? Rawlins is a station on the Union Pacific Railroad, and White River was an Indian agency, one hundred and sixty five miles down in the country. Congress made the mail route connecting Rawlins and White River. At White River this route did not connect with any other mail service. White River was simply an Indian agency, where the Ute Indians were stationed and where the troops were camped that held those Indians in subjection. There was a large number of troops there, and the only communication between that point and headquarters was over this mail route. When the mails were infrequent the Government had to establish a special service by couriers over that very route. When they got their mails once a week the Government itself could not afford to rely upon its own service. It could not be delayed in communicating between this post and headquarters by a mail that only ran once a week and on a slow schedule of time. It could not afford to do that, and therefore they carried their own mail by a courier line paid for by the Government of the United States.

Mr. BLISS. Is there any evidence that the courier line was established until after this order was made? Is it not the evidence, emphatically, that it was not until after the troops went in there and the trouble came about; long after this order was made? That is my recollection.

Mr. WILSON. I do not understand it that way, but I will even take it the way you state it. What does that show, gentlemen? Why, when the mails were interrupted they had to put on more service in some way or other. They had to have this communication. I only speak of it to show the importance of speedy and frequent communication with these Government posts. The gentlemen of the prosecution want you to say that once a week was often enough for the Government to hear from that important post, or to get a communication from the Indian Office or from the War Office to that place. They want you to say that when military orders or orders from the Indian Office or from the Secretary of the Interior reached Rawlins it was amply sufficient for them to go from Rawlins to White River in one hundred and eight hours. In other words, if General Sherman sent an important order by mail to that post at White River, or the Secretary of the Interior sent an important communication to the Indian agent at White River, it was all-sufficient for it to go by rail as fast as steam could carry it to Rawlins and then when it got to Rawlins it could lie over for a week, and go to White River in one hundred and eight hours. That is their theory in this case and that is the spirit in which they argue it. But that is not all they want you to say. They want you to say that if anybody thought one trip was not enough and that one hundred and eight hours was too long, that man must have been dishonest in that opinion, and that if he acted upon it, it is evidence that he was engaged in.

the commission of a crime, and especially they want you to think that is so if he was acting in an official capacity when he entertained that opinion. Gentlemen, let us see upon what it was that Brady acted: First, there was the known fact that this was a most important route, one upon which the Government was greatly interested in having frequent and speedy communication. That of itself was enough. That of itself was sufficient to justify it. But that is not all. I find a large number of petitions indorsed by Chaffee and Corlett and Teller and Patterson, and by county officers, and a recommendation from the governor of the State. To all that what is the reply? I am not going to read to you these petitions. You have heard them read. General Sherman recommended this also. What is the reply to all that, gentlemen of the jury? Rerdell went out there and got these people to make these recommendations. If they are true, what matters it who got them to do it? The question is not who got them to do it. The question is, do they state the truth? Here is what General Sherman says about this particular thing:

Q. Can you now state the facts that led you to make that recommendation? And by facts I mean the condition of the country at that time and the troops that it was occupied by.—A. The western half of Colorado at that time was occupied by Indians known as Utes. There were three distinct subdivisions of the Utes, one of which was called the White River Utes, having their agency at White River station or agency, under Agent Meeker and his family, under the Interior Department.

Mr. BLISS. Is not that petition with General Sherman's indorsement long after the order; months after the order?

Mr. WILSON. If you will hear me through you will see I am not misrepresenting.

Mr. BLISS. You take care not to state that fact.

Mr. WILSON. I have not stated anything yet. I was reading what Sherman says. If you know what I am going to say you can make your objection in advance.

Mr. Meeker was murdered, and his family were taken and known to be in the hands of these Indians. Cries for help came. Troops were immediately ordered there, and in the fight that resulted Major Thornburgh, of the regular Army, was killed, and I think others. Other troops were then ordered there to capture, destroy, or disperse the Indians. The nearest point of communication on the railroad was Rawlins station, I think, about one hundred and twenty-five to one hundred and thirty miles north of the old agency at White River. It required a considerable force to keep up communications back to the depot or railroad. So that every means to which we could resort to relieve our troops of that amount of labor was to our military interest, and, I thought, to the interest of the General Government. Therefore, when a petition came to me in this form, signed by some officers and many citizens, and which, on its face, appeared to ask a proper thing to be done, I indorsed it with great pleasure, believing it to be for the interest of the nation.

That is what he believed about it.

Q. You thought, at that time, that it was to the best interest of the country to have the trips increased, as asked for?—A. I thought it for the best interest of the country to have trips increased as often as possible, certainly daily. Establishing intermediate offices and stations, and incurring a like amount of expense chargeable against a different appropriation of the same Government saved us the necessity of sending couriers over the line.

Now, gentlemen, Colonel Bliss says to you that the expedition had been made before General Sherman indorsed that petition, and that what he recommended was an increase of trips. Ah, but Colonel Bliss forgets that when you increase the trips you increase those trips on the expedited time. So when he was asking for this multiplication of trips he was asking for it on a forty-five hour schedule, as it was then being run. Is not that a complete answer to his suggestion?

Mr. BLISS. My suggestion is that the indorsement was long after the order was made.

Mr. WILSON. Certainly, it was after the order was made. Here are a whole lot of petitions asking for this increase of speed, and it was granted. Now after that, General Sherman comes in and says, "We not only want three trips at forty-five hours, but we want six trips at forty-five hours." That is what he asks. Do you not see, gentlemen of the jury? Let us understand this, because that is the very point I am coming to. Let me show you what they say in the indictment about this:

And afterwards, to wit, on the eighth day of March, in the year of our Lord one thousand eight hundred and eighty-one, at the county and District aforesaid, and within the jurisdiction of the said court, the said Thomas J. Brady did fraudulently make, sign, and file in the said office of the Second Assistant Postmaster-General a certain order in writing for increased and additional service in carrying and transporting the said mail on and over the said post route numbered 38113, and for the allowance of increased pay and compensation to the said contractor and subcontractor, without the said increase of service then being lawfully needed and required, as he, the said Thomas J. Brady, then and there well knew as aforesaid, and with intent thereby to defraud the said United States of America, and which said fraudulent order in writing is as follows, to wit:

"From April 1st, 1881, increase service to seven trips per week and allow contractor \$18,275 per annum additional pay, being pro rata, and allow subcontractor \$13,333 per annum additional pay, being pro rata."

Did he make any increase there? No, gentlemen. They say that the fraudulent order that he made was increase of trips; this very thing that General Sherman recommended they say was a fraudulent order; that it was not needed, and that Brady knew it was not needed. That is what they say in their indictment. If General Sherman's testimony is worth anything at all, it was not a fraudulent order. They say that it was not needed, and Brady knew it was not needed. If General Sherman's testimony is worth anything before this jury, it was needed, and that disposes of the question. But these gentlemen come back upon us and say, "Oh, well, that is pleaded as an overt act." It is a lie, if it is pleaded as an overt act. It is not true. But they say before that time he had increased the trips to two and had expedited the service, and "we have brought that to the attention of the jury so that the jury will see from it that he was engaged in a conspiracy." That is their argument. Now, gentlemen, the answer to that is to be found not merely in the petitions that were before the Second Assistant, and in the letters that were before the Second Assistant, but it is to be found in the testimony of their own witnesses that it was needed when it was made.

But they make another point. They say that the petitions asked for a schedule of eighty-four hours, whereas he reduced it to forty-five, and as a matter of course, that must have been a fraud. Mr. Turner was brought on the stand in respect of that. You recollect his testimony. He said that he first made up the jacket for eighty-four hours when he saw that these petitions asked for eighty-four hours, and he carried it to Brady and said, "This is nonsense. Here is a route one hundred and sixty-five miles long. They are carrying it in one hundred and eight hours, not two miles an hour, and if we expedite it to eighty-four hours it will amount to nothing. That is only two miles an hour." Brady said, "I will not do that. If we are going to expedite that route we will make a service that will be of some value to the Government and the people. That is what we will do. What would be a reasonable schedule on that route?" That is the way he and Turner ciphered this out to about four miles an hour, and settled down on about four miles

an hour, which made a forty-five-hour schedule. Turner has told you that that was just how the thing happened. That further illustrates what I have said before in respect of like matters. I will not take up any more of your time on that branch of the case.

The COURT. It occurs to me just there to make a suggestion. A schedule of two miles an hour would allow the horses and carriers to rest at night, so that when they traveled in the day-time it would be four miles an hour.

Mr. WILSON. Yes, sir; that is true.

The COURT. A schedule of four miles an hour would require them to travel night and day.

Mr. WILSON. Yes, sir.

The COURT. So that is just the difference between carrying the mail at night or in the day-time.

Mr. WILSON. It is simply the difference of getting the mail through. If you drive a horse all day and let him rest at night he can go on the next day. If you travel all night you have got to have more horses, and then there is a difference in the cost. You get the mail through, but it costs more money to get it through; and the statute has provided a guide or put up a finger-board to direct the officers of the department in respect of the amount of money that is to be paid.

The COURT. You mean the regulation.

Mr. WILSON. I mean the regulation. The statute merely contemplates the same thing. The regulation is based upon the statute. Now, gentlemen, when that order was made on that route, can you say that it was not needed in the face of the testimony in this case? Can you say it was an improper order to make in the light of the testimony that was before the department when it was made, because that is the period to which you must resort for the purpose of determining upon the quality of the act which was done by the Second Assistant. Can you say that four miles an hour was too fast a speed at which to carry a mail which was to be freighted with communications from the headquarters of the military for an important post like that? I do not see, gentlemen of the jury, how you can say so. You recollect it was made three times a week, and it was expedited to forty-five hours, and then on the 8th of March, 1881, it was made seven trips a week. You remember that there was no expedition in this order, as I have just shown you from the indictment. I have called your attention to the petitions upon which that order increasing the service to seven trips was made. It seems to me that you must say with General Sherman that that was a proper thing to do. Undoubtedly if General Sherman had been the Second Assistant he would have made that order. They brought a witness here by the name of Smith, and I will read from his testimony, on page 1975:

Q. Now, this is a petition, Mr. Smith, on this route from Rawlins to Meeker, Colo. (White River). Did you sign a petition asking for seven times a week?—A. I presume I did.

Q. Were you asked to sign a petition to reduce the time to thirty-six hours?

By the way, I ought to have called your attention to that. They asked for thirty-six hours in that petition that Sherman indorsed, as I remember it.

A. I do not remember what the petition was. Whatever that petition says is there.

Q. Did you read this petition before you signed it?—A. I suppose I did. It is my writing.

Q. You wrote it yourself. [Reading:]

"To the honorable the SECOND ASSISTANT POSTMASTER-GENERAL,

Washington, D. C., Contract Office :

"SIR: We, the undersigned, citizens and residents of Rawlins, Wyo., and other points on mail route No. 38113, from Rawlins, Wyo., to Meeker, Colo. (White River), respectfully but urgently petition and pray that the mail service on said route No. 38113, from Rawlins, Wyo., to Meeker, Colo. (White River), be increased from three times per week to seven times per week, and if practicable that the running time be reduced from the present schedule to thirty-six (36) hours, thereby accommodating the demands and important business interest of the country to, from, and through which the route runs and connects, and allowing important correspondence to be answered by return trip from both ends of said route."

Did you believe it at that time to be true?—A. It was true.

Q. Was your action in it honest, so far as you remember?—A. It was.

Q. Did you, at that time, believe that you were representing the facts to the Post-Office Department?—A. It was after the Indian outbreak, when we had great need for mail service there.

Q. And you believed at that time that there ought to be seven trips a week?—A. I did.

Q. And that it ought to be run on thirty-six hours?—A. I will say, perhaps, there ought not to have been seven, but I believe it ought to have been quick time. But you hardly ever do get what you petition for.

They did not get what they petitioned for in this case because Brady did not give them thirty-six hours. He gave them trips, but did not change the route from a forty-five-hour schedule.

Q. You asked for all you wanted?—A. Yes, sir; all we could get.

Q. What do you mean about wanting mails on account of the Indian outbreak?—A. After the Ute war broke out there was a military post at White River, and there were a good many people there, and it made a large business on that route.

Q. You wanted to get the news from the soldiers?—A. We wanted the news, but the danger from the Indians was over at that time. There was quite an office there and quite a business between the two places.

Q. How many men were there at that time at the post?—A. I don't remember exactly now, but there must have been somewhere from eight hundred to twelve hundred soldiers.

Now, I pass to page 1994:

Q. When you were running the mail once a week, how large was it?—A. About one of these number-two sacks, two-thirds full, generally; that is, at that time. It has increased since then.

Q. About how much would it weigh?—A. Fifty or sixty pounds; may be seventy-five sometimes.

Q. Did the bulk of the mail go through over the route?—A. Coming out there was nothing but letters. Going down towards White River there was papers and merchandise, &c. Coming out the mail was light.

Q. There was more mail going from Rawlins to White River than from White River back?—A. Nothing but letters coming out towards the railroad.

Q. How large was the mail coming out?—A. Oh, it would not weigh over ten pounds besides the sack.

Ten pounds of letters. That is three hundred and twenty letters, or nearly a thousand letters a week, and then he tells you that when the service was increased the mail increased.

The COURT. Would you like to take a recess now?

Mr. WILSON. Perhaps we had better. It will take me some little time yet to get through with this route.

At this point (1 o'clock and 3 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. WILSON. [Resuming.] Gentlemen of the jury, another objection that is put forward in respect of this particular route is that the mails

did not make the proper connections all over this route. I have in another place attempted to show to you, as had already been shown to you by the testimony, how that was done, and if the proper connections were not made who was responsible for it? But as to this particular route as I remember it, one of the witnesses who testified, testified to the fact that the schedule of arrivals and departures was fixed by the postmasters at the terminal points. Without repeating what I have heretofore said on that subject you will see how little there is in that point as against my client, and how little there is on that point as against any of these defendants. These postmasters were the parties that the Government trusted to arrange these matters, and if they arranged them improperly that was their fault and not the fault of anybody else, and so I shall take no more of your time on that subject. They say there was a letter written down there to have these petitions returned before the 4th day of March, and they argued from that that it was anticipated that a new Administration was coming in and General Brady was going out, and they wanted to hurry it up so as to get the thing done before the new Administration came in. That is the inference they draw from it. I can draw another inference from that same state of facts that is just as reasonable and just as fair. There is no testimony that my client knew anything about any such letter having been written, none whatever. But if I were going to draw an inference from that letter I should draw this kind of an inference, that when there comes a change of Administration and a change of heads of departments there is a delay in the public business, and to avoid the consequences of that delay they wanted to get this thing done before the beginning of the incoming Administration. But I shall not take up any of your time in regard to that. This order that was made, was made by General Brady on the 8th day of March, as I remember. Mr. James had come to be Postmaster-General, and they say to you that he ordered Brady to revoke that order. There is a little discrepancy or conflict in the testimony just on that point. Perhaps I had better read Mr. James's testimony on that subject. The actual fact is that he did not order that revocation to be made by Brady. He spoke to French on the subject and he said that the next day Brady came in to see him about it, and they had a conversation on the subject, when he said that Brady asked him if economy was to be the policy or the rule of his administration, and he replied that it was, but he says distinctly, and repeats it over and over again, that he did not direct Brady in that conversation to revoke that order.

Q. Did you give such an order?—A. I told Mr. French I wished that order revoked.

Q. How long after that conversation was it that you saw General Brady?—A. The next day.

Q. Was it on the next day when you saw General Brady that the conversation you have given in evidence took place in which General Brady asked you, as you have testified, "Referring to that conversation with Mr. French yesterday, is economy to be the policy of your administration?"

Then there was an objection interposed.

Q. Was it in that conversation with General Brady that this conversation to which you have testified took place?—A. Yes, sir.

Q. That was the time?—A. Yes, sir.

Q. Was that order that you gave to French ever carried out by Brady?

Then there was another objection.

Q. Was the order that you gave to the Second Assistant's office, to revoke this order of March 8, carried out?—A. No, sir.

Q. When did you discover that it had not been?—A. Some time in September, I think.

Q. What did you then do?—A. The order was revoked.

Q. At that time?—A. Yes, sir.

Q. What time did Mr. Brady leave the office?—A. I think in April.

Now, a little further along he says, in reply to this question :

You say that you had a conversation with Mr. French on one day?—A. Yes, sir.

Q. And the next day you had a conversation with General Brady?—A. Yes, sir.

Q. Did you tell General Brady to revoke that order?—A. I did not.

Then further along :

The journals were brought to you to be signed, were they not?—A. Yes, sir.

Q. As a matter of fact, you did not read them?—A. I read them generally, or had them read.

Q. Did you sign the drafts or warrants?—A. I did while I was there.

Q. Did you have those read?—A. No, sir.

Q. You would go right on and sign warrants for that identical route, would you?—A. Yes, sir.

Q. You would go right on paying the eighteen thousand and odd hundred dollars a year without knowing it, would you?—A. Yes, sir.

Q. If the order did not appear in the journal you would not think about it?—A. I would not know that the order had been issued. The journal is simply a record of the proceedings of the Post-Office Department each day. It would have to be signed by the Postmaster-General, no matter what orders were in it, as I understand the law. It is simply a record of facts.

Q. If an order had been omitted you might notice it and you might not?—A. Yes, sir.

Q. In other words, the business of the office is so immense that you have to depend on others; is that so or not?—A. That is true.

Q. Would it be possible for you to read every warrant and every order and every draft and every paper brought to you to be signed?—A. It would be a physical impossibility, sir.

Q. You would be obliged to take somebody's word?—A. You have to trust somebody.

Q. You have to trust your subordinates?—A. Yes, sir.

Q. Otherwise it would be impossible to do the business?—A. Yes, sir.

Then, again :

A. My order to revoke was given to French.

Q. And afterwards you had this conversation?—A. The conversation with General Brady was the next day. That is a fact. You must draw your own conclusions.

They have argued this case, gentlemen of the jury, as though that order to revoke had been given to General Brady and he did not revoke it, and that therefore there was something wrong in respect of what he was doing. That is the argument. Mr. James tells you that he had that conversation with French, and that when Brady called to see him the next day he did not order him to revoke it, and there is no evidence in this case that he ever did order him to revoke it. Mr. James and General Brady differ as to the time of this conversation. General Brady says that some time after the time fixed by Mr. James, a month afterwards, he was in there, and the matter of these orders was brought up; that he went there because Mr. James wrote him a note on that subject, which note he produced in evidence before the jury. As a matter of course, nobody is going to say in this case—certainly I am not—that Mr. James told anything other than exactly the way he recollected this thing. I am not going to contend anything of that sort. But it is the easiest thing in the world, gentlemen, for men to be mistaken. We are often mistaken in our understanding of things, conscientiously and honestly mistaken, and if this case turned upon this very point you would see that here is a conflict in the testimony, one man understanding that a thing occurred on a particular day, and another man coming and saying it did not occur then at all, and it was not what this prosecution is

seeking to make it out to be at all, because they are claiming that he gave General Brady an order to revoke it, when he says himself he did not.

Mr. BLISS. We never have claimed that he gave the order to Mr. Brady. We claim that he gave the order to French, and the next day in consequence of that, as showing that Brady had talked with Mr. French, he came to Mr. James. That is our claim.

Mr. WILSON. Gentlemen, you see there is simply an inference drawn. There is not any proof at all that Mr. French ever communicated that to Brady. If it had been communicated to Brady, French could have proven that fact and you would not have been left to inference. They have begged you to consider that at various times we have not put witnesses on the stand when we could have put them on the stand. Now, gentlemen, here is a case. Let me turn it right back upon these gentlemen. Here is a case where they are attempting to fix improper conduct upon General Brady by saying, "James communicated it to French and the next day Brady had a conversation with James." We say that that thing occurred a month afterward. They say that the next day he had a conversation with James, but nobody proved that French ever said one word to Brady about it. Nobody proved that French ever told Brady that James had spoken of this matter to him. Nobody proved that. These gentlemen say they want you to infer that he did. Now, if it was an important fact in this case they ought to have proven that fact when the testimony was available to them. If it is important to the Government to have it established as a fact that that was communicated to Brady they ought not to leave it open to mere inference when they could prove the fact, if the fact was as they claim it to be. The very fact that they did not do that is a confirmation of General Brady's theory of it, especially as he brings you a note from Mr. James dated nearly a month later in which the subject that they were talking about was alluded to. But I leave that, gentlemen.

As I have said repeatedly, they have claimed a great many times in this case that Brady ought to have known, and the fact that he did not know is significant against him. Right here, as to this very identical route where Mr. James's attention was called, as he said, to the matter, he never heard of it again until September, and in the mean time had been signing warrants to pay for that very thing. The question was asked him, "How did it happen that you were signing warrants to pay out this money on this order that you had directed to be revoked?" "Why," he said, "I signed those warrants as they were brought in to me without reading them." "Why?" "Because," he said, "it is physically impossible for one man to read all these papers and know all these things. Men have to trust somebody." The somebodies that he trusted were the subordinates of his office. Yet they say to you that General Brady should have read everything, should have held every affidavit up to the light and should have examined every petition to see whether there was an erasure of a word or an omission to dot an "i" or to cross a "t." You recollect what Mr. Brewer told you in respect of that. You recollect that other witnesses have told you that the Second Assistant signs his name to over four hundred papers every day. Yet they require of him and they exact of him that he shall look into and scrutinize every paper and discover every little irregularity, and if he did not do it, they say that is evidence that he was engaged in a conspiracy. Upon the same principle you would have evidence against Mr. James for associating himself with the other "conspirators," because he was

signing these warrants and paying out the money for this service as to which he says he had given an order of revocation.

There are one or two other things in connection with this route to which I want to direct your attention. There are two or three affidavits that have been referred to. Take the Perkins affidavit, which they say was signed in blank. Perkins says that he signed and swore to that affidavit when it was in blank as to the number of men and horses. Does not the evidence in this case show, gentlemen of the jury, that that Perkins affidavit was not used? What other of these affidavits have they any evidence of that kind in respect to, except such evidence as has been furnished by Rerdell? Any? Any? When an affidavit has the jurat of an officer to it, *prima facie* that is correct, and it was just exactly as it now is when it was certified to by that officer. If these affidavits had been filled up as these gentlemen say they were, it was within their power to prove that fact. They proved it in the Perkins case and they could have proved it in the other cases if the fact had been so. There was Taylor, the notary public before whom many of these affidavits were sworn to by Peck down in New Mexico. Could not they have proven it by Taylor if it had been so? Taylor certified to the affidavits just as they appear here. There is the man Wainwright, up in Vermont. If the affidavits had been in blank at the time they were sworn to before him by John W. Dorsey Mr. Wainwright could have testified to that fact. I say that the very fact that they did bring one witness here to swear as to one affidavit and omitted to bring testimony as to these other affidavits, condemns that feature of this case, unless you may say that it is sufficiently proven by the testimony of Rerdell in so far as he has testified on that subject. There are two affidavits on this route by John W. Dorsey dated the 21st of April. They were both made on the same day.

Mr. BLISS. Are you not mistaken as to the route?

Mr. WILSON. I am mistaken. They are on the Pueblo and Rosita route, but I will refer to them here as I omitted to do so in connection with that route, and have a note of it. John W. Dorsey told you at first that he had not done that. Evidently he was conscientious about that. He didn't recollect having done anything of that kind. But Colonel Bliss or somebody else showed him those two affidavits, and as soon as he saw them he said "I recollect about that. That brings it back to my recollection. I got one of these affidavits in the morning, and I got the other in the afternoon. The one I got in the morning I swore to and sent back, and the one I got in the afternoon I swore to and sent back." Why does he say he did that? Because a communication came to him stating that the first one was wrong, and therefore they wanted the second one, and he swore to the second one, and sent it back. Where is the point of discrepancy? How do they seek to contradict it? They say that he said that he got these from Rerdell. They say that Rerdell was not here, and therefore he could not have sent these affidavits to John W. Dorsey, and therefore John W. Dorsey must have testified falsely about this thing. Is not that so? That is their position. Now, recollect, gentlemen, Mr. Dorsey did not swear positively that he got them from Rerdell. He said he thought he got them from Rerdell. He did not have the letter, but he thought he got them from Rerdell. They brought here three clerks from three different hotels out West for the purpose of showing to you that on the 22d, 23d, or 24th of April Rerdell was out there. Let me look at the testimony just a moment:

Q. Did you go West in the spring of 1879?—A. Yes, sir.

Q. What time did you leave?—A. I left here either on the 17th or 18th of April; the 18th, I think.

Recollect these affidavits were sworn to on the 21st. The 18th you will find, if you look at the calendar, was Friday, the 19th was Saturday, the 20th was Sunday, and the 21st was Monday.

Q. Where did you go?—A. I will have to give the places in order where I stopped, if you wish it. The first place I stopped was Sidney, Nebraska; I staid there a day.

They had that man here with his register.

The next place I stopped was Laramie City. From there I went to Greeley, Colorado; from Greeley to Denver, and from there to Colorado Springs.

Now, he left here either on the 17th or the 18th; he thinks on the 18th. What else did he do? I read from page 2233:

Q. State whether or not after you returned, about the middle of May, as you say, I believe—

A. [Interposing.] I said about the 5th of May.

Recollect when he got back—about the 5th of May.

Q. [Continuing.]—about the 5th of May, 1879, you found blank affidavits among the papers connected with the business?—A. Yes, sir.

Q. How many did you find?—A. Well, there were several blank affidavits of John W. Dorsey's and several of John M. Peck's. I don't know how many there were.

Q. Were they blank affidavits?—A. Well, sir, they were blank affidavits similar to that one I sent, leaving out the number of men and animals in each case.

Q. Did they purport to have been sworn to?—A. Yes, sir.

Q. Were those affidavits among the papers when you left here to go West?—A. Some of them were. I think those of Peck's were here, probably four or five, or half a dozen, and I had made out, before I left here, a lot of them and sent them to John W. Dorsey. In the mean time, when I returned here, John W. Dorsey was here; but still there were some of the blanks here; some of them acknowledged up there and some acknowledged here.

So you see, gentlemen of the jury, that Rerdell himself swears that he left on the 17th or 18th; *he thinks it was the 18th*, but before he went away he made out these affidavits and sent them to John W. Dorsey. *Three or four days before he went away he made out these affidavits, according to his own statement, and sent them to John W. Dorsey.* Gentlemen of the jury, if Rerdell can corroborate anybody he corroborates, instead of contradicts, John W. Dorsey as to those affidavits coming to John W. Dorsey from Rerdell. But that is not all, gentlemen. Recollect now that John W. Dorsey says that he got the second affidavit in the afternoon, because the first one was not correct. Rerdell got back on the 5th of May. On the 6th of May he filed the first of these affidavits. Now, on the 5th is this letter:

HON. THOMAS J. BRADY,

Second Assistant Postmaster-General:

SIR: I have the honor to transmit herewith my proposition for carrying the mail on route 38134, from Pueblo to Rosita, Colo., on an expedited schedule.

Hoping it will receive favorable consideration.

That was filed in the department on the 6th of May. Here is another one, which was filed on the 8th of May:

HON. THOMAS J. BRADY,

Second Assistant Postmaster-General:

SIR: I have the honor to request the privilege of withdrawing the statement I presented some days ago as to the men and animals required for the transportation of the mails on route 38134, in order to correct an error therein.

Do you not see, gentlemen, how that tallies with John W. Dorsey's testimony? He says he got it in the morning and swore to it and sent it back, and got the other in the afternoon and swore to it and sent it

back; that it was sent because there was a mistake in the first one, and Rerdell filed that——

Mr. BLISS. [Interposing.] He sent it back on the 21st of April.

Mr. WILSON. What of it? What has that to do with it? Of course he sent it back on the 21st of April. He sent it back to Washington, and Rerdell got here on the 5th of May, as he thinks. If he did, he wrote that letter on the same day he got back and filed it. Then he asked permission to withdraw that affidavit and put in the other on account of an error that was in the first one. Upon that they ask you to say that John W. Dorsey is convicted of lying in this case. I can conceive, gentlemen of the jury, how Rerdell may not have sent these affidavits. It may have been done by Kellogg or somebody else that Rerdell left here to look after this business in his absence. I do not know how it came about; but that is all there is in this vast display that has been made before you in respect of those two affidavits.

The next route, gentlemen, is route

NO. 35015, FROM VERMILLION TO SIOUX FALLS.

That was a route seventy-five miles in length, on which there were two trips a week. It connected two railroad points, one down at Vermillion on one railroad, and the other up at Sioux Falls, on another railroad. On the 10th of July, 1879, it was made six trips a week, and the time expedited from fourteen hours to ten hours. That was done upon a lot of petitions that were before the department, and those petitions were indorsed by Judge Kidder. All those petitions asked for a daily mail. If Brady was going to make money out of this thing there was a good chance to put on seven trips a week; but he did not do it; he made it six trips a week instead of seven, as was asked for by the petitioners. Whenever the prosecution find him granting a little more than is asked for in a petition, they say to you, "That is an indication of fraud." When you find him granting less than was asked, the rule ought to work the other way, ought it not? Ought not that to be an indication that he was not engaged in any fraud? Here these people asked for a daily mail; but he gave them six times a week. He did that upon these petitions, and the Government complains that it was not necessary. They have not proven that it was not necessary. I say the petitions are a complete justification to the Second Assistant Postmaster-General for doing exactly what he did do in respect to that matter.

There was a man by the name of Leach, who had a subcontract on that route, and he wanted to get the time extended, and procured a petition to be signed by the postmasters along the route asking that it be extended to sixteen hours. Recollect, the original contract time was fourteen hours. That is the way the contract was let. It was advertised on a fourteen-hour schedule. This man Leach having, as I suppose, made a bad bargain, and not having stipulated to get money enough to enable him to carry the service without loss, wanted the time extended to sixteen hours, and he sent in an application signed by the postmaster asking to have it extended to sixteen hours. That was favorably indorsed by Judge Bennett, then the Delegate in Congress. They say because Brady did not extend it to sixteen hours that that is an evidence of fraud. You will find there has been a great display made of an indorsement made upon a certain paper, in which General Brady says:

Write Judge B. it cannot be done.

That is all there is as to anything that Brady did or said in regard to the matter.

Write Judge B. it cannot be done.

Gentlemen, I say it could not be done. I say the law and the regulation is express that it could not be done. I will read you the regulation on the subject:

The Postmaster-General may change schedules of departures and arrivals in all cases, and particularly to make them conform to connections with railroads, without increase of pay, provided the running time be not abridged. But an application for schedule change cannot be granted * * * if more running time is asked than is given in the contract schedule.

That is the regulation made by the Postmaster-General. The regulation says that if they asked more time than is given in the contract schedule it cannot be done. What did Brady say? That was a petition asking for sixteen hours. Brady said:

Write Judge B. it cannot be done.

Mr. BLISS. The time was extended on the Bismarck route to one hundred and eight hours.

Mr. WILSON. That is on a different principle entirely. I am coming to the Bismarck route after a while. That is the next route to which I am coming and I congratulate you, gentlemen of the jury, that I am so nearly through. You see that the regulation says it cannot be done. The regulation prohibits its being done, and all he directed was:

Write Judge B. it cannot be done.

Now, Mr. Brewer, who was the corresponding clerk having the matter in charge, simply had that direction from General Brady. That is all he had. What did he do? He sat down and wrote that letter and gave the reasons. He put in that letter the reasons. They were not Brady's reasons. Brady had nothing to do with formulating that letter or with the construction of that letter, although there was nothing wrong in it. Brewer said it would be unjust to other bidders. I can see how that would be. Here are half a dozen bidders on a route advertised at a fourteen-hour schedule. Everybody bids on the faith of fourteen hours, and yet, when one man gets it on a fourteen-hour schedule, having bid below everybody else, then they turn around and increase the running time to sixteen, twenty, or forty hours for that matter. Is not that an injustice to other bidders? Do other bidders stand upon the same footing? Do they have the same opportunity? No. They go in and bid on a particular contract schedule. When that contract is made if there is an increase of the running time you have not dealt fairly with the other bidders. But that is neither here nor there. There was that regulation looking the Second Assistant squarely in the face, and he declined to do it and said it could not be done. But they say he could have increased it to fourteen hours. Suppose he could. Nobody asked him to do it, and yet they want you to infer that he must have been engaged in some rascality because he did not increase it to fourteen hours. General Brady has testified in regard to this particular route. He has been very frank with you in respect to this matter and all others, gentlemen of the jury—very—frank. He says that he was importuned by Judge Kidder. Judge Kidder lived at one of these points, and he wanted a daily mail service for the benefit of his section. General Brady accommodated him with it, and when Judge Bennett came in and succeeded Judge Kidder he wanted some favor in another

locality, and Brady told him he didn't have the money, and then he wanted him to take it off this Vermillion and Sioux Falls route and put it on another, and Brady declined to do it. Now, gentlemen, I want to go one step further in regard to this particular route, and that is all I will have to say about it. On the 6th of March, 1880, I find this :

All the postmasters ask that service end at Worthing, 3 a. w. from April 1, 1880. Omit Sioux Falls and Prairie Grove and end at Worthing, curtailing distance 16 miles; reduce service, Vermillion to Worthing, 59 miles, to tri-weekly; and deduct from pay of contractor and subcontractor \$3,720.99 per annum pro rata, on which one month's extra pay is to be allowed.

BRADY.

Let us see what he did that on :

VERMILLION, DAKOTA, *March 5, 1880.*

To SECOND ASS' P. M. GENERAL,
Washington, D. C. :

DEAR SIR: The undersigned, postmasters on mail route No. 35015, from Vermillion to Sioux Falls, Dakota, do most respectfully petition that service on said route be discontinued from Worthing to Sioux Falls, Dakota, making Worthing the terminus of said route instead of Sioux Falls.

Worthing is a railroad town on the Chicago, St. Paul and Milwaukee Railroad, a new railroad running east and west through Southern Dakota. There is only one post-office between Worthing and Sioux Falls. This office is within one mile of the Pembina and Sioux City Railroad, a railroad running north and south.

We further petition that service be cut down from daily to tri-weekly, all that the people can reasonably ask.

That is signed by the postmasters along that route. When it came to the Post-Office Department this service was curtailed to conform it to the new condition of things occasioned by the building of a new railroad through that country. The construction of that railroad introduced a new kind of service into the country, and made it unnecessary to use the Vermillion and Sioux Falls route as it had before been used. Now, what followed? Just as soon as that was brought to the attention of the Second Assistant Postmaster-General he cut down the service and took off between two and three thousand dollars a year from the pay of the contractor. I refer to that, gentlemen of the jury, to show you just how this service is being adjusted from time to time to meet the wants of the people. When there is no longer any occasion for it it is cut down, because the people are supplied in some other way.

I come now, gentlemen of the jury, to

ROUTE No. 35051, FROM BISMARCK TO TONGUE RIVER,

about which so much has been said. That is the route that was advertised as being two hundred and fifty miles in length. The service was once a week on a schedule of eighty-four hours. It subsequently turned out that the route was over three hundred miles in length; about three hundred and ten. By some order, which is not exactly clear in the record—it is not clear in my mind, and I do not think it is clear in the record—one hundred and eight hours was recognized as the running time. If the records in the department are full on that subject they have not been brought here. This route more than any other, as it seems to me, serves to illustrate what I said at the outset. Perhaps more has been said in respect to this route than any other, and it has been used and harped upon as indicating that there was a conspiracy between these parties who are here accused. I need not trouble you with the map, because that has been exhibited to you so many times that to produce it now would simply be a waste of

time. You know that Bismarck was at the western terminus of the Northern Pacific Railroad, and you know that the Northern Pacific Railroad was projected right over the line which was occupied by this route, and had been used before. You know that over at the other end of this route was Fort Keogh, with Miles City only two or three miles away. You know that Fort Keogh was one of the most important military posts in this Government. You know that over on the Bismarck side the mails concentrated. You know that Saint Paul was the military headquarters of that department. You know that at Fort Keogh there were mail routes running out into Montana, to Bozeman and various other places which I need not enumerate. You know that for the mail to get from Saint Paul, the military headquarters of this district, around to Fort Keogh, it either had to go by Fort Buford, some eight hundred or a thousand miles, or it had to take the other route going down by Omaha and the Union Pacific Railroad to Salt Lake City or Ogden, and thence up by stages three or four hundred miles into Montana, and then by three or four hundred miles more of stages to Fort Keogh, making a circuit of not less than two thousand miles. Here was Bismarck upon the one hand and Fort Keogh on the other, three hundred miles distant, and yet to get from one to the other you had to make one of these circuits. Congress established the mail route from Bismarck across that country to Fort Keogh at the mouth of Tongue River, and pursuant to that establishment this route was advertised and let. There are several things in connection with that route to which it probably will be necessary that I shall call your attention. In the first place, this route passed through an unexplored region. It passed through a region of country that was infested with very hostile and very savage Indians. General Miles had fourteen companies of troops at Fort Keogh, and I think, gentlemen of the jury, that I am not misrepresenting or misstating the testimony when I say that General Miles's attention was early attracted to the importance of having this very route and he made himself very active in procuring it. When John W. Dorsey went out there to put the service on this route he started the outfit, as they call it, from Bismarck, and then took a boat and went around up and came down to Fort Keogh, where General Miles was, and had an interview with him. I think I can say, and be entirely consistent with the testimony, that the suggestion as to increase of service upon that route over and above what had been contracted for came from General Miles. Undoubtedly gentlemen, that subject was talked about between General Miles and Mr. John W. Dorsey, and although Mr. Pennell and some others have sworn that when they started from Bismarck they built their stations seventeen miles apart in anticipation of increase and expedition of service, yet I say that the weight of the testimony is that when John W. Dorsey went around to Fort Keogh and had an interview with General Miles, then John W. Dorsey turned these men back upon this route. He swore he did that, and I think the circumstances confirm his testimony that he turned these men back upon this route and told them to build intermediate stations, so that when this route was increased, as General Miles thought it would be increased, they would have the stations already prepared to put the service on. Now, how happened General Brady to increase that service? It was only one trip a week and it was on a slow schedule. How came he to do that, gentlemen of the jury? In the first place, we have the testimony of Major Maginnis. Major Maginnis tells you that he repeatedly went to the department in regard to this matter and urged it upon the department. He went there in company with

General Miles and represented the situation and showed them the necessity for having the service increased and expedited on that route. He argued this with General Brady. General Miles did precisely the same thing, and General Miles not only did that, but he wrote letters to the department in regard to it. He transmitted letters through the War Department to the Post-Office Department asking that this thing be done. That is what General Miles did about it.

Mr. BLISS. Expedition? You said expedition, and I thought you did not intend to.

Mr. WILSON. I am going to show this jury if I can what there was in this situation, and what influences were being brought upon the department, for the purpose of showing to the jury what the department first had before it when the thing was done, and then to show to the jury that what the department had before it was true by what was placed before the department afterwards. I read you the other day, gentlemen, the testimony of General Sherman in regard to the importance of having a mail route across this route.

There has been a great deal said about Miner's affidavit upon this route. They said he swore falsely when he said it would take one hundred and fifty men and one hundred and fifty animals. I say, gentlemen, that to perform that service properly—and the evidence shows it in this case—it would take that number of men and animals. General Sherman told you that it would have taken two regiments of troops to have picketed that line as the stage line picketed it. Mr. Miner has told you that when the service was discontinued because of the completion of the railroad across there, they sold from that very line one hundred and sixty-five horses; so they did have one hundred and sixty-five horses on it at any rate.

I am not going to take up your time, gentlemen, in reading the petitions that came in on that route. You recollect them; petitions of Boards of Trade of Minneapolis and Saint Paul, General Miles's letters, Maginnis's testimony and Sherman's testimony. Lounsberry, the postmaster there, and various other people have stated to you the importance of that route. It was not necessary that they should state to you the importance of the route, because the very map itself shows the importance of the route as does the situation of the country. It was increased and it was expedited in accordance with these recommendations. You will recollect, gentlemen, one thing that I will mention right here, for I do not want to weary you with reading testimony. You will recollect that Mr. Lounsberry asked to have that mail expedited to sixty-five hours. He was on the stand here and he was interrogated as to whether he signed that petition, and he said he did, and whether he did it in good faith, and he said he did. He said that as to trips it was all right, but that if he had to do it over again in the light of after-acquired information he did not think he would have recommended a schedule of sixty-five hours in the winter. There was no trouble about carrying it in the summer on a sixty-five-hour schedule. In the winter he would not have recommended a sixty-five-hour schedule. He was not seeking to mislead the Post-Office Department. When he made his recommendation he made it in perfectly good faith, and when the department acted upon it, it acted upon it in perfectly good faith. But afterwards he found out that sixty-five hours was too short a schedule for winter. Why? Because they had had for one or two winters very extraordinary snow-storms and even the railroads could not get their mails through sometimes for three weeks at a time. They had exceptional hard winters and after a

year or two had elapsed and they found they could not get the mail through, yet the prosecution undertake to say that although in making the sixty-five-hour schedule he acted upon the suggestion of these gentlemen, Brady was engaged in a conspiracy to defraud the United States. Was this an important route, gentlemen? Was it important to have the mail go over this route? They brought here to you carrier after carrier to show that there was only a few pounds of mail. They belittled it and said there was nothing of it and all that sort of thing; but Mr. Lounsberry, the postmaster, came here and told you that when they first opened that line there was very little mail went over it. That is natural. You cannot turn the mail in a particular direction in a day. But he told you that when it was increased the mail became a very large one and increased rapidly. He said that on one occasion in the presence of one of the Post-Office inspectors and after the holiday season was over, when there was no unusual use of the mail, it weighed two hundred and forty pounds, and that the mail ran from two hundred to three hundred pounds. This route, gentlemen of the jury, it seems to me serves a very important purpose in this case. There were no intermediate post-offices. Now, what revenue would you get from such a route as that? They have brought to you a statement of the revenue. For what purpose? To show you that there was no mail over it and that the route was of no consequence. That was the purpose.

As I remember it, they have Bismarck at one end of the route, and that is a railroad station, but all the stamps that were sold at Bismarck, of course, were not stamps that went over this route. The stamps sold at that office represented letters going wherever they might through all the length and breadth of the country. And so over at Fort Keogh and Miles City. The stamps sold there represented not merely the mail that went over this particular route, but represented the mails that went out on all the routes from Miles City.

So you see, gentlemen of the jury, that the revenues do not represent the mail matter that went over that route, as I will show you as I proceed. How could they? If a man wrote one letter at Bismarck to go to Fort Keogh, there would be a three-cent stamp sold there if the stamp was bought there. Now, with that one letter there might be five hundred letters in the same sack not one of which was mailed at Bismarck. There might have been five hundred mailed in New York to go to Fort Keogh, and when they got to Bismarck they could put in one solitary letter, and then five hundred and one letters would go over that route, and yet only one of them from Bismarck. Now, the table of revenues only shows the stamps sold at the offices along that line and at the terminal points. And included in that is the box rents, gentlemen. I will give you, gentlemen, the benefit of that. I will claim the benefit of it, as you will see as I go along.

Now, there is a route three hundred miles long carrying from two hundred to three hundred pounds of mail every day over it, and no revenues from it; that is to say, no revenues from the route itself, comparatively speaking. Would you discontinue that route because there were no revenues from it? There is three hundred miles without an intermediate post-office. General Miles said it was a very important route; General Sherman said it was a very important route; Lounsberry said it was a very important route; these military officers, General Terry and the others, say it was a very important route; these boards of trade say it was a very important route; and there were two hundred or three hundred pounds of mail going over it every day. Now, would you discontinue it because at the little post-offices along

the line they did not sell scarcely any postage-stamps—not a thousandth part of what the offices cost?

Now you see, gentlemen of the jury, that the importance of the route does not depend upon the stamps sold along the line of that route. It depends upon the facilities which it affords to get the mails that are gathered in from all over the country into the localities where these mails are to go.

Let me illustrate this a little further. It is only a repetition of the illustration I gave a day or two ago. Here are letters starting from New York, Philadelphia, Boston, Washington, Cincinnati, and all over the country to go out into Montana. There is a vast influx of emigration to that country. There are those military posts scattered about through that country, and these mails all concentrate at Bismarck, and then it takes three hundred miles to get these mails over into the other regions to which they are to go. They concentrate there, and then they pass over this route. If there was not a stamp sold along that route, what of it? Does it make the route any the less important? Why, no, gentlemen. That route is simply the connecting link between two vast systems of routes, one on the east and the other on the west. It is simply the channel through which all of these streams of mail that are concentrated at Bismarck flow across into that other region of country to be distributed by the various routes to the various sections of country in the West.

Why, it is preposterous, to my mind, to talk about a route of that kind not being important; and it is preposterous, to my mind, to say that because stamps are not sold along the route therefore the route itself is useless and the country ought not to have it.

Mr. BLISS. Mr. Wilson, we certainly do not claim that that route was useless.

Mr. WILSON. What is the matter? Did it cost too much?

Mr. BLISS. I think so.

Mr. WILSON. You think it cost too much. It cost too much to keep up daily communication between Bismarck and Tongue River, three hundred and three miles, through an Indian country, where General Sherman says it would have taken two regiments of troops to picket the line. It cost too much when it cost \$69,000 or \$70,000 a year.

Gentlemen of the jury, my Brother Bliss has made out some figures, but I will show to you if there is anything that can be made out of figures in a case like this that it did not cost as much as it produced. Let me see if I cannot demonstrate that to you. I have figured on this a little. Of course, you will understand, gentlemen of the jury, that I have to conjecture somewhat; I have to assume some things. On that route, according to Mr. Lounsberry, there was about two hundred and fifty pounds of mail. He says from two hundred to three hundred pounds; that he weighed it once and it weighed two hundred and forty pounds. I will assume that two hundred and fifty pounds of mail went over it daily. Would it be unreasonable to say that thirty pounds of that was letters?

Mr. BLISS. The mail bills show differently.

Mr. WILSON. The mail bills on what?

Mr. BLISS. Bismarck and Fort Keogh.

Mr. WILSON. Have you got them here?

Mr. BLISS. You put them in evidence.

Mr. KER. Page 2886.

Mr. WILSON. Just let me go through with my illustration, gentlemen, and see how they will come out.

The COURT. How was the time advanced from eighty-four to one hundred and eight hours ?

Mr. WILSON. If your honor please, as I said a little while ago, there is either a confusion in the record or something omitted from the record, that I confess I am not able to explain, and I said so to the jury a little while ago.

The COURT. Expedition was ordered on the basis of one hundred and eight hours, was it?

Mr. WILSON. I am not able to explain that ; I admit that.

Mr. BLISS. I may say to your honor that the condition of things was this : The schedule was eighty-four hours ; there was no evidence put in showing any increase of hours ; there was some subsequent order which recited that previous to that time the schedule had been extended to one hundred and eight hours, but there was nothing disclosed in the evidence as to how that arose. An order was allowed to be put in at one time showing how Mitchell came in. I have proposed to have the route-book of the department brought in so that we could see whether that would give us any light upon that subject as to whether or not there was actually such an order made. I do not know whether there was or not. I will look at that matter to-night, and if I find it, will ask Judge Wilson to let it come in, and then if he does not, we will only be where we are now.

The COURT. It makes a difference in the calculation.

Mr. WILSON. I did not discover that until after the testimony had closed.

The COURT. According to the advertisement the distance was two hundred and fifty miles.

Mr. BLISS. Mr. Brady restates the distance.

The COURT. The actual distance was three hundred and three miles.

Mr. BLISS. Mr. Brady restates it from some information furnished by General Rosser, at three hundred and three miles to Miles City, and three hundred and ten to Fort Keogh, or whichever is the farthest off. There is a recital in some order that it had been extended to one hundred and eight hours, but we have, none of us, looked that up. I requested at one time that it should be looked up in the route-book, but I do not recollect of any reply.

Mr. WILSON. Mr. Miner made his affidavit on the basis of one hundred and eight hours, I believe ; that is my recollection.

The COURT. I supposed it was that.

Mr. WILSON. But after the testimony closed, or at some time late in the trial, I discovered this apparent confusion or discrepancy in the record, and therefore I stated that there was something there which I did not entirely understand.

Now, gentlemen, my Brothers Ker and Bliss have called my attention to the mail bills on this route. Recollect, I was discussing the question as to the importance of this route, how much mail matter was going over it and how much revenue was derived from it every day, and all that. Now, I am referred to the mail bills to show how much was going over the route. Here is a mail bill on page 2886 :

Route No. 35051, from Fort Keogh to Bismarck. Post-office at Fort Keogh. Date, July 2, 1879. Mail, consisting of 2 pouches for Bismarck, locked, dispatched this day at 8 o'clock a. m.

There were two locked pouches. You know the papers go through in canvas sacks. That was letter mail, gentlemen. Then here is another :

Post-office at Bismarck, Dak. Date, July 5th, 1879. The mail accompanying this register, consisting of two locked pouches for Bismarck, received this day at 2 o'clock p. m.

Then this on the 4th of July:

Route No. 35051, from Fort Keogh to Bismarck. Post-office at Fort Keogh. Date, July 4, 1879. Mail, consisting of 2 locked pouches, dispatched this day at 7 o'clock a. m.

Then on the 8th of July two lock-pouches; on the 7th of July two pouches locked; on the 10th of July two pouches locked:

Received this day at 5 o'clock p. m.

C. A. LOUNSBERRY,
Postmaster.

That is enough now for my purposes, enough to show that over this route were going daily two pouches of locked mail. [To Mr. Bliss.] Do you contend that those were not letters?

Mr. BLISS. I do; I have ascertained that they were not.

Mr. WILSON. Did the papers go in locked pouches?

Mr. BLISS. No, sir; they went in canvas sacks.

Mr. WILSON. Not on that route. There is no evidence on that subject.

I want to assume now, gentlemen, as Mr. Lounsberry says, that there were from two hundred to three hundred pounds of mail per day. There will not be any dispute about that. Let me suppose, gentlemen of the jury, that thirty pounds of that was letters, and give the balance of it to other mail matter. Now, how many letters is that? Nine hundred and sixty per day one way. And you will notice that there were two pouches received and two pouches sent, although the mail was lighter, as the testimony shows, coming this way than it was going the other way, as naturally it would be. There you will have, upon the hypothesis upon which I am going, \$28.80 worth of postage one way each day. Now, if you will just double that to cover all the balance of it, you will have \$57.60, or \$86.40 of revenue for a day. Now, if you will say that there is half as much coming this way, you will have \$43.20; that is to say, \$154.60 worth of mail matter going over that route every day. The Government is getting that much postage every day from mail matter going over the route. How much is that in a year? It is \$46,380. And yet when you come to take their table of revenue you will find it less than \$10,000, and that \$10,000, mark you, gentlemen of the jury, embraces all the postage-stamps sold at Bismarck, in all probability nine-tenths of which came east, and did not go over this route at all, and nine-tenths of that sold at Miles City and Fort Keogh was going west. So that this route, in point of fact, upon the most moderate calculation, was carrying mail matter that represented not less than \$50,000 a year in the way of postage-stamps. And yet they say, "That is of no consequence; it did not pay; look at these little post-offices here; just see how insignificant the mail matter is that goes from these little post-offices—how utterly inconsequential." And yet here is mail matter going over that, which, upon the most moderate calculation, giving these gentlemen the benefit of every doubt, shows that the Government was receiving certainly \$50,000 a year, not from that particular route, but that the postage-stamps used in the mail that went over this route amounted certainly to \$50,000 a year. And if you will make a fair calculation here you will find that the postage-stamps sold more than paid the running expenses of that route.

Of course, gentlemen of the jury, that route is not entitled to the credit of all of it, any more than the New York Central Railroad is entitled to the credit of all the mail that passes over it. Why,

just think of the train loads of mail that go out every day over these trunk lines. Think of the vast amount of postage-stamps sold in New York every day. Are you going to give New York the credit of all that business, or are you going to give the credit to the New York Central or the Pennsylvania Central for all the mail that goes over those lines? Why, no, gentlemen of the jury. The mail leaves these great trunk lines at every station. It sweeps through the country at forty miles an hour without even stopping at the stations. There is a postal car, a regular distributing post-office on each mail train. Skilled men are there to assort these mails, and when the train comes to a place where a mail is to be left, there is an arm and hook, and as the train goes by, it hooks in the sack and the train goes on its way. And in this way hundreds and thousands and millions of letters are put in the post-offices all over the country and distributed far and wide. And it is idle and foolish to undertake to determine the value of a route simply by what passes over it. It is idle to say that a route is entitled to the credit of all the matter that passes over it. It is, as I said, a vast distributing system, working route with route in harmony.

I take the year 1879 on this Bismarck and Fort Keogh route, and I find that they sold in that year at Bismarck \$6,247 worth of stamps. They are particular to state that that is a railroad point. Undoubtedly the vast majority of that mail comes in this direction rather than the other. At Miles City, which is the next point, they sold \$1,211 worth of stamps. At Fort Keogh \$1,157. Making a total of \$8,616.34. Whereas in point of fact this large amount of mail was going over this route just as I have before stated.

Now, gentlemen of the jury, let me go back a little and see what it was that General Brady acted upon.

The COURT. Were there any connections beyond Fort Keogh?

Mr. WILSON. Oh, yes; daily mails.

Mr. DAVIDGE. Immense mails.

Mr. BLISS. There is no evidence on that subject.

Mr. WILSON. I am not going to state it, Mr. Bliss, and the reason I am not going to state it is——

Mr. BLISS. [Interposing.] There was connection at Bozeman, I think, that appears in the evidence, though nothing in detail beyond that fact. Mr. Wilson asked some question whether there was not a route from there, &c.

Mr. DAVIDGE. General Sherman explained the situation.

Mr. WILSON. Certainly; and Major Maginnis described the situation, and told us how the railroads ran through that region into Montana and to Bozeman and Fort Keogh.

Mr. BLISS. I do not mean that there was nothing beyond Fort Keogh. What I mean is that there was no evidence about that mail matter——

Mr. WILSON. [Interposing.] Except the daily.

Mr. BLISS. I do not think daily; there is no evidence on that subject.

Mr. WILSON. I think Major Maginnis testified to that, but I am not sure. I am not going to say positively.

Mr. BLISS. I speak with confidence because, I made some preparation on that point.

Mr. WILSON. I am quite sure, gentlemen of the jury—although, of course, I am liable to be mistaken, and I have not referred to the testimony—that Major Maginnis told you exactly how the stage line ran and how letters had to go, and so did General Miles, to go up into this country about Fort Keogh. They told how they had to go to Ogden and then by stage three or four hundred miles up to Helena, and then

coming back this way on the stage lines, so that when they made this route across from Bismarck to Fort Keogh, it connected, as I said a while ago, the system on the east with the system on the west.

Now, I want to show you, gentlemen of the jury, some petitions and recommendations that appear in this case.

Mr. BLISS. Mr. Wilson, I thought I should find it so, and this is what Mr. Maginnis says, at page 3246:

Q. What daily mails were there running from Ogden out in the direction of Helena and Bozeman?—A. Well, sir, there was a daily mail to Helena, and when it got up to a place called Watson's Junction, it branched there, and one branch went on the west side of the mountain to Deer Lodge.

By Mr. MERRICK:

Q. What time are you speaking of?—A. I understand that I am speaking of all along the interval between 1872 and on up.

Mr. WILSON. That is right.

A. [Continuing.] Then there was a daily mail to Virginia, and afterwards to Bozeman, and there was a tri-weekly mail established from Bozeman down the Yellowstone to Fort Keogh.

Mr. WILSON. I knew that he testified on that subject. I am going to address myself directly to the testimony, and this testimony shows, as it now appears, unless I can find something else, that when they got over to Fort Keogh they had tri-weekly mail until they got to Bozeman, and then they had a daily mail on from there to Ogden. That is the way it would seem now.

Now, I want to show you some petitions and recommendations, and let me commence with the 18th of July, 1878 (page 2140):

BANK OF BISMARCK,
Bismarck, Dak., July 18, 1878.

Hon. D. M. KEY,
Postmaster-General, Washington, D. C.:

SIR: I desire to call your attention to the mail route between this place and Tongue River, Montana.

The country west of us is settling up rapidly and the mail facilities are entirely inadequate to the wants of those living in that section of the country, including not only the settlers, but the military posts, where the want of more mail facilities are being felt daily. And should the mail route between this place and Tongue River be increased to three trips a week each way, it would meet a want that has become almost a necessity, and one that the parties living on the line of route earnestly beg may be extended to them. This request, in my opinion, is a just one, and a request which, if granted, will be a public welfare.

Very respectfully,

J. W. RAYMOND,
President.

That man could well write that letter. Any one of us looking at the situation could have written that with the utmost truthfulness.

Mr. BLISS. Who is that?

Mr. WILSON. J. W. Raymond.

Mr. BLISS. As appears by the evidence, Mr. Dorsey's banker.

Mr. DAVIDGE. Well, he lied, I suppose on that account.

Mr. WILSON. Is it possible, gentlemen of the jury, that because Mr. Raymond was John W. Dorsey's banker—that is to say that, I suppose, when Mr. Dorsey went out there to put stock on that route he probably made a little deposit of money in Raymond's bank, and because he did that it is evidence that Mr. Raymond is an unmitigated liar.

Mr. DAVIDGE. It was Rerdell who drew his drafts through Raymond.

Mr. WILSON. All right; that makes it worse yet.

Mr. BLISS. It appears in evidence that Mr. Raymond paid the bills, expenses, and so forth.

Mr. WILSON. I suppose he paid them out of his own pocket. Look here, Mr. Davidge, don't you see that Raymond paid these bills out of his own pocket, and he wrote this letter for the purpose of getting this done, and he was going to divide the profits?

Mr. DAVIDGE. I presume so.

Mr. WILSON. Don't you see that that is so?

Mr. DAVIDGE. It is very plain.

Mr. WILSON. That is the logic of it; nothing plainer than that.

Mr. DAVIDGE. As plain as anything else.

Mr. WILSON. That letter was indorsed as follows:

I earnestly, but respectfully, recommend the increase of service asked for in this letter of Colonel Raymond's. I know, personally, that the statement herein made is true. Colonel R. is a banker and one of the leading men in Bismarck. Whatever he says can be relied upon.

July 25, 1878.

J. P. KIDDER.

Now Davidge, I have got him corroborated. Here Kidder says:

Whatever he (Raymond) says can be relied upon.

Now let us go further:

BISMARCK, DAK., *July 23, 1878.*

To the Hon. 2D ASS'T P. M. GEN'L:

SIR: I have the honor to call your attention to the personal call—

See how this corroborates what John W. Dorsey said about General Miles taking an interest in this. Recollect this is only twenty-three days after the service was to go on. John W. Dorsey went out there some time in June, 1878, to put that service on. Now, Mr. Maginnis says:

I have the honor to call your attention to the personal call made on you last winter by General Miles and myself in relation to establishing a daily mail route between Miles City and Bismarck, which at that time, you may remember, received your favorable consideration.

Away back in the preceding winter, before John W. Dorsey knew even that he was to have this contract, when he could not have known it, General Miles and Major Maginnis had been to the Second Assistant Postmaster-General urging a daily mail over this route:

A weekly mail (route 35051) has been let, and the service is now established from this place, but with a once-a-week mail and such a long schedule the route will not be of much use, and will not shorten the mail time much beyond the long route via Montana.

Now you can see that is so. You have once-a-week mail over that route and one hundred and eight hours in which to run it, and you might just as well have none at all. The mail would go way around twenty-two hundred miles and come in, as Maginnis says, at the back door. Now, he was presenting that, recollect, on the 23d of July, 1878, calling his attention to the fact that he and Miles had presented this case to him before:

It is now proposed to increase the service to tri-weekly, and to reduce the schedule from ninety hours to sixty-five. To make the service valuable this should be done at once, and then the question of daily service may be postponed until another year.

That is what was done.

I find the country is settling faster, and the need of this mail is even greater than was set forth by General Miles at the time of our call, or in the recommendations of other Army officers which have been made to you.

I hope the service may be increased, and the schedule reduced as asked for.

With great respect, your obedient servant,

MARTIN MAGINNIS,
Delegate from Montana.

Now here is one that was signed by Mr. Lounsberry :

Hon. DAVID M. KEY,
Postmaster-General, Washington, D. C. :

The undersigned, representing the citizens and business men of Bismarck, Dakota Territory, beg to represent that at a recent letting contracts were made for mail service between this place and Tongue River, Montana, the same to be weekly. This service is entirely inadequate to meet the proper wants of the country lying between the terminal points, and especially to supply Tongue River and the country beyond. This route is along the proposed route of the Northern Pacific Railway, and will, within a brief period of time, in our judgment, become a great thoroughfare of travel and commerce.

Prophetic, gentlemen, prophetic. To-day the Northern Pacific Railroad Company is selling tickets from ocean to ocean. There is a little intervening stretch of stage line, but these great minds, these great, enterprising men of the country, to whom the country is so much indebted, are building that road at the rate of three or four miles a day :

In the interest of the Government and of the people we ask that this service be increased to three times per week, and the speed also increased so we can reach Tongue River in sixty-five hours.

Bismarck, D. T., July 22, 1878.

Signed by C. A. Lounsberry and others.

Now, let us take another one :

MILES CITY, MONTANA TERRITORY.

Hon. D. M. KEY, *P. M. Gen'l :*

SIR: The undersigned, citizens of Montana Territory, beg leave to state that the mail service—

The other, you recollect, was from the Bismarck end of the route ; now we come to the Miles City end :

The undersigned, citizens of Montana Territory, beg leave to state that the mail service on the route between Bismarck and Tongue River is entirely inadequate to the wants of the people now supplied by said route.

The Territory is now settling very rapidly both east and west of Tongue River, and one trip a week can hardly suffice.

We therefore very respectfully but urgently request that the route be increased to three trips a week and the schedule to at least sixty-five hours.

Then follows another that I want to read, at the risk of wearying you :

POST-OFFICE, BISMARCK, D. T., *July 19, 1878.*

You see this was away back in July, 1878.

THOMAS J. BRADY,
Second Assistant Postmaster-General, Washington, D. C. :

I have the honor to call the attention of the department to the necessity for increased service on route 35051, from Bismarck to Tongue River.

The country is rapidly settling. One may start from Bismarck on foot and travel to the Custer battle-field, which has already been taken by settlers, and stop every night at the ranche of a settler.

Gentlemen, there is a great deal in that sentence. There is a great deal in it that illustrates this case. There is a great deal in it that is suggestive. That substantiates exactly what I have been trying to say to you during the progress of my argument. There was that Custer battle-field, noted in history, where Custer lost his life. There is a country that was infested with hostile Indians, and although when this route was first laid out or traversed by John W. Dorsey and his outfit, General Miles had to send a squad of troops along with them to protect them against these hostile Indians, yet now, when Mr. Lounsberry—for he is the author of this letter—writes this letter in 1878, he says a man can travel on foot across that region of country and stop every night at a

ranche, and that the very battle-field where Custer lost his precious life, which filled this country with mourning, is settled upon by the enterprising people of this country who are making their homes there. And these gentlemen think it is not right to give them their mails unless it pays. Oh, nothing but men in uniform with brass buttons on their coats delivering to them their mails two or three times a day will satisfy them. They have got a good deal to learn, gentlemen. If they will go out into that country among those Western people, they will find where the bone, the muscle, the sinew, the brains of this country are. And they are a class of people who are entitled to just as much consideration from this Government as any other class of people.

Now, let us go a little further with this :

One may start from Bismarck on foot and travel to the Custer battle-field, which has already been taken by settlers, and stop every night at the ranche of a settler. An important village has already sprung up at the mouth of the Tongue River, and much of the country not covered by military reservations has been taken for farming purposes.

Several of the most important military posts in the department can best be served by this route, and the service proposed will cost less than the War Department paid last year for carriers carrying special messages from Tongue River to telegraphic points.

Now, what do you think of that? It will cost less than the War Department paid to its couriers to carry special dispatches to telegraph stations so that they could reach this Government from that wilderness.

The time necessary to reach Tongue River by the old route via Buford is about ten days. This can be reduced not only to the four days allowed in the Miner contract, but when the route is once established it can and should be still further reduced to at least sixty-five hours.

I have had frequent talks with General Miles in relation to this matter, and know that he thinks the increased service proposed is very important, and I believe it will be economical on the part of the Government to grant the increase asked.

He was saying to the Second Assistant that this is economical; it will not cost as much as the War Department paid for sending special messages, which left out the interests of the people, because they could not use these War Department couriers. "Now if you will put on this service," says Mr. Lounsberry, "it will not cost as much as the War Department has been paying for couriers, and then not only the War Department will be benefited, but all the people of this country will have the benefit of this service. Not only the settlers who have located themselves upon this battle-field and along the line of this route, but the people beyond," says Mr. Lounsberry, "will get the benefit of this service."

In all probability, too, the N. P.—

That is, the Northern Pacific—

will be extended next season—work in that direction may even be done this fall—and settlements will surely push ahead of their work. Carriers—

That should be Congress—

have already provided for a telegraph line, which should be supplemented by direct and frequent mail communication. A military post, at least a camp, will, no doubt, be established on the Little Missouri at the point where the railroad will, and where this route now crosses it. On looking at the matter from every possible stand-point the increased service asked for should be granted.

I am, sir, very respectfully, your obedient servant,

C. A. LOUNSBERRY,
Postmaster.

Now, gentlemen, Mr. Lounsberry is brought here as a witness in this case. He is a gentleman, as you can see. You have seen him. You

have heard him testify, and he tells you that he signed these petitions and also these letters in good faith, believing what they said to be true. But he says he was mistaken when he asked the department to reduce it to sixty-five hours in the winter time because of the extraordinary storms in that country, which rendered it impracticable at times to carry that mail.

In the face of such recommendations as that, in the face of the testimony of Miles and Maginnis and General Sherman and Lounsberry, and these petitions, which I might read to you in great numbers in addition to what I have already read, recommending the same thing and urging this with the utmost persistence upon the department—in the face of all this they ask you to condemn General Brady for having made the order increasing this to three trips and reducing the schedule to sixty-five hours.

Mr. BLISS. Do I understand you to say that there is any recommendation of expedition by General Miles anywhere, either in writing or on the stand? I undertake to say there is not.

Mr. WILSON. Now, gentlemen, is not that cutting it almighty fine? That is drawing a very fine sight on this case. How many times have I said that I take this testimony as showing the necessity for this service? Some of these men say, "We want expedition." Numbers of these petitions say, "We want sixty-five hours." Lounsberry says, "We want sixty-five hours." Lounsberry says, "I have had frequent conversations with General Miles upon this subject, and he thinks this thing ought to be done."

Mr. BLISS. Mr. Lounsberry says expressly "increase of service;" he does not say expedition. Look at the phrase carefully when speaking of Miles.

Mr. WILSON. I know he thinks the increase of service *proposed* is very important. What was proposed, gentlemen? That was the question. It was proposed to give three trips and sixty-five hours time. Now is it not cutting it pretty fine, is it not drawing a very fine sight on this thing, to undertake to play upon this phrase, "increase of service?" Why, before I got into this case, if anybody had talked to me about increase of service I should not have known that there was any such distinction, and when I said increase of service I would have supposed that that embraced the meaning "more of it." And that just applies, to the ordinary mind, as much to expedition as it does to multiplication of trips.

Mr. BLISS. Mr. Brady knew what it meant.

Mr. WILSON. Yes; I presume he knew what it meant. I presume when Lounsberry and Raymond and all these other people said that they wanted three trips and a sixty-five-hour schedule Brady understood that. I think he comprehended that. And when Lounsberry wrote to him that General Miles wanted the increase of service proposed, I supposed that Brady understood that to mean three trips and sixty-five hours.

But is not that very technical now, gentlemen, in a criminal case? Here is a public officer discharging a duty, pressed to make that service, and he looks about to see what is the best thing to be done, and he comes to the conclusion that these representations made by these people are true, and he makes that service what he thinks it ought to be made. Now, upon a technicality these gentlemen want to send that man to the penitentiary because increase of service, they say, only means multiplication of trips, and he ought to have understood that it only meant that, and not have given expedition.

I have read these things to you, gentlemen, for the purpose of showing to you that there was ample justification for the granting of that order. Now, after a while, after the three trips have been granted and the sixty-five hour schedule, then come these applications for a multiplication of trips, and they are granted. Recollect, Lounsberry told you how the mails grew as the service increased, showing, gentlemen, that as you increase the facilities you increase the communication between the people. And thus this mail system is the forerunner, the pioneer, not merely for the development of the material resources of the country, but it is the pioneer for the intelligence, the development of the mental qualities of the people, for the mails grow as you give facilities for carrying them. And if this Government ever does its whole duty to those people—and it cannot spend money in any better way than that—it will in that way foster and encourage the people in their own cultivation.

Mr. DAVIDGE. Had we not better adjourn.

Mr. WILSON. No, no; I want to finish this route.

The COURT. This is not the last route, is it?

Mr. WILSON. Yes; it is the last one. I am going to keep my faith with this jury and the court. I am not going to talk any seven days.

Mr. BLISS. He is managing to come within about five minutes of it.

Mr. WILSON. There is going to be some expedition in this case, gentlemen.

Mr. DAVIDGE. At any rate you are saying something.

Mr. WILSON. I made a remark or two in reference to the affidavit of Mr. Miner, and perhaps a little farther along I will have to take it up again, but I do not care to discuss it further at this time, as the afternoon is nearly gone.

I have called your attention to the usefulness of this route. They have another badge of fraud in this case, as they think, and what is it? They have read to you, I do not know how many times, the letter of Boone, in which he said that this route was not needed at all. No, no; they did not want this route; they wanted to get rid of it, gentlemen; they had taken it too low, and he wrote a letter, saying that that was an unsettled region of country, and the woods were full of Indians, and that the Government had better discontinue this route entirely. Now, they say, "Here is that letter of Boone's right here in the Post-Office Department, and yet Brady did not abandon that route, and inasmuch as he did not abandon that route, with Boone's letter just looking him in the face all the time, he must have been in conspiracy with these people."

Gentlemen, if he had discontinued that route and relieved these contractors from putting on that service, these gentlemen would have been in here saying to you, "Now, there they got hold of one that was not going to be profitable; they were going to lose money on that" (as they have lost \$40,000 or \$50,000), "and therefore Brady let them out of it, and that is another evidence of fraud." That is the way they would have argued this case then.

Now, what are the facts, gentlemen? Boone did want to get rid of that route. Miner wanted to get rid of that route. It looked like a hard bargain, and it proved to be a hard bargain. But Brady would not let them out. Here is a most remarkable state of affairs. Here is a conspirator, according to their theory, working against his coconspirator; his coconspirator wanted to get out and Brady holding him fast. Now, why did he hold him? Here is the best evidence in the world, gentlemen, that there was no conspiracy about this thing. General Miles and Maginnis had been to see him; Lounsberry had written to

him, and he knew that this was a service that was needed ; so he refused to let them out, but held them to their bargain. And then when he came to increase and expedite that route, if they had been allowed according to that affidavit they would not have more than got out whole.

Mr. BLISS. Which affidavit ?

Mr. WILSON. The affidavit in regard to one hundred and fifty men and one hundred and fifty animals. The fact in this case was that Mr. Miner was right about it, because if they had got the \$150,000 that that affidavit would have given them they would have come out about even, perhaps making a little money. But Brady would not give it to them on that affidavit. They deal with this case just as though Brady had made an allowance to them according to that affidavit. But he would not do it. Instead of that he cut them down about one-half, and they lost money largely in attempting to carry that route. And whenever they did not carry the mail on that route exactly according to the requirements of their contract, he fined them and imposed penalties upon them, and there is now a very large amount of fines and deductions imposed upon them by him that stand unremitted to this hour.

Mr. BLISS. Your honor, I desire to correct Mr. Wilson's statement as to Brady remissions. Every fine imposed, except for lost trips, during Mr. Brady's time was remitted by him. The evidence shows that ; that there were fines imposed afterwards to the extent of some \$13,000, and between \$11,000 and \$12,000 were not remitted.

Mr. WILSON. That is another instance of drawing a very fine bead in this case. Now, Colonel Bliss knows just as well as he knows anything that the fines that he is talking about were imposed just eight days after Brady went out.

Mr. BLISS. Yes ; by his successor.

Mr. WILSON. How was this thing done, gentlemen ? You know that all these reports come in from the postmasters, as I have told you ; that they go to the inspection division ; there the tables are made up, and these orders are made up and all that, and they come around in due course of time to the Second Assistant for his signature. Now, they are claiming credit for some things, when just after Brady had stepped out of the chair and another man had sat down, these things are brought in and that other man signed his name to it. That is the kind of stuff this case is made of, gentlemen of the jury.

Colonel Bliss has made a very neat mathematical calculation in this affidavit of Miner's about how many miles a horse would have to travel in a day if there were one hundred and fifty horses on that route. I have not had time to read that speech of his since he made it, and I may have misunderstood him. There is not much of it.

Mr. DAVIDGE. Very short.

Mr. BLISS. When you began you would not have said so, but now you have got up to about the same time.

Mr. WILSON. I am not up to you yet by forty-eight hours. Brief as it was, I have not had time to read it, but I understood him to make his calculation upon the hypothesis that one horse traveled by himself, and that every horse was engaged in carrying mails. Now, it so happened that two or three hundred pounds of mail are not carried with one horse, and it so happens that you cannot use all the horses on the route in carrying the mails, but more or less of them will get disabled, and more or less of them have to be used for other purposes than the mere hauling of wagons in which the mail is. They have to be used for furnishing supplies in that country. And at the time Mr. Miner made that affidavit there were no supplies in that country, and they had to

haul them long distances. But certainly it is, at any rate, a matter as to which men might differ in opinion. If you were going to calculate the number of horses that would be required to carry the mail over a route where there were no supplies, I think that most any one of you would say, "Well, I will have one to carry the mail, but I will have to have two to furnish me with provisions;" or, "two to carry the mail and one to haul fodder for them," and that will take three. It was upon that theory that Mr. Miner made his affidavit, and Mr. Bliss expected to startle you with figures, for figures are what they expect to knock you down with.

Mr. BLISS. Mr. Wilson, let me call your attention to the fact that the carrier himself swears that he started out with one horse with the mail and transferred it from a buckboard to a sleigh at the time he went over the route. That is Mr. Lambert; and another carrier swears the same way. It is on that basis that I took one horse when I made my calculation.

The COURT. Suppose there had been two horses. When you are making an affidavit for increase over a previous service I do not see that it makes any difference.

Mr. BLISS. But Mr. Wilson was referring to my calculation of how many miles each horse would travel in a day. If it took only one horse, of course it would be less than two or more horses.

Mr. WILSON. That shows how fallacious that was, and it only confirms all I have been saying about my brother. I would not say that he wanted to wilfully mislead you, but he has got a sort of jaundiced mind in regard to this; that is the trouble. He cannot see it like anybody else, nor can he see it in a reasonable way. He takes as a criterion the time when they started out with this service, running once a week and getting along on a mule.

Mr. BLISS. I fix it at the time the affidavit was made. I am talking about the time when Mr. Miner made this affidavit as to how many men and horses were then being used and how many would be used. I take the time as it was then sworn to and the number of horses that they swore they were then using in carrying the mail.

Mr. WILSON. Well, when they were carrying it with one horse they would hitch that horse to a buckboard and transfer it to a sleigh, and there was not much mail.

Mr. BLISS. Two sacks.

Mr. WILSON. Two sacks then?

Mr. BLISS. Yes.

Mr. WILSON. Well, let us have it two sacks, if you please. When you come to increase that and take four-horse coaches and make it a daily mail going through in sixty-five hours, that makes a very different thing. Has Mr. Bliss made any calculation on that basis?

Mr. BLISS. Yes; I made a calculation of how many miles a horse would travel.

Mr. WILSON. But he takes one feature of this case and presents it to this jury, and that is the trouble with this whole thing.

Mr. DAVIDGE. We had better adjourn now.

Mr. WILSON. I am ready to adjourn now, if it suits the convenience of the court.

Mr. BLISS. What ruling does your honor make about meeting tomorrow morning?

The COURT. I do not know but the present hours are about as convenient as any others.

Mr. BLISS. It is a matter for the jury, I apprehend.

Mr. GREENE (a juror). Some of the jurors have suggested that for the next three days it would be well to meet at 10 o'clock and sit till 12, then take a recess for half an hour, and then sit until half past 2, if that would please the court and counsel.

Mr. WILSON. I would just as soon take those hours as any other.

Mr. GREENE. Only for the balance of the week. I have talked to some of the jurors about it, and I do not know that there would be any objection raised.

The COURT. Then we will meet to-morrow morning at 10 o'clock.

Thereupon (at 4 o'clock and 12 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

WEDNESDAY, MAY 16, 1883.

The court met at 10 o'clock.

Present, counsel for the defendants, the Government being unrepresented.

Mr. WILSON. [At 10.10 a. m.] Shall I proceed, your honor?

The COURT. Yes.

Mr. WILSON. [Resuming.] If the court please, and gentlemen of the jury, permit me this morning, in further support of what I have said to you two or three times in the course of my argument, to read two provisions of the regulations. I will read them without comment, further than to say that they show that this mail is to be carried according to a grand scheme:

SEC. 414. *General duties of superintendents of mails.*—Where superintendents of mails are designated, they will have entire charge of the distribution and dispatch of all mails at such post-offices. They will see that the distribution of the post-office is done in accordance with the latest official schemes; that such schemes are kept corrected to date, as per changes issued by division superintendents; that case examinations of distributing clerks on the official schemes of distribution are kept up.

That is to be found on page 107 of the regulations. Now on page 105:

SEC. 385. *Distribution of mails by schemes.*—Postmasters will carefully distribute and make up mails by the official schemes which may be furnished them, and will conform to any changes that may be made in the same by the superintendent of the division, and will take up and exchange only such pouches as may be ordered by him. But such post-offices may be excepted from the requirements of this section as the general superintendent may direct.

I only read these to you, gentlemen of the jury, for the purpose of showing that the department has its scheme of distributing these mails through the country, and it is the business of the division superintendent to look after that branch of the work.

Now, gentlemen, I come to another feature of this case that has been much commented upon by the counsel for the Government in relation to this business, and that is the affidavits made by the contractors. I do not want you to be in any degree alarmed as to the time that will be consumed in examining this feature of the case. I could not properly pass over this feature of it, although I am to be followed by gentlemen who represent the parties who were the active parties in respect of these affidavits, and who will, I take it for granted, give special attention to that branch of the case. As my client is involved in this

matter of the affidavits, and as the affidavits were in a degree the basis upon which the allowances were made to these contractors in cases of expedition of service, I have thought that I could not do otherwise than give this matter some consideration. In the first place, gentlemen of the jury, in order that you may entirely understand the situation, I want to show you just what the regulations of the department were in respect of this subject as set forth and averred in the indictment itself. They aver in the indictment—and for the purposes of my argument I may accept that as being the truth—as follows, commencing on page 5:

[Mr. Bliss and Mr. Ker here entered.]

And that one William H. Turner was then and there a clerk of the said fourth class in the said office of the Second Assistant Postmaster-General, and was then and there employed and engaged in performing the duties of his said office of clerk in the said office of the Second Assistant Postmaster-General; and in obedience to the regulations prescribed by the said Postmaster-General, it then and there became and was the duty of him, the said William H. Turner, as such clerk as aforesaid, amongst other things, to attend to the said business in the said contract division of the said office of the Second Assistant Postmaster-General, relating to the mail service and carrying and transporting the mails of the United States on and over the several post routes in the States of California, Colorado, Oregon, and Nebraska, and Arizona Territory, Dakota Territory, and Utah Territory; and to mark and indorse upon all papers relating to contracts, allowances, and the said post routes in the said States and Territories, the true date when such paper was filed in the said office of the Second Assistant Postmaster-General, and to mark and indorse upon papers and orders made and filed in the said office, and relating to the said post routes in the said States and Territories, the true dates when such paper and order was made and filed.

This is what I particularly desire your attention to:

And whenever petitions, applications, letters, oaths, depositions, statements, and papers were received and filed in the said office, relating and pertaining to carrying and transporting the said mails on and over the said post routes in the said States and Territories, to mark and indorse upon such petitions, applications, letters, oaths, depositions, statements, and papers the true date when each was received and filed; and to wrap and inclose every such petition, application, letter, oath, deposition, statement, and paper in an envelope and cover, commonly called a jacket—

Now mark:

and to write and indorse upon the outside of every such envelope, cover, and jacket the true name, kind, and character of the paper so inclosed, with a true brief statement and description of the nature, subject-matter, and contents of every such paper so inclosed as aforesaid; and to arrange in proper and regular order, in separate packages and bundles, the papers received and filed in the said office relating and pertaining to each of the said post routes in the said States and Territories as aforesaid; and to receive, read, write, and prepare answers to letters and communications relating to the said post routes in the said States and Territories; and to write and prepare orders for allowances to be made to and deductions to be made from the pay of contractors engaged and employed in carrying and transporting the said mails on and over the said post routes in the said States and Territories aforesaid.

Now, gentlemen of the jury, they say in this indictment that that was the duty of the corresponding clerk and they say that that was the duty of Mr. Turner. He was to write a true brief statement upon the backs of these jackets; to carry on all the correspondence, to prepare all the letters, and prepare all the orders ready for the signature of the Second Assistant. Why is this, gentlemen? It is simply in order that the Second Assistant, having this enormous amount of business upon his hands, should have the whole thing stated truly and briefly upon the back of this jacket, so that he would not be required to perform what Mr. James has called an absolute impossibility, to wit, the reading of all these papers. The very scheme of the organization of this department was to have somebody whom they could trust to look into these details and to write out in brief just as you have seen written out in

brief on an endless number of these jackets, I might say, a true statement of the contents, so that the Second Assistant in casting his eye upon a jacket would know the true contents of the jacket. Gentlemen of the jury, you have seen these jackets; you have heard the contents of these jackets read. There is not a man on the face of this earth who would have the courage to stand up before this jury and say that Mr. Turner made any false statements on these jackets of the contents of these papers. I say that much by way of vindication of Mr. Turner, although he needs no vindication, because already he has been vindicated by a jury of his country.

Mr. KER. We asked them to do it.

Mr. WILSON. They asked them to do it. Yes, gentlemen, after they had stained the name of Mr. Turner. After they had driven him in disgrace from his office by making false accusations against him. After holding him for three months and a half before a jury and before the country, proclaiming him as a criminal then they came in at the last hour and asked the jury not to find him guilty, but to find him not guilty, and my Brother Ker seems to be claiming it as a merit this morning. These gentlemen knew during all those long months they were doing this thing that there was not any evidence against Mr. Turner.

Mr. BLISS. Your honor, I submit that Mr. Wilson has no right to make that statement. He charges us with having retained Mr. Turner in the indictment when he says we knew during the entire period that there was no case against him. I submit that that is not true in fact, and that there is no ground on which he can make that statement to this jury.

Mr. WILSON. I say it is true, and I say it is true in the face of this jury, because, gentlemen of the jury, you have heard the testimony—

Mr. BLISS. [Interposing.] Your honor, I submit that this is not proper.

The COURT. [To Mr. Wilson.] Stop. When counsel are interrupting for the purpose of an objection, counsel addressing the jury ought to stop to hear it.

Mr. WILSON. I did stop to hear it and was answering it. He said it was not true in fact, and I was proceeding to answer it.

The COURT. An appeal was made to the court.

Mr. WILSON. I thought he was through.

The COURT. Of course in the heat of argument a man sometimes goes on before his time. I think that you have no right in addressing the jury to say that the counsel on the other side knew there was no case against Turner. We cannot speak of what men know. They are presumed to act in good faith.

Mr. DAVIDGE. I suppose he might go this far: that if they knew anything, they knew that.

The COURT. No.

Mr. BLISS. Your honor, I submit that he has no right to go into the Turner business at all. It is not before this jury. There is no evidence on the subject before this jury. He was discharged from this indictment before this jury was impaneled.

Mr. DAVIDGE. He was acquitted.

Mr. BLISS. By a request of the counsel for the Government. While there were exceedingly suspicious circumstances, still counsel did not think that on their oaths they could ask a conviction. All that is out of the question, and whether counsel knew, or anything of that sort, I submit they have no right to go into here before this jury. All they

can say is that Mr. Turner has been discharged from this indictment. The circumstances, I submit, they have no right to go into.

Mr. DAVIDGE. I understand that the record is an item of evidence in this case. The fact that Turner was indicted and the jury found a verdict of not guilty is in evidence here.

Mr. BLISS. Yes.

Mr. DAVIDGE. Now, as to what they knew, I am the last man in the world to undertake to define that. But I think, if anybody knows anything, assuming that their evidence this time is not very different from what it was at the last trial, it may well be predicated of them that they must have known.

The COURT. They are not on trial as to what they knew or what they did not know.

Mr. DAVIDGE. The spirit of the prosecution is on trial.

The COURT. The record in the former case is not in evidence on this trial.

Mr. DAVIDGE. It has been distinctly given in evidence.

The COURT. The whole record?

Mr. DAVIDGE. The record about Turner.

The COURT. The evidence?

Mr. DAVIDGE. Not the evidence. That is no part of the record.

The COURT. What you call the record probably is the act of the court in regard to some particulars; but what in common and latitudinous meaning we call the record, in this case embraces the evidence, and so I say the record in the former case is not in evidence here.

Mr. DAVIDGE. I admit it. I never said it was.

The COURT. What we have here does not embrace the evidence.

Mr. DAVIDGE. Still it is the same case.

The COURT. It is undoubtedly true that it appears that Turner was indicted. That appears on the face of this indictment. It also appears that he was acquitted.

Mr. BLISS. Yes, sir.

The COURT. That is all there is in evidence in regard to that. Now, we are not trying Turner again. The prosecution have not given any evidence in this case, and will not be allowed to give any evidence in this case against Turner. So that you cannot go further into the matter than merely to remark, if you choose, that Turner was indicted in this case, and that he was acquitted at the former trial. Whether counsel knew anything of that kind is entirely beyond the line of argument.

Mr. WILSON. Your honor, if Mr. Ker had not interrupted me I would not have gone a shade outside of the record and outside of what I think your honor will consider to be perfectly legitimate argument in this case. Now, let us see. I read to you, gentlemen of the jury, a portion of this indictment. Turner is part and parcel of the indictment, although he had been acquitted. What was the scheme of the indictment? They there say that Turner was to make true brief statements upon the backs of these jackets. I am arguing to you that there is not the slightest evidence here that anything other than true brief statements were made upon the backs of the jackets. Is that within the line of argument? They have not pretended in this case that anything but true brief statements were made upon the backs of these jackets.

The COURT. Very well.

Mr. BLISS. On that point we raise no question of their right of argument; but we say there is evidence on that subject, and they need not go any further than the Bismarck and Fort Keogh route to find it.

The COURT. There is nobody on trial for that.

Mr. BLISS. We make no objection to the argument.

Mr. WILSON. Very well. He says there is evidence that the brief statements were not true. I submit the question to you to decide whether there is any such evidence as that. But, gentlemen of the jury, I care nothing for that. As Mr. Davidge suggests, the verdict settled that question in the former case.

Mr. DAVIDGE. That is in evidence.

Mr. WILSON. That is in evidence in this case. That is settled. Mr. Turner was to make these true brief statements, and these brief statements were made upon the backs of these jackets. What were these true brief statements to contain? The contents, in substance, of what were inclosed in these jackets, and among them were the affidavits. What was that done for, gentlemen? It was, as I said a moment ago, to avoid the necessity of the Second Assistant taking up these papers and reading them in detail. I present that to your consideration for the reason that they have made an argument here that we ought to have taken not only all these petitions, but all these affidavits and held them up to the light as these gentlemen have held them up to the light before you.

Mr. DAVIDGE. That we ought to examine them with a microscope.

Mr. WILSON. Somebody had to be trusted, said Mr. Postmaster-General James. Somebody had to be trusted in this matter. The trusted subordinates were selected not by the Second Assistant Postmaster-General. They were appointed by the Postmaster-General to do this work. The work of the Second Assistant was to take these jackets and these brief statements and make the orders as he saw proper to make them. I say this much, gentlemen of the jury, for the purpose of showing to you that in the very nature of things, in the very nature of the organization of that office, in the very nature of the distribution of the duties and work in that office, General Brady was not called upon to scrutinize every one of these papers just as you have been called upon to scrutinize them on the trial of this case. The regulation provided for affidavits. Complaint was made that Brady accepted these affidavits. These affidavits were certainly to be considered. They say he ought not to have accepted them; that he ought not to have taken these affidavits; that he ought to have gone beyond these affidavits; and that if he did not resort to some other mode to find out whether they were true or not he is to be held criminally culpable. The very fact that the regulation required affidavits and provided for affidavits shows they were to be considered. It would have been simple and foolish to have made such a regulation if those affidavits were to be absolutely ignored and no attention paid to them by the Second Assistant. Why make such a regulation if they are to have no weight, and if they are to have no consideration? It would be a very strange thing, gentlemen of the jury, to make a regulation requiring a contractor to make an affidavit on a particular subject, and then turn around and treat that contractor and all contractors making affidavits as a pack of liars. And yet that is the logic of this case. General Brady has told you he did not see fit to do that; that he took it for granted that they were honest men and were stating in their affidavits what they honestly believed. But he was not governed, as I will show you presently, exclusively by these affidavits or controlled exclusively by them. There had to be some guide in this business. The Postmaster-General adopted this affidavit system. Whether he adopted it wisely or unwisely is not for you or me to consider. He adopted it as a guide in respect of this

matter. He made the regulations. Gentlemen, how was this thing done before? The court put that question to me some days ago at a moment when I was not prepared to answer it. I have the answer here. I almost fear to use it lest I may be accused of going outside of the testimony in this case. General Brady, in his testimony, on page 3391, speaks of the subject, and refers to the document I have before me which accompanied the report of the Postmaster-General to Congress for the year 1881:

Practically, when I went there, the same system was pursued that was adopted by myself. The rule had not been written out and put in the regulations—

That was in 1876—

but it was the same. There was one instance—I do not know but it was Mr. Tyner' who had some queer notions, and he took into consideration the amount of soap, and candles, buckets, harness, and so forth. But I know of but one instance of that kind that obtained before I went there. I know that practically the rule was the same as was afterwards put into the regulations published a year or so after I came there. I adopted the rule, as a matter of course. I did not see any better rule to adopt then, and I know of no better rule to adopt now.

If there is any objection to my showing how it was done before I will not do so. It is not in evidence. It is part of the Postmaster-General's report.

Mr. BLISS. You had better not go out of the record.

Mr. WILSON. It is an official document.

Mr. BLISS. I raise the question because there is in some one of the reports made during this *régime* that we are reviewing, a statement which I am satisfied myself, by a personal examination of the record, is an incorrect statement. I therefore object to going outside of the record.

Mr. WILSON. This is an exhibit to the Postmaster-General's report.

The COURT. It does not follow that every exhibit to the Postmaster-General's report is evidence. If it is competent evidence, then it is admissible on the report. It need not be proved except the truth of the document. But, this is objected to.

Mr. BLISS. If that is all that he refers to—the particular page or two pages he has before him—I will not make any objection. The matter is not in evidence, but I will not raise the point.

The COURT. Then you can read it.

Mr. WILSON. Now I will show you how they did it:

TAMAWA, ILL., January 8, 1876.

DEAR SIR: In compliance with your request for a detail of cost beyond a mere statement of increase of stock and carriers necessary to expedite the schedule on route No. 31187, from Austin to Fredericksburgh, I herewith submit the same.

Respectfully, your obedient servant,

J. C. KIMZEY.

Hon. J. N. TYNER,

Second Assistant Postmaster-General.

Estimated cost of carrying the United States mail on route 31187, three times per week, from Austin to Fredericksburgh, Tex.

ADVERTISED SCHEDULE:

Four two-horse teams, eight horses:

Feed, \$20 per month.....	\$1, 920
Shoeing, \$1.25 per horse per month.....	120
	————— \$2, 040

Two drivers:

Pay, at \$35 per month.....	840
Board, at \$20 per month.....	480
	————— 1, 320

One stock-tender:

You see they put in not merely the carriers, but the stock-tenders.

Pay, at \$25 per month.....	300	
Board, at \$20 per month.....	240	
		540
Ferriage		120
Soap, buckets, &c.....		50

CAPITAL.

Eight horses, \$125 each.....	1,000	
Two hacks.....	400	
Four sets harness.....	100	
	1,500	
Interest, at 10 per cent.....		150
Wear and tear, 15 per cent.....		225
		4,445

TWENTY-FOUR-HOUR SCHEDULE.

	Per annum.
Five four-horse teams (twenty horses), feed.....	\$4,800
Shoeing, \$1.25 per horse per month.....	300
Three drivers:	
Pay, \$35 per month	1,260
Board, \$20 per month.....	720

Three stock-tenders:

Here you have the stock-tenders again.

Pay, \$25 per month.....	900
Board, \$20 per month.....	720
Soap, buckets, candles, &c.....	80
Ferriage	200

CAPITAL.

Twenty horses, \$125 each.....	\$2,500	
Three coaches, \$450 each.....	1,350	
Five sets four-horse harness.....	250	
	4,100	
Interest, at 10 per cent.....		410
Wear and tear, 33 $\frac{1}{3}$ per cent.....		1,366
		10,756

James C. Kimzey, being first duly sworn, doth state that from expenditures actually made, and other information believed by him to be reliable, the foregoing estimates are true to the best of his knowledge and belief.

J. C. KIMZEY.

Sworn and subscribed to before me this 8th day of January, 1876.

B. G. ROOTS, *Notary Public*.

That is the way Mr. Tyner did it.

The COURT. Did Tyner accept that affidavit?

Mr. WILSON. They give it here as being what was done.

Mr. BLISS. That was an affidavit annexed to a report of Mr. Gibson published in the Postmaster-General's report of last year, not as a part of the report, but as a report made to the Department of Justice. The Department of Justice having declined to publish it, it was put in there.

The COURT. It seems to be an affidavit of the contractor, and I do not know what the department did with it.

Mr. BLISS. I do not know, sir.

Mr. WILSON. I am only giving it to you for the purpose of showing how this thing was done when Mr. Tyner was expediting. He asked the contractor for a more detailed statement than he had before him.

The COURT. Did he give the contractor all he wanted?

Mr. WILSON. I do not know. I have not gone into that particular case. I do not give it for the purpose of showing he gave all the contractor wanted. I only give it for the purpose of showing how they got at this thing, and what elements they regarded as being proper to be taken into consideration.

The COURT. But the affidavit of the contractor does not show that. You must have some action of the department to show that that was their practice at that time.

Mr. WILSON. The letter transmitting this statement says:

In compliance with your request for a detail of cost beyond a mere statement of increase of stock and carriers necessary to expedite the schedule.

Now, he had made a statement of the increase of stock and carriers necessary to expedite the service, I presume, just as General Brady said was the practice, and just as this regulation provided, and Mr. Tyner asked him for a more detailed statement, and when he got that detailed statement he simply got a detailed statement by the contractor under oath. I only present it for the purpose of showing that they were relying upon the statements of the contractor. They had no other means of doing it. They had to rely upon the statements of the contractor. How on earth could the Post-Office Department get at this thing in any other way unless they had a horde of men at their command to travel about the country and make these investigations? But I will show you in a moment that General Brady had a check upon this thing. Mr. Tyner adopted the rule I have referred to for the purpose of informing himself. Evidently in that case the contractor had filed the usual affidavit as to the number of men and horses. This letter shows that he had done that. Mr. Tyner asked him for a more detailed statement, and he gave this more detailed statement just as he could have given it to him if he and Mr. Tyner had been sitting down at the table together and if he had picked up this affidavit. "How do you get at this?" "I get at it thus and so. It will require so many men to drive, so many horses to do the work, and so many stock tenders. It will require an expenditure of so much in the way of feed, blacksmith's bills, and all that sort of thing," setting down all the items before him. That is the way the contractors got at the thing, gentlemen of the jury, before Mr. Brady went in there and the way they got at it while he was there, and the way, I presume, that they get at it now, although I do not know about that.

Mr. BLISS. If Mr. Wilson desires, I will make no objection to having brought in in the morning from the Post-Office Department the entire record in that particular case and we will see just what was done. I never have seen it and do not know.

Mr. WILSON. I haven't either. Gentlemen, I am not arguing that question. I am only showing to you how they get at this thing. That is all. They are complaining of us because we followed the regulation that was made by the Postmaster-General. That is what they are complaining about.

Mr. BLISS. My point is that you were claiming that there was another affidavit presented. I do not know whether there was or not.

Mr. WILSON. No. I simply read that letter to Mr. Tyner from the contractor, in which the contractor refers to the fact that he had furnished a statement in accordance with the regulation.

Mr. BLISS. I understand you to say you declined to agree to the suggestion of having the papers sent for and brought in?

Mr. WILSON. I do not want to try that case.

Mr. BLISS. We have no right to ask it and do not ask it.

Mr. WILSON. I do not know anything about the facts. I do not know whether that was too much or too little, or anything about it. I am only showing to you how the matter was done. I would not even have referred to it if his honor had not called my attention to it the other day. Now, gentlemen, I think I need hardly argue to you further than I have already done in regard to this matter that the question of the number of men and horses that are necessary to carry the mail on a particular schedule, and the number of men and horses necessary to carry it on a proposed schedule, is a question about which men would differ. It is a question about which there can be no mathematical accuracy. You cannot tell. It depends upon the roads. It depends upon the facilities with which you can get supplies. It depends upon the country through which the route goes. There are many contingencies about it, and just because of these contingencies you cannot get at it with mathematical accuracy. It is, more or less, an estimate. They have, as I have before said, attempted to show to you that these affidavits stated the number of men and animals too low or too high, as the case might be, by showing what some subcontractor used. That is not the test, gentlemen. It is not what some subcontractor used who was trying to perform the service as cheaply as he could and did not perform it. That is not what was called for under these regulations. The contractor was required to state under oath the number necessary; not necessary for one month or two months, or three or four or six or twelve months, but for four years or for the life of that contract—whatever the life of the contract might be. Will you point me, gentlemen of the jury, to one single witness who has testified here as to the number of men and animals that were necessary to carry that mail—necessary to carry it so as to perform the service according to the contract? What witness have they brought here to testify as to that? They have brought you, I grant, many witnesses—men who drove the wagons or rode the horses, or had the subcontracts, to prove to you how many they used; but not one of them that I can now recall to mind has testified as to how many were necessary. In every case, as well as I can now recall the testimony to mind, when they testified as to how many they used, they were compelled to testify that they did not carry the mail according to contract. That proves that their testimony is not sufficient to show how many were necessary. Upon that kind of testimony they want you to find that these affidavits were false in their statements. You cannot do that, gentlemen of the jury.

Now they say that Brady accepted these affidavits as true. He says that he did not treat the men who made the affidavits as rascals. He says that he treated these affidavits as having been made by men who honestly believed that what they stated was true. But was he guided by those affidavits solely? Did he have no check upon them? Did he blindly accept these affidavits? No, gentlemen, unless you utterly disbelieve him. Why? He says that from his observation, from the information that he had acquired, he had ascertained that it was worth about \$30 a mile for good service in that region of country. Now, of course, the

cost of the service in different regions of country will vary; but in that country, a new country, a country being developed, he had learned, after his own way, that it was worth about \$30 a mile for good service.

The COURT. What do you mean by good service?

Mr. WILSON. Efficient service; service running about four miles an hour, is what he says.

The COURT. How many times a week?

Mr. WILSON. That would depend upon——

The COURT. [Interposing.] One price per mile would be good compensation for once a week, but it would be very inadequate compensation per mile for six or seven times a week.

Mr. WILSON. Certainly. The \$30 a mile was for once a week during the year.

The COURT. That is what I understand; for once a week.

Mr. WILSON. Yes; \$30 a mile for once a week.

The COURT. What expedition?

Mr. WILSON. He thought about four miles an hour was the proper speed to run the mails through that country. Of course you cannot make every mail route run at exactly the same speed.

The COURT. Nor at the same time of the year.

Mr. WILSON. Of course you cannot. As a general rule they make the schedules running the whole year through in the same way. In one or two cases they had a practice of making a longer schedule in the winter and a shorter one in the summer, but there is no such case here where they had a summer and winter schedule. That grows out of the condition of things, the character of the country, the climate, &c., through which the route passes.

Now, he says that was his guide. When a contractor filed an affidavit which did not conform substantially to that rule, what did he do? You find all through this case that he refused to allow them according to what they had stated in their affidavit, and he required them to come down, and he made a special bargain with them, allowing them in the neighborhood of \$30 a mile, according to the particular circumstances of the case. Some of them were as low as \$22, and some of them went above \$30 a mile. That was the test he applied to those affidavits. You may say it was not the best test, gentlemen, but the regulation, mark you, provided for the affidavits. Now, he put a check upon these affidavits by ascertaining what he regarded as being a fair compensation per mile for the service, and he applied that test to these affidavits and determined upon the amount that he would allow by virtue of that test and the affidavit, or in connection with the affidavit.

Now, gentlemen, they may say to you that \$30 a mile was too much. If it was too much, they ought to have proved it. They ought to have proved by somebody that \$30 a mile, or the range that he has given you here, was an exaggerated amount to pay. That is a thing that is susceptible of proof, and they ought to have proved it.

But they say, gentlemen, that these affidavits were altered, and he ought to have known it. Now, assume, for the purposes of this argument that I am making to you, that they were altered, just as these gentlemen say they were, and that they were sworn to in blank just as these gentlemen say they were, and that the numbers of the men and animals were put in after they were sworn to. Then what? Have they proved to you by any man, have they brought to you a witness, have they brought to you a circumstance that indicates that General Brady had any knowledge of that fact whatever. I defy these gentlemen to point to a syllable of testimony in that direction. Here, as I have

shown you, by reading from this indictment this morning, was a man whose duty it was to put those affidavits in a jacket and to make an indorsement upon that jacket and present it to General Brady; and you know from the regulations and the course of business in that department that not one of these affidavits or papers ever came to General Brady until it had first gone to this corresponding clerk. Such papers make their first appearance before General Brady when inclosed in the jacket with this true brief statement indorsed upon it. Does not that show to you, gentlemen of the jury, that he never saw those affidavits until they came to him regularly sworn to and inclosed in that jacket? How did he know that a blank had been filled up, if it was filled up as these gentlemen state? How did he know that an affidavit had been changed, if it was changed as these gentlemen say it was? You will see, gentlemen of the jury, that, from the very nature of things, it was impossible for him to know it. When it came to him, it came to him wrapped in this jacket with this true brief statement upon it. Now, why should he take out an affidavit to see whether or not it had been changed? Mr. Turner or Mr. Brewer had made that true brief statement upon it, and what does it show? It shows upon the face of it that the contractor swears that it required so many men and horses on the existing schedule and so many men and horses on the proposed schedule. What necessity for him to open that jacket and hunt out that affidavit to see whether that corresponding clerk had stated the truth about it.

Mr. BLISS. Mr. Wilson, do I understand that you claim that there is any jacket in this case which states on the outside the number of men and horses?

Mr. WILSON. If I had one of the jackets I would show it to you.

Mr. BLISS. I do not think there is one that states it.

Mr. WILSON. My recollection is otherwise, but I do not care about that, gentlemen of the jury. Let us take it upon his hypothesis, and see how this thing will work out. There is stated upon the back of the jacket the amount of the present pay, and the amount that would be required under the proposed schedule. It is the duty of the corresponding clerk to make that calculation. He makes that calculation upon what basis, gentlemen? Why, upon the basis of the affidavit, does he not? Now, why should General Brady look into that jacket and get out that affidavit to see if the corresponding clerk had carefully and properly done his duty, which was to make a true brief statement? In the nature of things, gentlemen, you know, from the manner in which this business is done and from its magnitude, that he would rely upon the brief statement that was made upon the back of that jacket, as he had a right to rely upon it. And, therefore, I say it is conclusive that General Brady never knew that there had been any affidavits sworn to in blank and afterwards filled up, or any affidavits changed, even if the fact be as they claim.

But even if he had taken out the affidavit and looked at it, then what? Why, they say he would have seen here that in certain places the number of men and animals was filled up in a different ink, evidencing that it was not written at the same time when the body of the affidavit was written. Well, now, suppose he had seen that; suppose he had opened it, looked at it, and seen that; I will venture to say that there is not one man in a thousand who would suppose that that had been filled up after it was sworn to in blank. Why, gentlemen, he had a right to rely upon the integrity of the officer before whom the affidavit was sworn to. Here is a notary public or a clerk of the court

who affixes his certificate to the jurat that this affidavit was sworn to before him on a certain day by a certain man, and he puts his seal of office to it. Now, that imports verity at least; *prima facie* that is true. But they say now that General Brady ought to have suspected that officer of having certified to a lie. I say that he had a right to rely upon it. Are you going to presume wherever you see a paper with a word interlined, signed and sealed by somebody and acknowledged before some public officer, that that must have been interlined after it was signed? Or will you presume that it was interlined before it was signed? Why, certainly you will presume that it was interlined before it was signed. If you were a public officer acting upon that paper I do not believe that it would be an evidence that you were doing a criminal thing because you did not suspect, and act upon that suspicion, that it was interlined before it was signed. If General Brady had taken out these affidavits and looked at them and seen all this in them he could, with the utmost propriety, have supposed—and he could have acted upon that supposition—that that paper was then in the exact condition that it was at the time it was sworn to before the officer whose certificate was attached to it.

Gentlemen, I deny that these affidavits were sworn to in blank. I say the evidence is not sufficient to establish it. I admit that Rerdell swore to it, but I deny that that proves anything. I admit that there was one affidavit, that of Perkins, that is proved to have been sworn to by him in blank; but I say that the evidence in this case shows—and I do not think anybody will ever, successfully at least, dispute it—that that affidavit was not used, but another affidavit was used instead.

Mr. BLISS. Brady told Congress it was used.

Mr. WILSON. Well, gentlemen, Congress asked him for those papers——

Mr. DAVIDGE. [Interposing.] Your honor, I object to these interpolations during the argument. I recollect that when we interrupted Mr. Bliss in opening this case he became very much irritated on one or two occasions.

The COURT. I think the interpolation was out of order; but where counsel are misstating the evidence——

Mr. BLISS. [Interposing.] I have endeavored to confine myself to that. He says nobody will claim that that affidavit was used. I stated that we claim that Brady told Congress it was used. I have confined myself strictly in my interruptions to cases where there has been a misstatement of the evidence; at any rate I have meant to.

The COURT. That is an additional fact; it is not a correction of the statement that he was making.

Mr. WILSON. The evidence in this case shows that that affidavit was not used. Do you deny that? Do you claim that it was used?

Mr. BLISS. I claim that Mr. Brady said to Congress that it was used, and then I say in fairness that there are some indications from the calculations that the other one was used.

Mr. WILSON. The calculation is what settles it, and Mr. Bliss knows that that calculation settles it, because the calculation is made upon the basis of an affidavit, and the calculation was not made on the basis of that affidavit, and that settles that.

Gentlemen, they could prove without any trouble that the Perkins affidavit was sworn to in blank. Why did they not prove it as to all of these others? Mr. J. S. Taylor was the notary public down in New Mexico who took the affidavits of Peck that he swore to there. Wainwright took the affidavits of John W. Dorsey in Vermont that he swore

to there. And here was Kellogg right here in Washington who administered the oath upon some of these affidavits, and if they were sworn to in blank, Kellogg was right here and could have proved that fact. There was no necessity for swearing to them in blank before Kellogg, because he was right here, and he could have inserted the number of men and animals. It would have been an easy thing for these gentlemen, if these affidavits had been sworn to in blank, as they say they were, to have brought those gentlemen here and proved the fact, just as they did in the Perkins case. But they did not do it, and the fact that they did not do it is sufficient for our purpose in this case, and sufficient to warrant me in saying that it is not true, or they would have proved a thing so easily proved as that.

But they say that on these affidavits the number of men and horses was filled in at a different time from the body of the writing. I admit, gentlemen, that as to many of them that is evidently so. I think there is no doubt about it, and anybody looking at them can see it. You will find, for example, where an affidavit is written out, and then you will find the number of men and animals written in in a different ink. That is shown right upon the face of it. I think, however, that I can give you a very consistent reason why that is so, and I think I can show you how that is absolutely consistent with entire integrity upon the part of Mr. Miner and everybody else who had anything to do with it.

As I said a while ago, this matter of ascertaining the number of men and horses necessary is one of calculation. Suppose you are going to put in an affidavit as to the number of men and horses. That being a matter of calculation, it would be perfectly natural—nothing unnatural or suspicious about it—for you to sit down and write the body of the affidavit and then take up a pencil and piece of paper and calculate how many are necessary on this branch of the case, and then how many were necessary on the other branch of the case, and then perhaps consult with somebody about it. If it was Miner and Vaile, they would discuss the matter with each other as to how many were necessary. Why, gentlemen of the jury, just such things as that happen throughout all the business affairs of life. After they had settled upon how many would be necessary for the one and for the other, then they would fill in that blank and swear to it. So you see, gentlemen of the jury, that in that way these contractors might have prepared, and most probably did prepare, these affidavits; or, after having prepared the affidavits and fixed the number of men and animals, they may have concluded that they had got it wrong, too much or too little, and erased a word and put in another. If they were going to carry on a scheme of fraud, you would not have found these things in these affidavits. They would have been as clean as a ribbon. There would have been no interlineations and no erasures. Everything would have been done up in apple-pie order, as we sometimes say. But, the very fact that you find these affidavits in the condition they are is an indication to my mind that it was not a scheme of fraud that they were in, but that they were endeavoring to ascertain what was the truth, and then to make these affidavits as they conscientiously believed the truth to be.

A portion of what I was going to say in regard to this matter I am going to pass over, simply because I know I am taking too much of your time, and I want to pass on.

Now, gentlemen, I have gone through with these routes, one by one, and called your attention to them, so far as any acts of General Brady are concerned, and so far as the evidence relating to the necessity or propriety of the service is concerned. I have not troubled you with the

orders permitting subcontracts to be filed or withdrawn, for it seems to me they cut no figure in this case. Nor have I troubled you with orders directing change of address. I have not dealt with those things in any detail, nor do I propose to. I have attempted to show to you that every one of the orders made is entirely consistent with innocence of this accusation, and if they are, then the law settles it that they are not adequate to establish guilt.

I trust you will not forget that the offense charged in this case is a conspiracy; that these parties combined, confederated, and agreed together to defraud the United States.

I have referred you already to the operations of the department as to fines and remissions. I have already called your attention to the mail bills, the introduction of which was at the suggestion of General Brady, for the purpose of seeing that these parties performed the service as their contracts as expedited required.

You have here this remarkable situation of things: General Brady, who is charged with having conspired with these parties, devising means by which he should catch the men with whom he is alleged to have conspired in failing to discharge their duty in respect of the matters as to which they say they conspired. Now, gentlemen, very naturally, if there was a conspiracy, you would expect that there would be no fines and deductions made, because that would be taking money out of their pockets instead of putting it in. Brady, however, relentlessly imposed fines and deductions. And not merely that, gentlemen, but we have produced to you here on the defense case after case where he refused to make remissions of deductions that had been made.

I want to call your attention now to what they say about these fines and deductions in the indictment. One of the means by which they allege that this conspiracy was to be carried out was that Thomas J. Brady fraudulently refused to make deductions from the pay of these other defendants for failures to perform services in accordance with the contracts and agreements. They say that a part of the means was that he was to refuse to make deductions. Have they proved anything of that kind, gentlemen? Have they shown you a case where he refused to make a deduction when it came to him through the inspection division? Not one. But, on the contrary, all the testimony in this case shows that that averment in the indictment is absolutely and unqualifiedly false.

Now, gentlemen, I repeat that I have gone through with these acts of General Brady to show you that you cannot extract from them proof of conspiracy, and thereby to show you that if the Government has got any case against him it must be found elsewhere.

The prosecution must prove much more than these orders. They must prove that those acts that were done by him were done from corrupt motives; that he did them for personal gain, and not from such considerations as I have been presenting to you.

Now, gentlemen, I am strongly sustained in this and in all I have said, as I think, by what the court has said, and in proof of that I read to you from page 3264 of this record:

The COURT. I probably was a little hasty when I said there were two objections to this paper, one of them being that it was not within the time laid down, and the other being that it could have no influence on the question. In regard to the second point I had not fully considered it. Since then I have recurred to a certain line of authorities and principles which I think make this paper competent evidence. At this stage the court cannot assume that the Government has established fraud at all. That is the question we are trying. The motive of the Second Assistant Postmaster-General is very important matter in the issue we are trying. It is everything.

* * * * *

I cannot say that a man charged with a crime can prove himself innocent of that crime by proving that he has not been guilty of another crime. That, of course, cannot be done. But where the evidence is in the same line of business, the same kind of transaction, and the act offered to be proved tends to throw light upon the motives of the party in doing the act he is charged with doing, I think it is competent evidence, although it may be subsequent to the commission of the other act. On the ground, then, that it may throw some light upon the motive of the Second Assistant Postmaster-General I think it is admissible.

Now, gentlemen of the jury, as I said, these orders, in and of themselves, every one of them, are in the direct line of the lawful duty of the Second Assistant Postmaster-General. They say he ought not to have made them. I say that they were orders that he was called upon either to make or to refuse to make, and he had to decide. He made them. They say that they were fraudulent orders. They say they were corrupt orders. I say that they must prove that, not by the orders themselves, but they must prove that that motive was a corrupt motive, and they have to prove that, gentlemen, beyond a reasonable doubt. At page 4745, Mr. Ker, in his speech, said :

It is true we have not been able to show by anybody that money was actually paid to Thomas J. Brady.

They recognize the importance of showing, and they have been attempting to show, that somebody paid money to Brady. It is the testimony touching the question whether any money was paid to Brady that I now propose to consider.

In the line of, and as a part of, my argument to you, and for the purpose of showing to you that at least I am very strongly supported in my views of this case, I want to read you part of what the court said at the former trial, at page 979 :

The COURT. In the progress of this trial, I have seen piles of petitions from men of the highest standing in the country, official and otherwise, to the Post-Office Department for increase of service and expedition upon these routes. Now, looking on the face of those papers, I cannot see anything to condemn in the conduct of the Second Assistant Postmaster-General in complying with these petitions. He is not to be supposed to have gone over those routes himself, but he acts upon the petitions before him as a public officer must in all cases. You have not brought home to him any facts, so far as I can remember, to show that in ordering these expeditions on these routes and the increase of service, he acted from any improper motives, because he is backed by these petitions from gentlemen of the highest position in all quarters of that country, and men presumed to be acquainted with the routes, and with the improvements and industries that are springing up in this new country. If I had seen that there was anything in the evidence to bring home a reasonably strong suspicion of improper motive on the part of the Second Assistant Postmaster-General, I should not hesitate to go further into this and investigate it. But there is no evidence of that kind ; the contracts are apparently sustained by petitions, and the petitions justified the Postmaster-General in doing what he did.

Now, gentlemen, I only refer to that for the purpose of showing to you that the Government in proving this case must go farther than the proof of these orders. They have got to bring proof that Brady acted from corrupt motives. And it is simply because they have to produce evidence of that kind, gentlemen of the jury, that they have brought here the testimony of Walsh, of Rerdell, of Cable, and McLellan, all of which is intended to establish to the satisfaction of this jury the alleged fact that Brady did receive money from these contractors who are alleged to be co-conspirators with him. That is the purpose of that testimony. That is the reason that is brought here. And now I propose, gentlemen, to examine that testimony, and see whether or not that, in connection with the other testimony in this case, shows that these contractors, the co-defendants with General Brady, paid him money for these orders ; and I will take up these witnesses now in the order I have named.

First. I want to consider the testimony of John A. Walsh. Now, you will remember, gentlemen, that the question is, does the testimony of these witnesses prove that these contractors paid money to General Brady? For motive is the great question in this case. Did he make these orders in the honest discharge of his duty as Second Assistant Postmaster-General, or were they bought from him with a price? Now, Mr. Walsh testifies, and what is his story, gentlemen of the jury? He says that there was an interview between him and General Brady over at Sheridan's room. He says that he wrote a note to General Brady asking him to meet him there. And these gentlemen made a great deal of noise over the fact that we did not ask Brady anything about that note. That is not a material thing in this case, gentlemen. They met there frequently; there is no doubt about that. Brady says it was a sort of general rendezvous for those parties; whether they met on that particular day or not he does not know. The note asking him to come there was a matter of no consequence. They met there frequently. The note says nothing about what the meeting was for, and whether they met pursuant to the note, or casually, or by verbal request, is a matter of no sort of consequence in this case. It is what occurred that is of consequence. He says, at page 2207:

Agreeably to the terms expressed in that note General Brady met me at the house of General Sheridan, and after some desultory conversation, which just now I cannot recall, we touched on the subject of the difficulties that Jerome J. Hinds at that time was causing the Post-Office Department and the Second Assistant Postmaster-General. I expressed it as my opinion that Mr. Hinds would make a very great deal of trouble for Mr. Brady; that he had expressed a determination to do so, and I thought had every disposition. General Brady remarked that he did not care particularly about Mr. Hinds; that Mr. Hinds was powerless to affect him. We may have and probably did discuss some other subjects before coming to the point, which was the payment of the notes of General Brady that I held, amounting to about \$25,000. General Brady asked me if I had the memoranda or data with me. I responded that I had. I had the notes in my pocket. I had also memoranda as to other amounts than expressed in the notes.

And then he goes on to speak about this alleged indebtedness of Brady to him:

Mr. Brady sat there listening to me. I told him that everything was pretty well determined except as to the matter of interest; that there was no interest expressed on the face of the notes; that that matter had been held in abeyance and that now would be a proper time to adjust it; that the time had come when I desired the payment of the notes, for the reason, among others, that I needed money. Mr. Brady sat there very calmly at the table turning the papers over in his hands and putting them down; he looked at me inquiringly and asked me if I was in earnest. I told him yes, I thought I was. He asked me if I did not think that that matter had been pretty well and fairly liquidated. I asked him to explain. He entered into an explanation without any sort of hesitation. He reminded me of the fact that I was in the enjoyment of a very remunerative contract.

Q. What contract was that?—A. From Albuquerque, New Mexico, to Prescott, Arizona.

Q. You held that contract?—A. Yes, sir; at that time. He informed me that he had expedited that very largely, had increased the service; the pay had been largely increased as the result, and that he did not really think that he owed me anything; that he did not see how I thought he could possibly owe me. I reminded him of the fact, as I had repeatedly told him, that the contract, even viewed from that standpoint, was unremunerative; that it had been a source of no profit to me; on the contrary, a loss; that he himself was largely instrumental in my ever having entered into it, and that I felt that such increase and expedition as had been accorded me was made under the law. He smiled at that, and asked me if I had not seen cases where petitions, &c., very numerous and largely signed, had not effected any result whatever. He then referred to the fact that after he had cut my trips down from 1876, that all the petitions that had come from that country had not succeeded.

Now, mark you, gentlemen, see what this man is saying. He does not pretend that there was any arrangement between him and Brady—

of course not—that for the expedition of this route anything was to be paid. And yet he says that Brady coolly informed him that although—because that is the substance of it—there had been no understanding between them, yet Brady coolly informed him that he was to pay him for that service. Now that is done, gentlemen, for the purpose of impressing upon your minds that because he did that to Walsh he must have done it to these parties.

He said, in brief, that the matter of petitions was simply to enable him to act within the law, and that any man might have understood that, not seeing half as much as I had.

Now, look at that for a moment. You see petitions coming in from all over this country asking for this service—petitions, with which Brady could have had no possible connection. And yet he says that Brady said to him that the petitions were simply to enable him to act within the law.

I asked him what he meant by saying what I had seen. He referred me to the Price and Peterson drafts, and said that I ought to have been able to have divined from them what was the custom. I asked him what was the custom; that I still could not understand from those drafts; all I knew was the existence of the drafts but how they came to be made, and what they were made for, was none of my affairs and none of my business; that he had turned them over to me to his credit, and that it was not my province as a banker to inquire into the cause of their being made. He told me that my affectation of not knowing what the terms were was rather ridiculous; that I should know. I told him that I did not.

Now, mark this:

He said that the amount that he exacted, as a rule, was 20 per cent. of the amount of the pay that was increased (the total increase of pay over the original contract)—20 per centum of that multiplied by the term of the contract.

That is what Brady said he exacted from the contractors, and that is brought here for the purpose of showing that these contractors in this case paid Brady 20 per cent. or some other per cent. of the increases. Then he goes over a great deal that is not necessary for me to read.

Q. Go on with the conversation.—A. He further informed me that I owed him \$8,000, as my pro rata for the Congressional corruption fund. I do not know that he stated it that way.

* * * * *

The WITNESS. That \$8,000 was the amount of my part of the pro rata to contribute towards the passage of the appropriation bills, and the star route in Congress. I told him that I had not authorized any disbursement of money; that I had been a witness before the Congressional committee that was investigating the subject of star-route matters; that I felt that I had probably been as largely investigated as most any contractor, and that it had not cost me a cent; nobody had asked me for any money, and in a general way I expressed some doubts as to the money having been spent, and reminded him, further, that I had refused to contribute to Chase Andrews, who had approached me.

He told me that that would not do; that I must not expect that those things could be done without some sort of effort, and that they always cost money. He then reminded me, further, that there had been a remission of fines and penalties in my case, and that the percentage that he was accustomed to receive on such occasions was 50, and that if I proceeded carefully to debit and credit his account, he thought that I would find that he did not owe me anything. I had remarked by that time the absence of the papers from the table.

Now, gentlemen, Walsh said that Brady told him that it was the custom to receive, on the matter of remissions, 20 per cent. of those remissions. That is what he testifies to. Now, gentlemen of the jury, you know that is not true, as a matter of fact. I am not talking about what Walsh says. But you know it is not true, as a matter of fact, that

Brady received any such 50 per cent. of these remissions. And why do you know it? Why, gentlemen of the jury, we have shown to you that those remissions were made, and we have shown to you by an official of the Sixth Auditor's office that whenever a subcontract was on file, they sent the remissions to the subcontractor. What better proof can you want in this case that that is a lie? Here is a subcontractor who gets, say, 65 per cent. of the expedition. They produce to you various subcontracts here, in which it is stated just how much of any increase of compensation by reason of expedition the subcontractor shall get. When all the fines are imposed the subcontractors, according to these contracts, have to bear those fines and deductions. And why? Simply because that was the mode used by the contractor to compel the subcontractor to perform his duty; and if he failed, the deduction was made from him; and if there was remission, of course the remission went to him. And we have proved to you here by the officers of the Sixth Auditor's office that when they made those remissions they sent the money to the subcontractor, to whom it belonged. Now, you know that Walsh's statement about that is a lie.

Now let us go a little further:

By Mr. MERRICK:

Q. What papers?—A. My notes and memoranda that I had given him. When the conversation had assumed this shape, I thought perhaps the matter was getting pretty serious, and I asked General Brady what he meant by taking the notes. He said he meant to make a settlement of that in that way; that that was a settlement of it; that that account was audited, and was dismissed. I asked him if he thought that I was going to submit to that. He asked me what I could do. Well, I suggested mildly—

Now, if Walsh had been a great, stalwart fellow, like I am, you know he would not have suggested that "mildly." But being an effeminate, weak, timid sort of a man, he suggested it mildly—

Well, I suggested mildly that I might go to the court. He remarked that I might go there, and perhaps it was all the good it would do me; that probably I ought to have learned enough by this time to find out that appeals to any of these tribunals were not productive of any great results.

* * * * *

A. That was substantially an end to the interview. I talked to him further about my willingness to sell out in relation to my remark that the service had been unproductive of results to me; that I had lost money; that I had originally gone into the matter because he told me that the contractors were reputable people, and that I might loan them the money with safety; that my being a contractor was a matter of chance; that there was no solicitation on my part; it was really the result of necessity; and that, waiving the moralities of the matter altogether, it was not fair to treat me as he would his other contractors; that I did not come under that classification. He remarked that if I did not make money out of the contract it was because I did not know the business. I told him that that was possible. That I had accepted the contract and had attempted in good faith and to the best of my ability to perform the service; that I had performed the service; that I had stocked the route with the best mules and the best stock that had ever gone to the Territory, and that I felt convinced that there was absolutely no money in it; and I generally took occasion to doubt that contractors had agreed to pay any such money. He assured me that I was mistaken; that I was in error about it; that it was painfully obvious that I did not understand the business, and the best thing that I could do was to sell out.

This conversation was had, Brady having taken from him \$25,500 of notes and put them in his pocket.

That I was willing to sell out—perfectly willing, and that he could aid me in finding a purchaser if he wished to; that he was potent, certainly, with his contractors, and that I would willingly sell out at a sacrifice. He told me that that was the best thing I could do. I do not suppose you want that part of it wherein I was approached by the contractors to sell out, do you?

* * * * *

Q. What else, if anything, passed at that interview, and how did you part?—A. We parted very much as philosophers. He seemed very philosophical and he seemed satisfied. I was very anxious to sell out then; more anxious than I was before.

* * * * *

Q. You have already stated that, and in a connection where it is appreciable, I think. Did he say anything about what you may have supposed to have been his reason for making these expeditions?—A. Oh, well, he said that he didn't think for a moment that I thought it afforded him any amusement to make expedition. I told him that I didn't know that I did, but I supposed the law directed him. He said that petitions simply enabled him to act within the law; that the petitions were matter of form. The petitions worked all right if it was all right; and when it was not, they didn't.

Q. He said that?—A. No, sir.

Q. Do not state anything but what he said.—A. I will refer to what he did say. He cited me petitions that produced no effect.

Q. Does anything else suggest itself to your recollection of what passed in that interview?—A. No, sir; not now.

Mr. MERRICK. That is all I have to ask him that I now think of, your honor.

By the COURT:

Q. Did you get your notes?—A. No, sir; I went away.

He went away as a philosopher, after Brady had taken the notes, put them in his pocket, and told him that this thing was settled up; that the account was audited and closed. He put the notes in his pocket, and he says they parted as philosophers. Gentlemen of the jury, that is the testimony of Mr. Walsh in this case. It seems from his own testimony that there was nobody there but himself and General Brady at the time this interview occurred; nobody there but these two. Brady says that there is not a word of truth in that story; not a word. You have it resting therefore, so far as the mere matter of the statements of the two men are concerned, upon the statement of Walsh on the one hand and the statement of Brady on the other. To my mind, gentlemen of the jury, that story is absolutely incredible. It is preposterous to suppose that General Brady would deliberately tell John A. Walsh or anybody else that he had thus been committing crimes. Walsh wants you to believe that General Brady told him that these contractors in the Post-Office Department were paying him 20 per cent. of all increase of service, and 50 per cent. of the remissions that were made of fines and deductions. Now, I say in the very nature of the thing that is absolutely preposterous. I cannot conceive of a man of sense and character thus putting himself absolutely in the power of a man like John A. Walsh, and doing it at the very time that he was robbing Walsh of \$25,000 worth of his property. Just think of it. He picked up \$25,000 worth of these notes and put them in his pocket and said, "That is settled." "How settled?" "Why, I charge all contractors so much money on these increases. I make them pay it, Mr. John A. Walsh, and you can go and tell it if you want to." Just think of it! If he had stolen these notes from Walsh how absolutely improbable it is that he would in the very next breath give John A. Walsh the evidence of his corruption in office. The thing is absolutely preposterous. But, gentlemen of the jury, I say that the evidence is overwhelmingly the other way. Recollect now, he does not say that Dorsey paid Brady 20 per cent. He does not say that Vaile or Miner or anybody else paid him 20 per cent. or any other per cent., but he makes this cover all these contractors, everybody. He makes it broad enough to sweep the entire country. It is introduced for what purpose? To prove that Miner paid him money, that Vaile paid him money, that Dorsey paid him money, and that Peck paid him money. That is what it is introduced for. Let us see how the testimony stands. They have

got to prove beyond a reasonable doubt that he was paid money; that he was corrupted; they have got to prove it beyond a reasonable doubt. I say the story in itself is improbable. Then on the other hand General Brady says that it is not true. In addition to that Stephen W. Dorsey swears that he never paid Brady one farthing, and Vaile does the same and Miner the same, and so through to the end of the chapter. These men concurrently swear that no such money were ever paid. So you have John A. Walsh on the one hand and all these witnesses upon the other, and these records against it, too, because, gentlemen of the jury, when you come to look into these warrants that they have brought before you, you will find them all going in the direction where these parties could not out of that money have paid General Brady a single solitary farthing. Up to the division of these contracts Vaile got this money. You recollect that. After that, for a quarter or two, Dorsey got it and then it went to Bosler, and so on. The record itself shows that this money did not go to Brady; it did not go in that direction. It went into other channels. They have not traced a farthing of that money into the hands of Brady. So that, gentlemen of the jury, while Walsh swears that Brady told him this improbable story you have Brady and all these other parties and these records disputing and denying that fact. When you put the one in one scale and the other in the other can you say that they have proven by the testimony of Walsh that money was paid to Brady? I say, gentlemen, that it not only does not prove it beyond a reasonable doubt, as they must prove it, but that the preponderance of the evidence is overwhelmingly the other way.

Now, by whom next do they undertake to prove this? By the testimony of Rerdell. [To the court.] Is the court going to adjourn at 12, or sit right along to day?

The COURT. I shall try to accommodate you.

Mr. WILSON. Anything will suit me. I want to get through, and I will accommodate myself to the wishes of the court. I thought I would have been through by this time; but I am not.

The COURT. Do you think you will close to-day?

Mr. WILSON. I will.

The COURT. We will adjourn at half past 12 o'clock, if you can go on.

Mr. WILSON. I can go on until then very well.

Mr. DAVIDGE. Will the court adjourn then for the day?

The COURT. No.

Mr. DAVIDGE. I thought the arrangement was to take a recess.

Mr. WILSON. The jury want to leave at 2.

Mr. BLISS. If we are going to adjourn at 2, let me suggest that 12 o'clock will divide the time better.

Mr. WILSON. It is not material to me.

Mr. BLISS. I see it was announced yesterday, or suggested by Mr. Greene, that we meet at 10 o'clock and sit until 12, and then take a recess for half an hour, and then sit until half past 2, if that would please court and counsel. I do not know but what some of the jury may have acted under the belief that that was the arrangement.

The COURT. The court said it would meet at 10, and would accommodate all parties concerned as well as possible.

Mr. WILSON. Suppose we take a recess for half an hour now, and I will close at 2 o'clock, or probably before.

The COURT. We will take a recess until half past 12 then.

At this point (12 o'clock m.) the court took a recess until half past 12.

AFTER RECESS.

Mr. WILSON. Gentlemen, here is the best place in all my argument to make an apology. I want to apologize for my Brother Bliss and my Brother Ker in that they consumed so much time in the argument of this case. I think that an apology to you through me from them is necessary, because, having now traveled the same road that they did, I find that they could not have gone over the ground they did go over in much less time than they did. All that I said, therefore, about their making their speeches immortal by making them eternal, and all I said about the opening of this case being compared to nothing else on earth than the crater of Vesuvius, I want to take back.

Mr. BLISS. All right. That is handsomely done.

Mr. WILSON. Now, gentlemen, a word more. The apology that I have made for them I hope I may have the benefit of myself.

Mr. CARPENTER. It counts for you.

Mr. WILSON. I say I hope I may have the benefit of it myself. I have done the best I could to get through with this case in the shortest possible time I could, and I have omitted to say many things that I had intended to say.

Now, gentlemen, I come to the testimony of Rerdell. He is one of the witnesses by whom, in connection with Walsh—I am going to try to state this thing fairly as to their position—they attempt to prove that these contractors paid Brady money. How do they seek to prove it by Rerdell? They first prove that certain books were kept in which charges were made against Brady under an assumed name, or a false name; second, that Dorsey paid money to Brady, and third, that Brady advised him to copy the books so as to keep the real books from the committee. These three facts that they have sought to prove by Rerdell they seek to use for the purpose of showing that Dorsey and these other contractors paid money to Brady.

That is the purpose of it. In other words, gentlemen of the jury, they bring here this statement of Rerdell in regard to these books. In the first place, let me suppose that there were just such books as are claimed to have been kept in this case. Let me suppose that Rerdell did keep exactly that kind of books. Let me suppose that Dorsey did give to Rerdell that very identical memorandum. Let me suppose that every one of those entries was made exactly as Rerdell states they were made in that book. I want to know, gentlemen of the jury, how you are going to charge that up against General Brady. Does anybody pretend that he ever saw those books? Does anybody pretend that he knew that those entries were ever made—supposing they were made? Does anybody pretend that he ever heard of these books until Rerdell made that statement which he made to James and Mac-
Veagh, a denial of which, in the form of an affidavit, was subsequently published? General Brady tells you he never heard of that thing until it came out at that time. Nobody pretends that he ever did hear of it, because even when Rerdell said he told him about copying the books he does not pretend that he told Brady what was in those books. So you have a case, gentlemen—I am talking now about my immediate client—where they are seeking to make a circumstance against General Brady by what? By what somebody else wrote in somebody else's books of which he had no knowledge. Upon the same principle, gentlemen, if you adopt that as testimony in this case; if you would allow that to make any impression upon your mind in this case as against my client, applying the same rule—for if it is good here it is good any-

where, under all circumstances—one man can make evidence against another man, no matter where he may be. Any merchant, any mechanic, may make evidence against anybody else; or anybody else may make evidence against him. I say, gentlemen, that that thing is monstrous. It is a principle that cannot prevail in the minds of just men. The law will not allow one man to make testimony against another man. The law will not allow one man to confess for another man that that other man has been guilty of some crime. The law does not tolerate a thing of that kind. Common sense and common justice revolts against such a proposition. Yet these gentlemen come to you and they argue to you that because there were such books (and for my present purposes I am assuming that there were), without a shade of evidence that Brady ever knew or heard of them until the time that I have stated, that you are to allow that to have weight in the scale as against my client. It cannot be true, gentlemen of the jury. But, gentlemen of the jury, I deny that there were any such books. Do not understand me as conceding that there were any such books. I deny it. I say the weight of the evidence in this case, although it does not come properly within the range of the argument that I have to make to you, is against there being any such books and especially, as I will show you, that it is against there being any such entries in those books, if any books were kept. Where is the evidence of such books ever having been kept? You have the testimony of Rerdell upon the one hand. You have the testimony of this man Gibbs, who could not recollect certain things until just a few days before he testified, although he had been talked to about it over and over, and inquired of about it over and over again, and did not remember; yet one day, just before he came on the stand and testified, all at once it flashed upon his mind that there was such a name as Smith on those books. He never could remember it before. Then you have the testimony of Donnelly. You have those three. Donnelly says he copied a book. Upon the other hand, you have the testimony of Stephen W. Dorsey that no such book was ever kept. You have the testimony of Kellogg, in whose office these books were kept, according to Rerdell, openly, where Kellogg must have known it if there were any such books. Kellogg swears there never were any such books there. Then you have the testimony of Torrey that there were no such books. Rerdell swears he sent one of these books to New York to Senator Dorsey and that he went over to New York and got that book in the presence of Torrey and carried it away. Torrey says there never was any such book there, and these other two witnesses swear that there never was any such book there. I deny, gentlemen, that there were any such books. But, as I said a moment ago, concede that there were such books. What then? You cannot use that fact against my client, because he had no connection with them whatever. Now, gentlemen, I admit that Mr. Rerdell could manufacture such a book as that. He had the capacity to do it. He is the man who would do it. He not only had the capacity to do a thing of that kind but he has demonstrated to you that he is the character of man who is willing and ready to do just that kind of thing. He says those books were opened by a memorandum that was given to him written by Senator Dorsey. Without going into any detailed argument about that thing, you could not fail to observe, gentlemen of the jury, that there was at least—allow me to state it as mildly as I can—very great doubt thrown upon the integrity of that memorandum by the Government's own witness. They put Mr. Boone upon the stand and they showed him that memorandum. It was vital to them to show that that memorandum was written by

Stephen W. Dorsey. They wanted to prove that Stephen W. Dorsey wrote that memorandum in order to bring it squarely home to him. They could not rely upon Rerdell to prove that Stephen W. Dorsey wrote that memorandum. They could not trust him. They knew they could not trust him. They knew he was a disgraced man. They knew that perfectly well, and therefore they must help that out. Nobody would believe that Stephen W. Dorsey did that upon the testimony of Montfort C. Rerdell. Nobody would take his testimony for anything. Therefore, this being a very vital point for them, what did they do? Here was Boone who knew Dorsey's handwriting perfectly well, and when they brought him on the stand, knowing the importance of fixing this thing upon Mr. Dorsey, they showed him that memorandum and asked him in whose handwriting it was, and he said that down to a certain point, where everything was perfectly innocent and cast no discredit upon anybody, it was the handwriting of Stephen W. Dorsey. Boone said down to a certain point, every part of which is perfectly consistent with all the facts of this case, it was written, he thought, by Stephen W. Dorsey; but as to the balance of it he did not think Stephen W. Dorsey wrote it. That is to say, when you come down to that part of it where the Smith and the Jones figure on the memorandum, that part of the memorandum which is intended to apply to my client, the Government's own witness, Mr. Boone, does not corroborate Mr. Rerdell as to that having been written by Stephen W. Dorsey. So that when you get to the vital part of this memorandum the greatest discredit is cast upon it by the testimony of the Government's own witness.

Are you, gentlemen of the jury, going to punish anybody on the testimony of Rerdell? Are you going to take his statement in regard to matters of this kind, and thereby convict somebody of a crime? Are you going, upon his statement as to what he entered in books, to say that Dorsey paid to Brady the sums of money that he entered on these books? I apprehend not.

Gentlemen, suppose any one should come to either of you and make an accusation of a grave character against a neighbor of high character, and suppose that while he was telling his story you should detect him in picking your pocket or robbing your money-drawer. How much credence would you give to such a man's story against your neighbor? Suppose he should come and tell you that your neighbor had written a certain paper, indicating his connection with an infamous, a criminal transaction, and at the same time should exhibit another paper and assert that it was written by your neighbor, when it was palpable to your senses that the latter was a lie. How much credence would you give to the former?

Suppose he exhibited to you a letter which he told you he received through the mails, and you at once discovered that it never came through the mails, how much credit would you give to the statements of such a man against your neighbor? And suppose before he got through with his story he should frankly say to you that he had repeatedly sworn falsely; that he had time after time upon one occasion and another occasion sworn falsely. How much credit would you attach to the story of a man like that? Such a man is Rerdell. I am not going to waste adjectives on him. Right here in your presence he was acting as the party, as I said in the beginning, to a vile scheme. I want to acquit these learned counsel of any participation in that scheme. I want to acquit my Brother Merrick and these other gentlemen, for Mr. Blackmar has stated since I commenced my address in this case that Mr. Merrick rejected the proposition. I give him credit for it. I want to acquit Mr.

Blackmar, too. Mr. Blackmar was doing simply what he was instructed to do. But does that help Rerdell? That is the question. What kind of a man is he? That is the question we are looking into. He has shown to you his willingness and his eagerness to sit around the table with his codefendants. He has shown to you that he was a traitor, that he was a spy, that he was writing down what transpired between the defendants and their counsel and carrying it to the counsel for the Government. Nobody will deny that after Mr. Blackmar's statement. What kind of a man is he? Can you conceive of a man more depraved in his character, more utterly abandoned and wicked in his character than Montfort C. Rerdell? That is the kind of man Rerdell is. He admits that he did try to control the construction of this jury in the interests of the Government. He did his best to do that thing. And not only that, gentlemen. You recollect how all through this case the prosecution have struggled to bring Stephen W. Dorsey into connection with the business as a party in interest while he was a member of the Senate of the United States. From the beginning of this trial down to the close of the opening argument of my Brother Bliss there has been a great struggle in this case on the part of the Government to put Mr. Stephen W. Dorsey in the attitude of a party in interest in these contracts while he was a member of the United States Senate. Now, gentlemen, away back in September of last year Mr. Rerdell had an interview with Mr. Woodward. He wrote out a statement for Mr. Woodward and he swore to that statement. He was then going over to the Government, you remember. Mr. Woodward told him that would not do; that was not enough. I think I quote his precise language. Woodward said to him, "That is not enough," after he had made the statement, and sworn to it. Then he went off to Hartford, and made another statement and that was not enough, although he swore to it. Then he came down here, and about the time the trial was beginning made a supplemental statement. The first you recollect was not enough, and he was making more. Now, mark you, it was important to get Stephen W. Dorsey associated with this thing while he was in the Senate. When Rerdell came on the stand there was produced before you, gentlemen, that Chico letter. The first we ever heard of it was when it was produced by the prosecution and handed to Mr. Rerdell, he having previously given it to them. That was the *more*, as I think, that he was furnishing to Mr. Woodward when Mr. Woodward had told him that he had not given him enough. Gentlemen, the very moment you saw that you saw that there was something about it to indicate that it was a fraud; and although this man Rerdell swore unblushingly that he received that letter from Stephen W. Dorsey, and that Stephen W. Dorsey wrote that letter, yet the Government's own witnesses said that Stephen W. Dorsey did not write that letter. You saw the envelope. It never came through the mail. That man Rerdell manufactured that letter for the infamous purpose of showing to this jury and convincing this jury that Stephen W. Dorsey was interested in this business before he left the Senate of the United States. It was for that purpose, or it was for no purpose under the sun. Now, if he would manufacture a thing of that kind, would he not manufacture in this case anything to suit his purposes? Everything that that man has touched, everything he has said in aid of this prosecution, is to be regarded with the most extreme suspicion, to say the very least. In all these fourteen days—not too long a time, I grant you—and in all the picking up of circumstances that lay strewn around through this case—

Thick as autumnal leaves that strow the brooks
In Vallombrosa,

everything that they could lay their hands upon they have apparently discussed, but they have studiously avoided saying a word about the Chico letter. By their silence they confess that that was an infamous fraud injected into this case by this man Rerdell for a vile, mean, wicked, criminal purpose, because it is criminal to do so wicked a thing as that. He has not only told you, gentlemen of the jury, that he swore falsely, but he has told you that he was perfectly willing to steal Dorsey's property; to take it by false pretenses. He is perfectly willing to do that, and I think that the Chico letter shows that he was perfectly willing to commit a base, mean forgery. So much for those books. That is all I am going to say about them. What is the next thing that Mr. Rerdell is called upon to testify about, for the purpose of showing that Dorsey paid Brady money? He tells you that on one occasion he saw Dorsey go to Middleton's bank and get some money, and then they went from there to the Post-Office Department, and then Dorsey told him to step into Turner's room and wait for him and he would go to Brady's room; that Dorsey went on and went into Brady's room and came back. From that you are called upon to infer that when Dorsey went into Brady's room he paid Brady that money that he got out of the bank. That is the inference that is to be drawn from that. Gentlemen, there are in connection with that the foot-prints of a very artful villain. This thing is the lie by insinuation. It is the meanest of all lies. Look at it. "I saw Dorsey draw money. He and I walked to the Post-Office Department. He told me to go into Turner's room and he went into Brady's room. Don't you see, gentlemen, how that was done? He got me out of the way so that I should not see him pay that money. I didn't see him pay that money." He wants you to draw the inference that the money was paid. I say it is a lie by insinuation, and the meanest of all lies. It is the same kind of a lie that the miserable debauchee tells when he winks and nods and smirks to his companions as a lady passes along the sidewalk. He does not say a word about her, but he foully asperses her character by his winks and nods and smirks without saying a word. It is the same kind of a lie that Iago told to the dusky Moor about the fair and the pure Desdemona. That lie so inflamed the mind of Othello that

Trifles light as air

became to him

Confirmation strong as proof of Holy Writ,

and the fair Desdemona, innocent and pure, became the victim of her husband's wrath because of an insinuated lie. It is the same kind of testimony, the same character of testimony, which these gentlemen are relying upon by this proof from Rerdell to show that Dorsey paid money to Brady. Now, gentlemen, in the first place Dorsey did not get that money, as some would have you believe. There, you see, is the sum and substance of the whole thing, for if he did not get the money of course he did not pay it to Brady. We brought the checks here, and an examination of those checks confirmed the testimony of Dorsey that he never did any such thing. The checks show he did not do it, although Rerdell located the time. The only sum of any considerable amount that was paid at about that time was a check drawn in favor of Rerdell himself which Rerdell himself indorsed, and on which Rerdell of course got the money. He took it to Dorsey, and Dorsey carried it with him to New Mexico.

Mr. BLISS. There is no evidence of that.

Mr. WILSON. Dorsey says so.

Mr. BLISS. No, I think not.

Mr. WILSON. I may be mistaken.

Mr. BLISS. There was a promise given that where Mr. Dorsey took that money should be accounted for, but it was not carried out.

Mr. CARPENTER. Rerdell got the money.

Mr. BLISS. And Dorsey says brought it to him.

Mr. WILSON. Yes. They did not then go to the Post-Office Department as Rerdell said.

Mr. BLISS. Not on that \$7,500 check.

The COURT. There is no question about the \$7,500 check.

Mr. WILSON. Brady and Dorsey both deny this thing. They say there is no truth in it. Now, what is the next thing, gentlemen of the jury, in connection with Rerdell so far as General Brady is concerned? He says that Brady suggested to him to copy these books. Brady denies that. Rerdell says he never talked with Brady more than five or six times in his life. Brady says that he never talked with him but very few times, scarcely at all, because he tells you he did not like the man then any better than he did after he had disclosed his true character on the witness stand. I believe that I can trust Brady's denial as against Rerdell's affirmation, especially as Rerdell says to you that there was no special intimacy between them. Now, as to this letter that is alleged to have been written. Nobody pretends that Brady ever saw the letter. Bosler says he never received any such letter. The Government put Bosler on the stand for the purpose of showing that such a letter had been written to him. Bosler they cannot discredit. Bosler says that no such letter ever came to him. He kept files of his letters, and he had searched for it and no such letter ever came to him. He said moreover that a letter containing such things as that could not have come to him without his recollecting it. They cannot discredit their own witness. They put Mr. Bosler on the stand for the purpose of showing that such a letter came to him and he denied it. But even suppose it had been written? Is my client to be bound by what other people write in their letters? If you adopt that rule, I could ruin every man in this jury box before to-morrow morning. They come here and say, "Why don't you produce these books?" I presume my brethren do not put that question to me. They do not pretend that my client ever had those books? The gentlemen who represent other parties in this defense will no doubt have occasion to discuss all that matter, and I need not weary you with it. They certainly could not put that question with any seriousness to me or to my client, because they do not pretend he ever had these books. The same is true with reference to these stubs, &c. Need I waste your time so far as my client is concerned about that? I know you are not going to draw any inference against my client because he did not produce a book that he neither kept nor had nor ever saw, and they do not pretend that he did.

Now, they have got another thing that they are relying upon as against General Brady. They say that away back in June, 1878, John W. Dorsey, sitting with some men around a camp fire out in Dakota, said that they had formed a ring in Washington and that they were going to have the assistance of the Second Assistant Postmaster-General in the matter of increasing and expediting service on that particular route.

The COURT. Was that in June, 1878?

Mr. WILSON. June, 1878.

The COURT. I thought it was July.

Mr. WILSON. I think it was in June.

Mr. CARPENTER. June.

Mr. KER. August, 1878.

Mr. BLISS. I think it was some time as late as August.

Mr. WILSON. My recollection is it was when John W. Dorsey went West to put the service on.

Mr. BLISS. He went West in June.

Mr. CARPENTER. To put this service on.

Mr. WILSON. He had just gone out there to put on the service.

Mr. BLISS. No. He started the trips from Bismarck on the 1st of July, before he went to Fort Keogh, and had the interview with General Miles; so that it was afterwards.

The COURT. It was in the latter part of July, I think.

Mr. WILSON. Very well. I do not care whether it was June or July. My recollection is that it was June, but I will call it July. They say, then, that in July, 1878, John W. Dorsey made that kind of a statement, not using my client's name, but the words Second Assistant Postmaster General. I would like to stop, gentlemen, and read the testimony of these two men for the purpose of showing to you just exactly how the thing was stated by both of them; but I will not detain you. Suppose John W. Dorsey did make such a statement as these two witnesses have detailed to you.

Mr. BLISS. The interview with General Miles appears to have been the 28th of July, 1878, and the transaction was after that time. Miles fixes it by an indorsement.

Mr. WILSON. I am admitting your statement as to the time. Suppose he did. Suppose John W. Dorsey had said that very thing. I cannot see that there was any occasion for his saying it. I cannot see any particular reason why he should have talked to these men at all about this thing. But suppose he did. My client was not there at all, and I say he is not bound by what Mr. John W. Dorsey said away back in 1878. But, gentlemen of the jury, I want you to bear in mind that this matter of repeating conversations three or four or five years after they have occurred is dangerous. Such evidence is the most dangerous evidence that ever came before a jury, because the change of a word makes a very material difference in the meaning of a sentence. Here we had an illustration the other day. On the first day of my address to you in this case, I believe it was, a gentleman came to me and said "Mr. Chandler's boy is drowned." That was a very serious matter. It turned out that the word that was sent here was not that he was drowned, but that he was found. The little fellow had strayed away from his mother and got lost and they had found him. There is an immense difference between drowned and found, although only the change of a word. Five years afterward some man might come here and repeat that the boy was drowned whereas in fact the message was that he was found. I could give you many illustrations. You know how it is, gentlemen, in your own experience. A man makes a statement to you. You misapprehend him entirely. If you were to go off and repeat that statement as you misunderstood him, then you would convey a false impression to the party to whom you made that statement. If that false impression were not corrected, and years went by and the man was called upon to say what you had said to him, he would still have that first impression that was wrong. In the present case years have intervened to make changes and to dim memory, and you are called upon to hear the testimony. There is a certain direction in which testimony is sought, and no matter how honest you may be, the very fact that the thing is drifting in a particular direction

and that it is sought to make an impression in a particular direction would only have a tendency, perhaps entirely unconsciously with you, to stimulate your memory in that particular direction. The result of it all, gentlemen, as every lawyer knows, is that when you come to repeat a conversation years after it has transpired, such testimony is the most uncertain of all testimony. We cannot recollect here things that occurred but a few days ago, statements that were made but a few days ago. In the intense excitement of this trial, where every man's attention is fixed upon this very matter, we cannot remember testimony for three days. We cannot state it accurately three days after it is given. How will it be five years from now, if one of you gentlemen were called upon to state what a witness swore to in this case, when your attention was riveted upon that witness, and when your duty required you to know exactly what he said? Do you think you could repeat it with accuracy? Would you be willing to swear that he swore thus and so? No, gentlemen. How is it about these two witnesses? One of them came here at the last trial, as he tells you, and testified. He was here for some months, as I recollect it, or weeks, at any rate, and this particular thing, so vital in this case, this particular thing which is intended to prove that Brady was to get money out of it, was never alluded to by him at all. He says the reason it was not was because he was not asked the question. Now, how is it about the other man—Cable, I believe, his name is? He tells you he was not here at the last trial, and Pennell came all the way out there to Dakota to get him as a witness. You recollect the circumstances—how he got off the train, and they went to the hotel and dined together, and Pennell asked him whether he recollected a conversation out at that camp-fire in 1878, and he told him he did. He told you the extraordinary story that, although Pennell had gone all the way West for the purpose of subpoenaing him, he never asked him what he knew about the matter, never asked him what the conversation was about, never intimated to him what that conversation related to or what it was that he was to come here to testify about. Without any sort of intimation from him except the simple fact that he recollected the conversation, he was subpoenaed and brought here, hundreds of miles, to testify in this case. Gentlemen of the jury, you may believe that. All of you may believe that. I do not believe that. It is too unnatural. It is too unreasonable. This Government was not going to bring a witness here at enormous expense to testify in regard to a matter without knowing anything whatever about what he was going to testify to. That man did not tell the truth, in my judgment. But whether he did or not, in the first place, such testimony, as I said, is utterly unsatisfactory in its nature. It is utterly unreliable, because it is merely repeating a conversation, and repeating a conversation years after that conversation is said to have occurred. But more than that, gentlemen of the jury, as I said before, it is one of those things that you cannot fasten upon my client unless you adopt a theory and a principle in this case that would be utterly and everlastingly subversive of the rights of every citizen in this country.

The COURT. The evidence was not admitted as against your client.

Mr. WILSON. I know, your honor, but they have argued as though it were, and therefore I am compelled to refer to it. As I understand, the court said at the time that this testimony was not competent against my client. So that is out of the way, gentlemen, and I need not have taken so much time in its argument.

Now, gentlemen, let us come to another thing. I am only going to allude to it briefly, because I am under promise to this jury to quit at

2 o'clock, and I shall do so, or within a very few minutes after that time. They say that this memorandum and these books showed entries against my client of thirty-six thousand and odd dollars. When, gentlemen? Mark you, in June, 1879. You may take all the orders that were made up to that time. All this, remember, they say was given to him in May, 1879. Take the list of all these expeditions that were made up to July, 1879, and the aggregate of the whole of them would be about \$56,000. I am talking about the Dorsey routes now. Mr. Miner says the increases and expeditions both amount to about \$76,000. Now, mark you, gentlemen, of all these expeditions the subcontractors got about 65 per cent. You recollect that testimony. They have shown you these subcontracts. I will put it at 65 per cent. on an average for the subcontractors. Nobody pretends that Brady got any of the subcontractors' money or that Dorsey got any of it. They want you to believe that, taking the increases and expeditions both, \$75,000, and allowing the subcontractors 65 per cent., yet that Dorsey had actually paid to Brady \$36,000 on account of that. They want you to believe it. I say it is absurd right upon the face of it. This record shows that it is not true.

Mr. BLISS. The memorandum does not speak of \$36,000.

Mr. WILSON. There was \$36,000 in all charged up.

Mr. BLISS. That went on to the books before they were recopied in the spring of 1880.

Mr. WILSON. Call it \$18,000. I will take it in that way. The thing is absurd, gentlemen of the jury, for the additional reason——

Mr. CARPENTER. [Interposing.] It was all before the end of June.

Mr. WILSON. Certainly it was.

Mr. BLISS. What was?

Mr. CARPENTER. All the charges.

Mr. BLISS. There is no evidence of that.

Mr. CARPENTER. Yes; the testimony shows it.

Mr. BLISS. I think not. The memorandum is here.

The COURT. The memorandum contains no date.

Mr. BLISS. Mr. Rerdell says the memorandum was obtained in May or June. I think the memorandum accounts for only \$18,000. That is my recollection, and there is no evidence of anything beyond that, except what appeared when the books were copied in 1880.

Mr. CARPENTER. You are wrong.

Mr. BLISS. I think not.

Mr. CARPENTER. Yes, you are.

Mr. WILSON. I am willing to take their figures. The statement is absurd enough anyhow, but it is particularly absurd for the additional reason that there was no payment made upon any of these routes until after July, 1879, and could not be.

Mr. BLISS. The Mineral Park route was increased \$22,000 in 1878, I think.

Mr. WILSON. These gentlemen apparently, cannot understand the logic of their argument and the logic of this case. Gentlemen of the jury, during that period of time Mr. Vaile was drawing the money, was he not?

Mr. CARPENTER. Every dollar of it.

Mr. WILSON. Mr. Vaile drew the money up to April. I am talking about what Dorsey had done. They do not pretend that any of the Vaile money went into this memorandum or into these books. Vaile drew all the money up to April, 1879, because he had become the treasurer of this concern. Then Mr. Stephen W. Dorsey got a portion of these contracts, and what they are trying to prove is that Stephen W.

Dorsey, for the purpose of getting these contracts expedited, was paying these large sums of money to Brady. That was it. Now, from April, 1879, to the end of the next quarter, for they paid by quarters, was the first of July, and in addition to that, gentlemen of the jury, it would take them a good part of a month at the department to get ready to pay for that quarter. So that in this very quarter that these gentlemen are talking about when they say Dorsey paid this money—we will say only \$18,000—to Brady he had not received a farthing from any of these contracts; not a farthing.

Now, gentlemen, I have gone over all the evidence by which they undertake to prove that this money was paid to Brady, and I say that they have not proved it, and that they have fallen very short of proving it. Instead of proving it, I say that when you take all the testimony in this case it will appear that it is impossible that any such payments could have been made. Brady denies it, Dorsey denies it, Vaile denies it, Miner denies it, and these record facts stand up here denying it with the utmost emphasis.

There is another matter that is referred to in connection with this case which I wish to consider briefly. They say that Brady violated the law in creating a deficiency. I do not want you to misunderstand me about that.

Remember that the extent of the service is always under the control of the Postmaster-General. He can add trips or take them off, he can increase the speed and he can diminish it within the contract limits. He can, therefore, at all times control the amount expended and keep within the appropriation. If the service he has created it is found will exceed the appropriation he can cut it down so as to keep within it. Now, a little history:

The country had emerged from a period of great stagnation, during which everything had been at a stand-still. Specie payments were resumed on the 1st of January, 1877, and the country entered upon an era of unexampled prosperity. Great discoveries of minerals occurred in the West. Thousands of people went there for that reason. Others went there and filled the valleys with their flocks and herds. They were clamorous for mails, as I have before shown you. Now, the Postmaster-General and General Brady discussed this subject, and I will show you what was said.

The COURT. Before you proceed, I have the record of Rerdell's testimony, at page 2249:

Q. When was this?—A. It was in the latter part of May, I think; after my return from Colorado. I returned in the early part of May.

That was in answer to Judge Wilson. Then Mr. Merrick asked:

Q. That was in the spring of 1879?

And the witness answered:

A. Yes, sir.

I understand him to refer there to that memorandum which was handed to him by Dorsey at that time, and which bears out your construction of the evidence.

Mr. WILSON. I thought I was right. Of course it is impossible for me to run through all of this evidence. I have to rely much upon my memory. I am always glad to be corrected where I make a mistake, but I thought I was right in that case, and it seems I am.

Now, gentlemen, as to the discussion between the Postmaster-General

and the Second Assistant. They went on increasing this service, and this is what occurred. I read from page 3392 :

Q. What communication did you have with the Postmaster-General with reference to the matter of increasing and expediting the service and the manner of doing it during the period that you made these increases and expeditions ?

That was objected to, and then there was a little discussion, and the witness went on :

A. Judge Key became Postmaster-General some time in March, 1877. Previous to that time there had been some increases of service. Of course there is always somebody wanting some office, and during that spring there was quite a fight made on Brady, and it was especially charged that he had been extravagant, and all that sort of thing, in the conduct of the Second Assistant's bureau, by virtue of these increases, &c. The matter was thoroughly investigated and brought to Judge Key's attention.

* * * * *
Mr. MERRICK. * * * Let us get at something that has some significance.

The WITNESS. This will have significance : Judge Key discussed the matter with me as to what had been done—

Recollect this was in 1877—

and said to me at the conclusion that what I had done was right ; and, in answer to my direct question, said I should continue that policy until he notified me to the contrary. Frequently after that, when matters would come up that I did not feel like acting upon myself, I would go to Judge Key and discuss the matter with him. And he was even more liberal than I was. And so it ran along until in 1879, when, if the hundredth part of things were done that we were asked to do, there would have possibly been an excess of expenditures over the appropriations. Then the matter was discussed in the fall of 1879, whether we should go ahead and increase and expedite service, as we had been doing, and appeal to Congress to make good the probable deficiency. He authorized it, and it was done. The appeal was made to Congress, and Congress sustained it. And there was nothing ever done in the Post-Office Department, while I was there as Second Assistant, that to my knowledge did not receive the consent and assent of the Postmaster-General.

Now, you see, gentlemen, that here was the situation I have already very briefly described. The people were clamorous for this service. The department had been going on increasing and expediting, and they saw that this thing was going to exhaust the appropriations made for that fiscal year, and they discussed the matter whether they should continue to increase and expedite or what they should do, and it was the conclusion between Judge Key and General Brady that they should go on as they had been doing and then should report the matter to Congress for its consideration. Recollect, gentlemen, that at any moment they could cut down the service so as to keep within the appropriations. But they concluded to go on, and then when Congress met in December they would tell Congress just what they had been doing, and if Congress did not approve of it then they would reduce the service so as to come within the appropriations. If Congress did approve of it and give them the money they would go on as before. That is exactly the way it was.

Mr. GREEN (a juror). How long had General Brady been Second Assistant before Judge Key came in ?

Mr. WILSON. Brady went in in 1876 and Judge Key came in in 1877, and this service went into operation in 1878.

Now, gentlemen, they did go on. Just see what happened. I will show to you now from this record that it sustains General Brady in what he has said to you. On the 6th day of December, 1879, a communication was sent by General Brady to the Postmaster-General, and two days after that that same communication was sent by the Postmaster-General to Congress. That communication was exhibited to you,

gentlemen, as an evidence on the part of Brady of violation of the law. I say to you that it is evidence of the fact that he and Judge Key thoroughly understood this thing; that they had determined to furnish the country with this service and then submit the matter to Congress, and if Congress did not approve of it they would reduce the service. Let me read the letter to you:

SIR: I have the honor to state that the appropriation for inland mail transportation on star routes for the current fiscal year has proved insufficient to meet the wants of the rapidly-growing service.

The annual cost of the service now in operation is \$7,620,004, while the appropriation is but \$5,900,000.

Not only will the present appropriation allow no increase of mail facilities during the year, but it will be necessary to curtail the existing service in order to bring its costs within the appropriation.

He brought this directly to the attention of Congress—"there is not enough money now to pay for the service as we have it; we cannot increase the mail facilities any more with the money we have; and unless there is something more appropriated we will have to curtail the service." Could you make a franker statement to Congress than that?

Believing that this cannot be done without great injury to many deserving communities, and, further, that pressing necessity exists for increased service in many places, I venture to suggest a method of relief.

And then he recommends the appropriation of money.

In view of this fact, I have the honor to request your recommendation to Congress that about one-half this amount, say \$2,000,000, be reappropriated for mail transportation on star routes.

He was referring to some money which had not been expended before and which had been covered back into the Treasury.

This will enable the department to maintain the present service, and besides afford a margin for reasonable and necessary increase during the remaining half of the fiscal year.

Very respectfully, &c.,

THOS. J. BRADY,
Second Assistant P. M. General.

Now, you see that he says that he and Postmaster-General Key had talked this matter over, and they had determined to go on and report it to Congress. When Congress meets he sends that communication to Judge Key, which, of course, was to be transmitted to Congress, stating the exact situation.

Now, Judge Key sends it to Congress by this letter:

POST-OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER-GENERAL,
Washington, D. C., December 8, 1879.

SPEAKER HOUSE OF REPRESENTATIVES:

SIR: I have the honor to transmit herewith a communication from the Second Assistant Postmaster-General, calling attention to the insufficiency of the appropriation for inland mail transportation for the present fiscal year, and asking that the sum of \$2,000,000 be reappropriated out of the unexpended balances of former appropriations for that purpose, which have been covered into the Treasury, and be made available to meet the necessities of the service and of the country during the current fiscal year. I cordially indorse this recommendation, and take this occasion to suggest that the business interests of the country would be promoted by the prompt and favorable action of Congress.

D. M. KEY,
Postmaster-General.

Duplicate to the United States Senate.

Now, gentlemen of the jury, do you not see that the Postmaster-Gen-

eral approved this thing? But I am not talking particularly about that. They say that he had created a deficiency, and that is what I am talking about. Gentlemen, there was no deficiency. There was money enough to pay for all the service that they had put on, but there would have been a deficiency if they had gone on to the end of the fiscal year. They brought that subject, as I have shown you, directly to the attention of Congress, by the recommendation of the Postmaster-General that that be granted because it would subserve the business interests of the country, and he cordially indorsed it for that reason.

Now, what happened? Why, Congress looked into this. They have had a great deal to say about that investigating committee. The committee investigated it, and there was sent to that committee, as these gentlemen have told you and as the evidence in the casis shows you, every one of these cases that you are now considering. If Congress did not want this to go on they ought to have said so, but they did not say so. They appropriated over \$1,100,000 for the purpose of carrying on this service until the end of that fiscal year. But these gentlemen say, "Oh, they did not give him as much as he asked for; he asked for \$2,000,000 and they only gave him \$1,100,000." Why did he ask for \$2,000,000? This communication that I have just read to you gives you the reason, because he said there were many deserving communities that needed more mails, and in order to increase the mail facilities as it would be proper and necessary to increase them during the remainder of the fiscal year he would have to have \$2,000,000, although he could carry on the service with \$1,100,000. They gave \$1,100,000. Then Congress passed what these gentlemen call the 50 per cent. law, that is to say, to restrict expedition to 50 per cent. of the original letting. Who recommended that, gentlemen? General Brady is the man who recommended that to Congress.

They say that part of this scheme was to deceive the Postmaster-General. Was he deceived, gentlemen? In the light of this testimony to which I have called your attention, was he deceived? We have brought in the records showing that his name was signed to them every day. Of course, they meet that by saying that they were carried to him at intervals of a week or two, and he would sign a number of them at a time without knowing what was in them. I take it for granted that that is undoubtedly so. But was he deceived? That is the question. Why, he tells you that that was a subject-matter of discussion between him and Judge Key, and I say that that is corroborated by the testimony I have just called your attention to. That allegation of the indictment is not true.

Gentlemen, it seems to me that that is a complete answer to both of these objections that have been urged against him. It seems to me that what I have said, and that to which I have called your attention, shows that General Brady was only carrying out a policy; whether a wise one or an unwise one it is not for me to say, and, perhaps, not for you to say. I think it is not for you to say. But he was carrying out a policy which was to give frequent and expeditious mails to that region of country about which we have been talking—a policy that was indorsed by the Postmaster-General, and a policy that he was instructed by the Postmaster-General to pursue.

Now, these gentlemen talked to you about General Brady's wealth. You know, gentlemen, that when that subject was touched upon in the testimony his honor ruled it out as being irrelevant to this case, and, therefore, what there is about General Brady's wealth is largely drawn

from the imagination of these gentlemen of the prosecution. One minute my Brother Bliss would hold up to you this enormous amount of Chattanooga stock that Brady was carrying. I suppose all you gentlemen know what that means. That is exhibited to you as evidence of wealth. In about five or ten or fifteen minutes after that he turns about and talks to you about this Chattanooga wild-cat stock. One minute it was a mine of wealth, a pile of gold. The next minute it was wild-cat.

I do not think I ought, gentlemen—I must not—occupy your time in matters of that kind. In the “Ginger letter,” as they call it, you see mention is made of telephone stock and telephone bonds; and if I had the lively imagination of my Brother Bliss I could imagine how wealth might be obtained in a great many ways out of telephone stock and telephone bonds—buying them when they were worth nothing, when everybody was afraid to touch them, when the enterprise was in its infancy and you could get a bushel basketful of it for not more money than would buy you a breakfast. I can imagine that stock, as this great invention became developed and began to show what it was, growing in value until that which was comparatively worthless would be worth a vast amount of money. I could draw upon my imagination as to how a large amount of wild-cat, bought for nothing, could grow in value on the Wall-street market until the owner would be independent by reason of it. I can imagine a great many ways in which a man can make money, and I do not think that it is anything to a man’s discredit that he does make money. I think the most of us are trying to make money. I have been trying to nearly all my life, and I have not succeeded very well, while others, who have not tried half so hard as I have, have succeeded a great deal better. Now, look at my Brother Davidge over there, how innocent he looks when I mention a thing like that. [Laughter.]

Mr. BLISS. He can afford it.

Mr. WILSON. I say I can draw upon my imagination——

Mr. DAVIDGE. [Interposing.] That is the way I got mine.

Mr. WILSON. [Continuing.]—weak and poor as it is, and see how a man might get money without stealing it, and if I had as lively an imagination as my Brother Bliss, I would not have a bit of trouble on that score in addressing this jury. But, gentlemen of the jury, there is no evidence that he has wealth or has not. Whether he has or has not they have not proved, and they have not proved that any farthing of what he has ever came from any one of these codefendants of his.

Now, gentlemen, I am about to leave this case. I am to be followed by others, and in conclusion will come my Brother Merrick. When he comes to address you, I just want you simply to remember one or two things: I want you to remember that vituperation and abuse are not argument. There is no logic in a fish-woman’s talk—not comparing my Brother Merrick, of course, to a fish-woman. But there is no logic in vituperation. There is no argument in abuse. It proves nothing to call a man a scoundrel. It does not prove this case to howl about conspirators. That is the very question you have to try, whether these defendants are conspirators. And when he comes here talking to you, in the conclusion of this case, about these men being conspirators, I want you just to have in your minds all the time, gentlemen, a silent question to Mr. Merrick: “Is not that the thing we are trying here? And are not we to decide, and not you, Brother Merrick, whether these men are conspirators or not?”

The Government has charged them with that crime, charged that they agreed together, and the Government has to prove that—not as-

sert it, but prove it—and I want you, gentlemen of the jury, to hold them to that.

When they come to argue this case, notice and see if they tell you when this conspiracy was formed. See if you can find out. You have not found out in fourteen days of their opening. See if you can find out in the conclusion, from anything that Mr. Merrick says, when this conspiracy was formed.

And when they assail these gentlemen, see if they point out to you any act done by my client that was not in conformity with law. When he charges my client with having done some act in his official capacity that was a violation of law, let him point it out to you and show you wherein it was a violation of law.

When they charge him with retroactive orders, for example, let them give you the particular retroactive orders. Let them give you succinctly and in order all that happened in the department with reference to those orders, and see if they can make it out that they were retroactive orders. Mr. Merrick cannot do it, nor any other living man.

When he comes at you with Agate and Pagosa Springs, and some other place, and says Brady gave a month's extra pay, you just bear it in your minds that the law provides for a month's extra pay, and the contract provides for a month's extra pay.

And when they say that Brady gave pay for increased distance, I want you to remember that whenever, by reason of putting on a new post-office, the distance was increased, the pay was given according to the contract, and the distance was ascertained by the usual method of ascertaining distances—it was certified to by the postmasters upon distance circulars sent out.

And when they talk to you about fines and deductions and remissions, I want you to remember that in every case where delinquency was reported fines were imposed, and that in no case were there any remissions except where the inspection division reported them favorably, and sometimes not even then.

And when they talk to you about this service not being needed, and Brady knowing it to be so, I want you to remember these piles of petitions in regard to this matter that nobody has ever assailed or questioned.

Do not forget these things when they are standing here and shouting in your ears, "fraud and conspiracy."

Gentlemen, so far as I am concerned, I am going to turn this case over to you.

Time would not permit me to discuss many things that have been pressed upon you by the prosecution, but I think I have considered all that are worthy of serious consideration and many that were scarcely worthy of notice, and I have only detained you to notice them lest some unfavorable inference might be drawn from an omission to do so.

I know that I have been tedious and uninteresting, but I am sure you will overlook that when you consider the great responsibility that rests upon me in such a matter as this. I expected that my Brother Chandler would have shared this responsibility with me, but the court has willed it otherwise.

The Government has put forth and will continue to put forth all its energies to induce you to convict these defendants. It is a powerful, a fearful adversary. It has more eyes than Argus, more arms than Briareus, and resources without limit. It threatens, and men tremble; it commands, and men obey.

In a contest such as this, with such an adversary, we look to you—I will not say as a shield, but as the chosen instrument of the law—to stand firmly and indifferently between this Government, with all its power, and these citizens whom it has arraigned.

I have no fair words or polished phrases for a conclusion, gentlemen. I have attempted to present it to you in a plain way. I have tried to keep within this record. I have tried not to overstate anything in favor of my client or these other defendants, nor to understate anything that might militate against him. I have sought to deal with this record fairly, and I trust, gentlemen of the jury, that you will deal with it in the same way.

When you come to look through this evidence, look at these defendants, honorable men, I feel sure, gentlemen of the jury, that you will be moved by a single impulse, and that is to look at this evidence as it is; and that wherever any act committed by any one of these defendants is consistent with integrity you will attribute to it an honest purpose instead of a dishonest purpose. If you do that, gentlemen of the jury, I think I can retire from this case with a feeling of absolute security that no harm will come to any one of these defendants by reason of your verdict.

I thank you, gentlemen, and I thank the court.

The COURT. Who goes on to-morrow?

Mr. DAVIDGE. We will determine, your honor, between now and to-morrow morning. One of us will go on.

The COURT. Adjourn the court.

Thereupon (at 2 o'clock and 8 minutes p. m.) the court adjourned until to-morrow morning at 10 o'clock.

THURSDAY, MAY 17, 1883.

The court met at 10 o'clock.

Present, counsel for the Government and for the defendants.

The COURT. I wish to say just one word this morning about a matter. There has been a crazy man going about the court-house for several days. I understand that his name is England, and that he is a member of the bar. He was carried out the other day from within the bar, making exclamations of some character. The man is evidently deranged, but he is a dangerous man to be at large. I am just informed by one of the bailiffs that he was here this morning and said he was going to shoot the court.

Mr. DAVIDGE. Shoot the court?

The COURT. Shoot the person of the court.

Mr. DAVIDGE. That is of more importance to your honor.

The COURT. I shall have to get a substitute, I suppose. But it is a disgrace to the authorities of this town to have the peace and order of the community disturbed by allowing such a man to go about the streets for so many days. He is a dangerous man. You cannot tell what whims crazy people will get into their heads. Somebody ought to take charge of this man. If he were a sane man, of course I should disregard his threat and think nothing of it, but no one can tell at what moment a crazy man may whip out a deadly weapon and shoot his best friend. We have an instance reported in the paper this morning of such an occurrence yesterday in the neighborhood of Relay House. I suppose the

court itself could make some order in regard to this man, but I dislike to interfere in a matter that belongs properly to other persons whose duty it is to look after men of this kind.

Mr. CARPENTER. The court could properly make an order instructing the bailiffs not to admit him to the court-house.

The COURT. Of course he is not to be admitted here. That order has been given. It was given yesterday. His threat is that he is going to shoot me for making that order. That is worse than any step that has been taken by counsel in the trial of this case.

Mr. WILSON. I believe he was nearer to me than any one else when he sat in the court-room.

The COURT. I have a note here from Mr. George B. Sheriff, a member of this jury, which I will read. It is addressed to me :

MAY 17, 1883.

I regret having to inform you of my inability to attend court this morning, owing to a very bad sore throat, but hope to be able to be in place to-morrow morning.

Very respectfully,

GEORGE B. SHERIFF.

Mr. WILSON. I am glad to hear that it is only sore throat. If it had been any derangement of his mind I should have taken some of the responsibility for it to myself.

Mr. INGERSOLL. I suppose, under the circumstances, that the court will adjourn until to-morrow.

The COURT. Of course, we cannot go on with eleven jurors. Gentlemen, you are adjourned until to-morrow morning at 10 o'clock.

At this point (10 o'clock and 10 minutes a. m.) the court adjourned until to-morrow morning at 10 o'clock.

FRIDAY, MAY 18, 1883.

The court met at 10 o'clock a. m.

Present, counsel for the Government and for the defendants.

HON. ROBERT G. INGERSOLL

addressed the jury on behalf of the defense as follows :

May it please the court and gentlemen of the jury: Perhaps some of you, may be all of you, will remember that I made one of the opening speeches of this case, and that in that opening speech I endeavored to give you the scheme or plan of the indictment. I told you, I believe, at that time, that all these defendants were indicted for having conspired together to defraud the United States. In that indictment they were kind enough to tell us how we agreed to accomplish that object; that we went into partnership with the Second Assistant Postmaster-General, he being one of these defendants, and that we then and there agreed to get up false petitions, to have them signed by persons who were not interested in the mail service, to sign fictitious names to these petitions, those names representing no actual, real, living persons; that we also agreed to have false and fraudulent letters written to the department urging this service; that in addition to all that we were to make and file false and fraudulent affidavits, in which we were to swear falsely as to the number of men and horses to be employed, and the number of men and horses then necessary; that in addition to that we

were to file fraudulent subcontracts; that the Second Assistant Postmaster-General was to make false and corrupt orders, and that all these things were to be done to deceive, mislead, and blindfold the Postmaster-General. They also set out that these orders so corruptly made were to be corruptly certified to the Auditor of the Treasury for the Post-Office Department in order that we might draw our pay. That is what is known as the general scheme or plan of this indictment. You have heard the testimony, and remember some of it. Of course you do not remember it all. Probably no man ever lived who could do such a thing. You have heard the testimony discussed, I believe, for about twenty days, so that I take it for granted you know something about it, or at least have an idea that you do. The story that we told you in the first place, and that we now tell you, is about this:

In 1877 Mr. Peck, Mr. Miner, and John W. Dorsey made up their minds to make bids and to go into the mail business. I want you to remember that there is not one word in this indictment about any false bid ever having been made. Remember that. There is nothing in this indictment about a false bond having been given; not a thing. There is nothing in this indictment charging that any of the original contracts were false. I want you to remember that. There is no evidence that any person signing any one of those contracts as security was not perfectly solvent. There is no evidence, not one syllable, that any proposal was fraudulent, or that any bid was fraudulent. How is it possible for a bid to be fraudulent? I will tell you. If you make a bid, and make a contract or enter into an agreement at the same time with some of the Post-Office officials so that your bid will be accepted when it is not the lowest, there is a fraud, and there is a fraudulent bid. There is one other way, and that is to put in a bid to carry the mail at so many thousand dollars, and then have below that straw bidders, men not responsible, and when the time comes to accept the bid of those gentlemen they refuse to carry it out, and then the law is that it shall be given to the next highest, and he refuses, and the next, and he refuses, and the next highest, and he refuses, and so on until it comes to the highest bidder. There are such combinations and have been, I have no doubt, for many years in the Post-Office Department. That is called straw bidding, and it is fraudulent bidding. There is no such charge as that in this case. Every bid that was made was made in good faith, and every bid that was accepted was followed by a good and sufficient contract entered into by the party making the bid, and so that is the end of that.

Now, in 1877, I say these men entered into an agreement among themselves that they would bid on certain routes, and Mr. Peck, or Mr. Miner, or John W. Dorsey—they may have it as they choose—*somebody*, wrote a letter to Stephen W. Dorsey and in that letter told what they were going to do and requested him to get some man to obtain information in regard to these routes. You know that testimony. Stephen W. Dorsey was then in the United States Senate. He sent for Mr. Boone and he showed him that letter. In consequence of that Mr. Boone sent out his circulars to the postmasters all over the country, or all over the portion as to which they were to bid, and asked them about the roads, about the price of oats and corn, about the price of labor, and about the winters; in other words, all the questions necessary for intelligent men, after having received intelligent answers, to make up his mind as to the amount for which he could carry that mail. Mr. Boone, you remember, says that he was to have at that time a certain share. There is a conflict of testimony there. Mr. Dorsey says that he told Boone that

when John W. Dorsey came here they could arrange that, and he had no doubt but what they would be willing to give him a share; but that he did not give it to him. The circulars were sent out and the information in some instances, and I do not know but all, came back. Then they agreed upon the amounts they were to bid. I believe Mr. Miner came here in December, and John W. Dorsey, I think, in January, and in February the bids were made. All the amounts were put in the bidding-book issued by the Government, by Mr. Miner and Mr. Boone; all with two exceptions, and those amounts had been placed there by them, but under the advice of Stephen W. Dorsey those amounts were lowered. I remember one was upon the Tongue River route, the other route I have forgotten. Mr. Miner, Mr. Peck, and John W. Dorsey were together. Afterwards a partnership was formed between John W. Dorsey and A. E. Boone. Stephen W. Dorsey advanced some money. There is nothing criminal about that. It is often foolish to advance money, but it is not a crime. It is often foolish to indorse for another, and many a man has been convinced of that, but it is not a crime. He advanced until, I believe, he was responsible for some fourteen or fifteen thousand dollars, and thereupon he declined to advance any more. He saw Mr. Miner in Saint Louis, and said to Mr. Miner "This is the last I am going to advance." I think he gave him some notes that he hypothecated or discounted at the German-American National Bank. He wanted security, and thereupon they gave him Post-Office drafts for the purpose of securing his debt. He would advance no more money and went away to New Mexico. Mr. Miner had a power of attorney from John W. Dorsey who was absent, and a power of attorney from John M. Peck who was absent. I believe on the 7th of August, or about that time, Mr. Boone went out. Why? They had not the money at that time to put on the service. Why? A great many more bids had been accepted than they had anticipated, and instead of getting twenty or thirty routes they got, I believe, one hundred and thirty-four routes. The consequence was they did not have the money to stock the routes. There was another difficulty. There was an investigation by Congress, and that delayed them a month or two, and the consequence was that when the 1st of July came, the day upon which the service should have been put on, it was not only not put on, but they had not the means to do it. Then what happened? Then it was that Mr. Miner took in Mr. Vaile, and an agreement was made which bears date the 16th day of August, 1878. It was not finally signed by all the parties, I believe, until some time in September or October. Under that contract, which you have all heard read, and which probably I may read to you before I get through, or some portion of it, Mr. Vaile was given an interest in this business. More than that; subcontracts were given to Mr. Vaile, and under the subcontract law which was passed on the 17th day of May, 1878, I believe, Vaile could file his subcontract in the Post-Office Department, and that rendered all Post-Office drafts or orders that had been given absolutely worthless. That was done. The subcontracts were given to Vaile under the powers of attorney that Miner held from Peck and John W. Dorsey, and of course he could act for himself. That was the situation. Stephen W. Dorsey was not here. When he returned he found that everything had been disposed of except his liability, and that he would have to pay the notes. His security was gone, and the subcontracts were filed. At that time he and Mr. Vaile had a quarrel. That is our story. In the mean time John W. Dorsey was on the Tongue River route. I believe he visited Washington in November and left

word that he would like to sell out all his interests in these routes, and I believe fixed the price. Some time in November or December Mr. Vaile made up his mind to take the routes, and afterwards changed his mind. Stephen W. Dorsey was then in the Senate. On the 4th of March, 1879, his term expired. I believe on that very day, or about that day, he wrote a letter to Brady calling his attention to these subcontracts that had been filed for the protection of Vaile and denouncing them. That was the first thing he did. Then a few days afterwards the parties met. In a little while afterwards they made a division of this entire business. You know how the division was made. Stephen W. Dorsey fell heir to about thirty of these routes, I think. In addition he had to pay \$10,000 to his brother and \$10,000 to Peck. Mr. Vaile, I think, took forty per cent. and Mr. Miner thirty per cent. Mr. Vaile and Mr. Miner went into partnership and Stephen W. Dorsey took his routes, and that ended it. Mr. Peck was out and John W. Dorsey was out. That is our story. When they divided those routes, in order to vest the property of those routes in the persons to whom they fell, it was necessary to execute subcontracts and give Post-Office drafts and things of that character. All those necessary papers they then and there agreed to make. Up to this point there is not one act established by the evidence not entirely consistent with perfect innocence; not an act. That is our story. After these routes fell to us we did what we had the right to do and what we could to make the routes of value. As business men we had the right to do it, and we did only what we had the right to do.

The next question that arises, and which of course is at the very threshold of this case, is, did these parties conspire? That is the great question. In my judgment you should settle that the first thing when you go to the jury-room. After having heard the case as it will be presented by the Government, and after having heard the charge of the court, the first thing for you to decide is, was there a conspiracy? How is a conspiracy proved? Precisely as everything else is proved. You prove that men conspire precisely as you prove them guilty of larceny or murder or any other crime or misdemeanor. It has been suggested to you that as conspiracy is very hard to prove you should not require much evidence; that you should take into consideration the hardships of the Government in proving a crime which in its nature is secret. Nearly all crimes are secret. Very few men steal publicly, with a band of music and with a torch in each hand. They generally need their hands for other purposes, if they are in that business. All crime loves darkness. We all know that. One of the troubles about proving that a man has committed a crime is that he tries to keep it as secret as possible. He does not carry a placard on his breast or on his back stating what he is about to do. The consequence is that it is nearly always difficult to prove men guilty as stated in the indictment. But that does not relieve the prosecution. That burden is taken by the Government, and they must prove men guilty of conspiracy precisely as they prove anything else. Is circumstantial evidence sufficient? Certainly, certainly. Circumstantial evidence will prove anything, provided the circumstances are right, and provided further that *all* the circumstances are right. A chain of circumstances is no stronger than the weakest circumstance, as a chain of iron is no stronger than the weakest link. Where you establish or attempt to establish a fact by circumstances, each circumstance must be proved not only beyond a reasonable doubt, but each circumstance must be wholly inconsistent with the innocence of the defendants. Now, let me call your attention to what

I claim to be the law upon the subject, and I will call the attention of the court to it at the same time. I will take this as a kind of test:

The hypothesis of guilt must flow naturally from the facts proved and must be consistent with them; not with some of them, not with the majority of them, but with all of them.

In other words if they establish one hundred circumstances and ninety-nine point to guilt and one circumstance thoroughly established is inconsistent with guilt or perfectly consistent with innocence, that is the end of the case. It is as if you were building an arch. Every stone that you put into the arch must fit with every other and must make that segment of the circle. If one stone does not fit, the arch is not complete. So with circumstantial evidence. Every circumstance must fit every other. Every solitary circumstance must be of the exact shape to fit its neighbor, and when they are all together the arch must be absolutely complete. Otherwise you must find the defendants not guilty. The next sentence is:

The evidence must be such as to exclude every reasonable hypothesis except that of guilt. In other words, all the facts proved must be consistent with and point to the guilt of the defendants not only, but they must be inconsistent, and every fact proved must be inconsistent, with their innocence.

Now, what does that mean? It means that every fact that is absolutely established in this case, must point to the guilt of the defendants. It means that if there is one established fact that is inconsistent with their guilt, that fact becomes instantly an impenetrable shield that no honest verdict can pierce. That is what it means. That being so—and the court in my judgment will instruct you that that is the law—let us talk a little about what has been established.

In the first place nearly all that has been established, or I will not say established, but nearly all that has been said for the purpose of showing that our motives were corrupt, and that we actually conspired, rests upon evidence of what we call conversations. Some witness had a conversation with somebody, three years ago, four years ago, or five years ago. The unsafest and the most unsatisfactory evidence in this world is evidence of conversation. Words leave no trace. They leave no scar in the air, no footsteps. Memory writes upon the secret tablet of the brain words that no human eye can see. No man can look into the brain of another, and tell whether he is giving a true transcript of what is there. It is absolutely impossible for you to tell whether it is memory or imagination. No one can do it. Another thing: Probably there is not a man in the world whose memory makes an absolutely perfect record. The moment it is written it begins to fade, and as the days pass it grows dim, and as the years go by, no matter how deeply it may have been engraven, it is covered by the moss of forgetfulness. And yet you are asked to take from men their liberty, to take from citizens their reputation, to tear down roof-trees, on testimony about conversation that happened years and years ago, as to which the party testifying had not the slightest interest. As a rule memory is the child of attention—memory is the child of interest. Take the avaricious man. He sets down a debt in his brain, and he graves it as deep as graving upon stone. A man must have interest. His attention must be aroused. Tell me that a man can remember a conversation of four or five years ago in which he had no interest. We have been in this trial I don't know how many years. I have seen you, gentlemen, gradually growing gray. You have, during this trial, heard argument after argument as to what some witness said, as to some line embodied in this library. [Indicating record.] You have heard the coun-

sel for the prosecution say one thing, the counsel for the defense another, and often his honor, holding the impartial scales of memory, differs from us both, and then we have turned to the record and found that all were mistaken. That has happened again and again, and yet when that witness was testifying every attorney for the defense was watching him, and every attorney for the prosecution was looking at him. How hard it would be for you, Mr. Juror, or for any one of you to tell what a witness has said in this case. Yet men are brought here who had a casual conversation with one of the defendants five years ago about a matter in which no one of the witnesses was interested to the extent of one cent, and pretend to give that conversation entire. For my part, were I upon the jury, I would pay no more attention to such evidence than I would to the idle wind. Such men are not giving a true transcript of their brains. It is the result of imagination. They wish to say something. They recollect they had a conversation upon a certain subject, and then they fill it out to suit the prosecution.

Now I am told another thing; that after getting through with conversations they then gave us notice that we must produce our books, our papers, our letters, our stubs, and our checks; that we must produce everything in which we have any interest, and hand them all over to this prosecution. They say they only want what pertains to the mail business, but who is to judge of that? They want to look at them to see if they do pertain to the mail business. They won't take our word. We must produce them all. It may be that with such a net they might bring in something that would be calculated to get somebody in trouble about something, no matter whether this business or not. They might find out something that would annoy somebody. They gave us a notice wide enough and broad enough to cover everything we had or were likely to have. What did they want with those things? May be one of their witnesses wanted to see them. May be he wanted to stake out his testimony. May be he did not entirely rely upon his memory and wanted to find whether he should swear as to check-books or a check-book, and whether he should swear as to one stub or as to many. May be he wanted to look them all over so that he could fortify the story he was going to tell. We did not give them the books. We would not do it. We took the consequences. But what did we offer? That is the only way to find out our motive. I believe that on page 3776 there is something upon that subject. I will read what I said:

Now, gentlemen, with regard to the books. As there has been a good deal said on that subject I make this proposition: Mr. Dorsey has books extending over a period of twenty years, or somewhere in that neighborhood. He has had accounts with a great many people on a great many subjects. He does not wish to bring those books into court, or to have those accounts gone over by this prosecution, not for reasons in this case, but for reasons entirely outside of the case. If the gentlemen on the other side will agree, or if the court will appoint any two men or any three men, we will present to those men all our books, every one that we ever had in the world, and allow them to go over every solitary item and report to this court every item pertaining to John W. Dorsey & Co., Miner, Peck & Co., or Vaile, Miner & Co., with regard to every dollar connected, directly or indirectly, with this entire business from November or December, 1877, to the present moment, and report to this court exactly every item just as it is. I make that proposition.

That proposition was refused. What else did I do? I offered to bring into court every check, including the time they said we drew money to pay Brady. I offered to bring in every check on every bank in which we had one dollar deposited; every one. That was not admitted. And why? Because the court distinctly said that it rests upon the oath of the defendant at last; he may have had money in banks that we know nothing about. To which I replied at the time that if we stated

here in open court the name of every bank in which we did business, and there is any other bank knowing that we did do business with it, we will hear from it. So that we offered, gentlemen, in this case, every check on every bank but one. I did not know at that time that we had ever had an account with the German-American Savings Bank; I did not find that out until afterwards. But you will remember that Mr. Merrick held in his hand the account of Dorsey with that bank; and Mr. Keyser, who, I believe, had charge of that bank, was here, and if there had been anything upon those books, certainly the Government would have shown it.

More than that; that bank went into the hands of a receiver, I think, eight months before any of these checks are said to have been given for money which was afterwards given to Brady. Now, they insist, that because we failed to bring the books into court, therefore the law presumes that the absolute evidence of our guilt is in those books. I believe they claim that as the law. If my memory serves me rightly, Colonel Bliss so claimed in his speech. In other words, that when they give us notice to produce a book, and we do not produce it, there is a presumption against us. That is not the law, gentlemen. When they give us notice to produce a book or letter and we do not produce it, what can they do? They can prove the contents of the book or letter. In other words, if we fail to produce what is called the best evidence, then the Government can introduce secondary evidence. They can prove the contents by the memory of some witness, by some copy, no matter how; and that is the only possible consequence flowing from a refusal to produce the book or letter.

And yet, in this case, gentlemen, Mr. Bliss wishes you to give a verdict based upon two things: first, upon what we failed to prove; secondly, on what the court would not let them prove. He tells you that they offered to prove so and so, but the court would not let them; he wants you to take that into consideration; and secondly, that there were certain things that we did not prove; and that those two make up a case. That is their idea. Now, let us see if I am right about the law.

The first case to which I will call the attention of the court is a very small one, but the principle is clear. It is the case of Lawson and another, assignees of Shiffner, *vs.* Sherwood, and it is found in 2 English Common-Law Reports; 1 Starkie, 314:

Shiffner had indorsed the bill to Thompson, in whose hands the bill was (when it became due) on the 12th of January, 1815. Before the bill became due Shiffner applied to Masson, in order that provision might be made for the bill when due. The witness, who was called to prove notice to Sherwood of the dishonor of the bill on the 12th, stated that he sent a letter to him containing such notice two or three days after the dishonor of the bill, but the witness was unable to state whether it was two days or three days.

If it was three days it was not in time; if it was two days it was in time. I see the syllabus states that—

Notice was given by letter to the defendant, notice in two days being in time, but notice on the third too late; it cannot be left as a question for the jury whether notice was given in time, although the defendant has had notice to produce the letter which would ascertain the time.

Then the decision continues:

Richardson, for the plaintiffs, contended, that since Thompson was the holder of the bill when it was due, notice from Shiffner on the second day was in good time, and that although the witness could not state with certainty whether the notice had been sent on the second or third day, yet since this might be ascertained by the production of the letter itself, which was in the possession of the defendant, it was incumbent on him by the production of the letter to show that sufficient notice had not been given,

and that, at all events, in the absence of the letter, there was evidence to go to the jury that sufficient notice had been given.

LORD ELLENBOROUGH. The witness says two or three days, but the third day would be too late. It lies upon you to show that notice was given in due time, and I cannot go upon probable evidence without positive proof of the fact, nor can I infer due notice from the non-production of the letter.

THE COURT. If the witness had sworn, however, that the notice was given in two days, then the failure to produce the notice itself, which was in the hands of the party, would have allowed the evidence of the witness to stand.

MR. INGERSOLL. The evidence then would not have been necessary. If the witness had sworn that he gave the notice in two days, then there would have been no necessity for the letter; the letter would cut no figure:

The only consequence is that you may give parol evidence of it. The *onus probandi* lies upon the plaintiff, and since he has not proved due notice, he must be called.

Now here is a case in which a man says that he sent a letter to the other man, giving him notice of the dishonor of the bill, but he cannot say whether he sent it in two days or three days.

THE COURT. Colonel Ingersoll, you cannot argue that question to the jury; you cannot cite an authority and discuss it to the jury.

MR. INGERSOLL. Then I will just suppose a case. We will suppose a case like that. Here is a man who gives notice in writing to another; he writes him a letter, and then he forgets the date of the letter; he says it was either the 1st or the 2d of March. If it was written on the 1st of March it is good and the other man is held responsible.

THE COURT. I must stop this. I recognize the authority of the jury to render a verdict covering both law and fact in the case, but I cannot allow questions of the competency or admissibility of evidence to be discussed by counsel before the jury.

MR. INGERSOLL. Then I will discuss it with the court; it is immaterial to me which way I turn when I am talking. I understood your honor to decide that we were to discuss these questions in our argument, rather than to discuss the law before we entered upon the argument.

THE COURT. I said this: That you could assume the law to be as suited your purposes in your argument to the jury; but you cannot discuss questions of law one way or the other, as to what the law is, before the jury. You may assume the law to be as you claim it, and when the case reaches the proper stage the court will instruct the jury in regard to the law.

MR. INGERSOLL. Let me finish, then, upon this one point. If the notice had been given on the 1st of March, then the defendant was responsible; but if on the 2d, he was not responsible. The man swears that he sent him a letter either the 1st or the 2d, and thereupon gives the defendant notice to produce that letter. He will not produce it. Now, the point I make is that the inference cannot be drawn that if the letter were produced it would be dated the 1st of March.

THE COURT. You are perfectly right. The authority decides that point in that way, and I have no doubt the decision is correct. It results in just this: The question depends upon the evidence of this witness, and if he could not tell whether the notice was given on the 1st or 2d, of course his evidence failed to make out the case.

MR. INGERSOLL. In other words, the court admits, as I understand, that you cannot patch out that kind of testimony with a presumption.

THE COURT. It depends upon the evidence of the witness. If the witness had sworn that the notice was given on the 1st, which would

have been in time, that would have been sufficient ; but as the witness was not able to say whether the notice was given on the 1st or 2d his evidence did not make out a case against the plaintiff.

Mr. INGERSOLL. I go a great deal farther than that, and the law goes a great deal farther than that, in my judgment. If he had sworn that it was dated the 1st, and the defendant had had the right to swear and did swear that it was not dated the 1st, and then they had given notice to produce that letter, and it was not produced, there could have been no presumption.

The COURT. There you and I part.

Mr. INGERSOLL. That may be. We may entirely disagree as to the law, and we probably will disagree at least upon this point.

The COURT. If the testimony of the witness giving secondary evidence is upon its face sufficient, and the other side is in possession of primary evidence which would correct his error, if he made an error, and the party who has this primary evidence in his possession will not produce it, then the testimony of the witness must stand.

Mr. INGERSOLL. Well, there we part. Now, I insist that in this case the jury are the judges of the fact and of the law.

The COURT. Not on a question of the competency or admissibility of evidence.

Mr. INGERSOLL. Not on a question of the admissibility of evidence, because all the evidence has to go to the jury by the consent of the court, and the court can stop that evidence at any place. But when the evidence is before the jury, then I contend—and I do not do it offensively——

The COURT. [Interposing.] I know.

Mr. INGERSOLL. I contend that the jury are the absolute judges of the law. If they acquit, that is the end. Now, are they the absolute judges of the fact if they acquit. If they convict, then the court judges of the facts. If they convict, then the court may set the verdict aside. But if they acquit, that is the end.

The COURT. There is no difference between you and the court upon that point. The jury have a right to render a general verdict which includes both law and fact, and whether they decide one way or the other on a question of law, it is impossible for the court to determine. But in the progress of a trial, in regard to the rules of evidence which apply to secondary and primary evidence, and the consequences of the failure of a party in whose possession primary evidence is to produce it, the court has a right absolutely to tell the jury what the law is.

Mr. INGERSOLL. The court has that right, and the jury then have the right to judge whether that is the law or not.

The COURT. And the jury are absolutely bound by the decision of the court upon such questions of law as that.

Mr. INGERSOLL. I differ from that entirely.

The COURT. The jury will take their law from the court.

Mr. INGERSOLL. I have no doubt of that, but I am now discussing——

The COURT. [Interposing.] The court will not permit such a question of law as that to be argued before the jury.

Mr. INGERSOLL. I am arguing before your honor.

The COURT. I know that ; but after you have obtained the decision of the court you cannot turn around and appeal to the jury to vary from the decision of the court upon a question of law and insist upon the right of the jury to determine the question adversely to the decision of the court.

Mr. INGERSOLL. I insist, then, to your honor that the jury must at last decide the law in this case.

The COURT. Not upon a question of this sort.

Mr. INGERSOLL. Now I will read another case to the court, found in 9 Maryland, Spring Garden Mutual Insurance Company, *vs.* Evans. I read from page 16. It seems this was a case where a man sued an insurance company for loss by fire, and the question was whether he had furnished the preliminary proof of loss. The following notice to produce was served upon the defendant's attorney:

Take notice that on the trial of the above cause you are required to produce the written notice of loss by fire sent to you by the above plaintiff and left with you in Philadelphia shortly after said fire; as also the account of the particulars of the plaintiff's loss by said fire, accompanied and verified by his affidavit and the certificate of a magistrate or notary public, certifying his opinion of the amount of such loss by fire, and that the same was occasioned without fraud or evil practice, which said last two papers were also delivered to your company shortly after said fire.

Shortly after said fire and before this suit.

The insurance company refused to produce the papers and did not produce them. Question: Have the jury the right to presume that those papers were given him?

The COURT. No, they have not; and that question was determined by a higher authority than that, the Supreme Court of the United States, and I think it is reported in 13 Howard. A failure to produce papers upon notice will not establish the existence of the papers.

Mr. MERRICK. Certainly not.

The COURT. But if the secondary evidence is given of the contents of those papers, then it is another question altogether.

Mr. INGERSOLL. Now, the court decides in this case that the only consequence of their refusal to produce the papers, they not denying that they had them, was to allow the opposite party to prove their contents. That is all; that it could not be patched out with a presumption.

The COURT. But if afterwards they should attempt to contradict the secondary evidence the court would not have allowed them to do it.

Mr. INGERSOLL. It does not say so.

The COURT. That is the law.

Mr. INGERSOLL. Suppose, after the other side had proved the contents, there was an offer of the actual original papers. I can find plenty of authority that they must be received.

The COURT. I have never seen such authority, but I have seen a great many to the contrary.

Mr. INGERSOLL. I have never seen an authority to the contrary that was very well reasoned. But, then, I will not argue about that, for that is not a point in this case.

The COURT. If you have the papers, and have received notice to produce them, you are bound to produce them. If you do not produce them secondary evidence is admissible to prove their contents. But after the secondary evidence has been received, the court will not allow you then, after having first failed to produce the papers upon notice, to resort to the primary evidence which you ought to have produced upon the notice, for the purpose of contradicting the secondary evidence that was given.

Mr. INGERSOLL. Now let me give the court a case in point: In this very case that we are now trying, Mr. Rerdell in his statement to Mac-Veagh said there was a check for \$7,000; that the money was drawn upon that check; that he and Dorsey went together to the Post-Office

Department and that Dorsey went into Brady's room; that that money was drawn by Dorsey. That was his statement to MacVeagh and James.

The COURT. It was not his statement here.

Mr. INGERSOLL. Yes, that was his statement here, as I will show hereafter. But let me state my point. He was coming upon the stand. The check, instead of being for \$7,000, was for \$7,500; instead of being drawn to the order of Dorsey or to bearer, it was drawn to the order of Rerdell himself; instead of being drawn at the bank by Dorsey, it was drawn by Rerdell in person and had his indorsement upon the back of it. We were asked to produce that. I preferred not to do it until I heard the testimony of Mr. Rerdell. Why? Because I wanted to put that little piece of dynamite under his testimony and see where the fragments went, and I did. That is my answer to that.

Now, I find another case in the first volume of Curtis's Circuit Court Reports, where it is said, at page 402, that—

By the common law a notice to produce a paper—

The COURT. [Interposing.] Before we part from what you were saying, I wish to say that I do not think that the other side gave you notice to produce the checks; that is my memory.

Mr. CARPENTER. Oh, yes.

The COURT. It was a tender of your own. You proposed to bring all the checks for that month upon that bank, and subsequently you did produce those checks except two, and the absence of those was more or less satisfactorily accounted for.

Mr. MERRICK. They never were accounted for.

The COURT. I say more or less. But there was no notice to produce those checks given by the other side.

Mr. INGERSOLL. Yes, long before that. Let me state my memory to the court: I do not remember exactly every one of these four thousand pages of testimony; there are three or four that I may be a little dim about; but I do remember that a notice was given to us to produce everything in the universe nearly, and that the court held that the scope was a little too broad.

The COURT. Yes; I remember that.

Mr. INGERSOLL. The notice said checks, check-books, and in fact any correspondence that we might have had with anybody.

The COURT. I do not think it specified checks.

Mr. INGERSOLL. Oh, yes; the very word "checks" was in the notice.

The COURT. But whether it was or not, the court decided that the notice was too sweeping.

Mr. INGERSOLL. There is something that illustrates the point I make in my argument, as to how hard it is to remember what has been done, even right in this case.

The COURT. After a decision of that kind has been made upon the sufficiency of a notice, it goes out of my memory more or less.

Mr. INGERSOLL. I have forgotten the page, but I will tell you where it comes in: It was where Mr. Rerdell swore about the stub-book.

Mr. CARPENTER. On page 2255 is the notice itself.

Mr. INGERSOLL. I find the notice, may it please your honor, on page 2255, and it was dated the 13th of February. This is the notice, and it gave the same notice to all the defendants:

You are hereby notified to produce forthwith in court, in the above-entitled cause, all letters and communications, including all telegrams, of every kind and description, purporting to come from any one of said defendants and addressed to you or delivered to you, and all memoranda in which reference is made to any contract or contracts of

any one of said defendants with the United States or with the Postmaster-General for carrying the mail under the letting of 1878 on any route in the United States, or in any way referring to any contract or contracts for so carrying the mail, in which J. W. Bosler or any one of said defendants had any interest, or in any way referring to any act, contract, or proceeding thereunder, or to any payment, draft, warrant, check or bill, or note, or to any possible loss or profit in connection with such contract or contracts, or to the management or execution thereof, or referring to any possible gain or profit to be derived by any of said defendants from contracts for carrying the mail of the United States, or to any payments under such contract, or to the distribution of the proceeds made or to be made of said payment, or to the management of any enterprise or enterprises in connection with the transportation of the mail, or to gains, profits, or losses accruing or likely to accrue from such enterprises, or to the financial means for carrying on the same; and also to produce any and all books containing any entry or entries in regard to any of the subjects, matters, checks, drafts, or payments relating or having reference to the subjects, &c., hereinbefore referred to; and also any letter-book or letter-books containing letter-press copies of letters referring to the said subject or subjects.

I believe just about that time, or a little after, another notice was given.

Mr. MERRICK. If the counsel will allow me, my impression is that that notice was deemed by the court to be too broad.

The COURT. It was.

Mr. INGERSOLL. Then another notice was given that specified all these things.

Curtis says in this case that—

By the common law, a notice to produce a paper, merely enables the party to give parol evidence of its contents, if it be not produced. Its non-production has no other legal consequence.

I find, too, that in the Maryland case they make a reference to *Cooper vs. Gibson*, 3 Camp., 303. I also have another case, to which I will call the attention of the court, *United States vs. Chaffee*, 18 Wallace, 516. I have not the book here, but I can state what it is.

Mr. WILSON. Have you sent for it?

Mr. INGERSOLL. I believe I did. My recollection of the case is this: That an action was brought against some distillers; that by law distillers have to keep certain books in which certain entries by law have to be made. Notice was served upon the defendants to produce those books. They refused so to do; and the question was whether any presumption arose against the defendants on account of that refusal.

The COURT. I agree with you entirely that far in your law, that the mere fact of the failure to produce books or papers has no effect at all against the party declining to produce them. But it is a different question altogether, after secondary evidence has been given, in consequence of such refusal, to supply the place of the primary evidence. The mere refusal to produce books and papers on notice does not prove the existence of any such books and papers nor of the entries in them.

Mr. INGERSOLL. But this case will go a great deal farther.

The COURT. If the books and papers have an existence, and the party who has received the notice has refused to produce them, and the other party has given secondary evidence of the contents of such books and papers, that secondary evidence will have to stand, under those circumstances, as the proof in the case.

Mr. HENKLE. For what it is worth.

Mr. INGERSOLL. That is not the point. Of course that will stand for what it is worth.

The COURT. Of course it is like other evidence, it must stand for what it is worth.

Mr. HENKLE. There is no inference to be drawn from the non-production of the books.

The COURT. No; but an inference is to be drawn from the secondary evidence which takes the place of the primary, and the jury have a right to take into consideration the failure of the other side to produce.

Mr. INGERSOLL. That is what I deny.

Mr. DAVIDGE. The contrary has been decided by the Supreme Court.

The COURT. No, it has not.

Mr. INGERSOLL. I was not arguing the point last stated by your honor that the jury may take the secondary evidence for what it is worth. I was arguing this point: Can the jury hatch and putty and plaster the secondary evidence with a presumption born of the failure to produce the books and papers?

The COURT. What I mean is just this: If you should fail to produce the primary evidence, and then the secondary evidence of the contents is not contradicted——

Mr. INGERSOLL. [Interposing.] It may not be contradicted, because it happens to be inherently improbable.

The COURT. Of course the fact of your failure to produce the primary evidence will not force the jury to believe the secondary evidence if they see reason for disbelieving it. But the witness who gives secondary evidence stands before the jury with his evidence to be judged by all surrounding circumstances of the case.

Mr. WILSON. Pardon me, but I would like to understand this. If your honor please, I understand the proposition of Government to be this: That when they give notice to produce a book or paper and it is not produced, the jury have a right to infer from that something against the defendants. That is their proposition.

The COURT. They have a right to argue in that way.

Mr. INGERSOLL. Nobody denies that.

The COURT. The court is not going to instruct the jury that they are bound to believe the secondary evidence, but they are to judge of it from the manner in which it is presented and from all the circumstances.

Mr. MERRICK. May I make a remark?

Mr. INGERSOLL. I have no objection.

Mr. MERRICK. I do not care about it particularly, but this is the proposition of the Government: The Government claims the law to be as your honor has intimated, and we have formulated it in one of our prayers. But that abstract proposition is hardly applicable in the present case, for the Government claims the application of another and plainer proposition: That wherever a defendant himself takes the stand and has in his possession a certain paper which, when called upon on cross-examination to produce, he refuses, then a presumption unquestionably arises of such potency that it is difficult to resist.

The COURT. How much potency that has, under such circumstances, belongs to the jury.

Mr. DAVIDGE. And that same defendant throws the postulate of the argument of the other side sky high.

Mr. MERRICK. I will get Mr. Davidge to go up and bring it down when I come on.

Mr. INGERSOLL. The point I make is that there is no difference, so far as the law is concerned, whether the defendant, as a defendant, fails to produce the books and papers, or whether, in his capacity as a witness, he fails to produce the books and papers. The law, it seems to me, is exactly the same.

Now, in this case of the *United States vs. Chaffee et al.* (18 Wall., 544), it appeared on the trial below that they did keep the books; that did

not appear by their evidence, but by the evidence of the Government; but that fact that they kept the books was absolutely established, those books consisting of day-books, journals, and ledgers:

Now, the court instructed the jury that it was a rule, without exception, that where a party has proof in his power which, if produced, would render material facts certain, the law presumes against him if he omits to produce it, and authorizes the jury to resolve all doubts adversely to his defense; that although the case must be made out against the defendants beyond all reasonable doubt in this case as well as in criminal cases, yet the course of the defendants may have supplied in the presumptions of law all which this stringent rule demanded. "In determining, therefore, in the outset," said the court to the jury, "whether a case is established by the Government, you will dismiss from your minds the perplexing question whether it is so made out beyond all doubt."

This is the language of Mr. Justice Field:

It need not, in the exigencies of this case, be so proved in order to throw the burden of explanation upon the defendant, if from the facts you believe he has within his reach that power. In the end all reasonable doubt must be removed, but here, at this stage, you need say only, is the case so far established as to call for explanation.

* * * "If, then, you conclude that, unexplained and uncontroverted by any testimony, the opening proof would enable you to find against the defendants for the claim of the Government, or any material part of it, you will then take up their testimony in view of the principle" stated, that of presuming against a party who fails to produce proofs in his possession.

Justice Field denounces that, that you should presume against the party because he fails to produce books and papers known to be in his possession. And why? I suppose a party can not be presumed out of his liberty; he cannot be presumed into the penitentiary; and you cannot make a prison out of a presumption any more than you can make a gibbet out of a suspicion.

And again, the court instructed the jury that the law presumed that the defendants kept the accounts usual and necessary for the correct understanding of their large business and an accurate accounting between the partners, and that the books were in existence and accessible to the defendants unless the contrary were shown.

That same thing has been claimed here.

The COURT. No.

Mr. INGERSOLL. We have heard it very often that this was a large business.

The COURT. You have not heard anything of that kind from the court.

Mr. INGERSOLL. I am not saying that. I said "claimed;" if I had referred to your honor I should have said "decided." Here is another instruction of the court:

If you believe the books were kept which contained the facts necessary to show the real amount of whisky in the hands of the defendants in October, 1865, and the amount which they had sold during the next ten months, or that the defendants, or either of them, could by their own oath resolve all doubts on this point; if you believe this, then the circumstances of this case seem to come fully within this most necessary and beneficent rule.

He applied the word "beneficent" to a rule that put a man in the penitentiary on a presumption.

The COURT. He was conservative.

Mr. INGERSOLL. He ought to read some work on the use and abuse of words. Now, Judge Field says further:

The purport of all this was to tell the jury that although the defendants must be proved guilty beyond a reasonable doubt, yet if the Government had made out a *prima facie* case against them, not one free from all doubt, but one which disclosed circumstances requiring explanation, and the defendants did not explain, the perplexing question of their guilt need not disturb the minds of the jurors.

That is this case exactly ; that is the exact claim of Colonel Bliss in this case. Gentlemen, you have only to take into consideration, he says, what we offered to prove and what the court would not allow us, and what the defendants failed to prove. "Why didn't they call Bosler?" Judge Field says further :

Their silence supplied in the presumptions of the law that full proof which should dispel all reasonable doubt. In other words, the court instructed the jury, in substance, that the Government need only prove that the defendants were presumptively guilty, and the duty thereupon devolved upon them to establish their innocence, and if they did not they were guilty beyond a reasonable doubt.

We do not think it at all necessary to go into any argument to show the error of this instruction. The error is palpable on its statement. All the authorities condemn it. The case of *Clifton vs. United States*, in 4 Howard, cited by the court below, was decided upon a statute which cast the burden of proof upon the claimant in seizure cases after probable cause was shown for the prosecution, and, therefore, has no application. The instruction sets at naught established principles, and justifies the criticism of counsel that it substantially withdrew from the defendants their constitutional right of trial by jury, and converted what at law was intended for their protection—the right to refuse to testify—into the machinery for their sure destruction.

Now, gentlemen, we claim the law to be this : That while notice is given us to produce books and papers and we fail to do it, the only legal consequence is that the Government may then prove the contents of such books and papers, and that their proof of the contents must be passed upon by you.

The next thing to which I call your attention is the crime laid at our door, that we exercised the right of petition. It is regarded as a very suspicious circumstance that petitions were circulated, signed, and sent to the office of the Second Assistant Postmaster-General. Why did these people petition? Let me tell you. If you will look in every contract in this case you will find certain provisions relative to carrying the mail. Among others you will find this : That no contractor has any right to carry any newspaper or any letter faster than the schedule time ; that he has no right to carry any commercial news, or to carry any man who has any commercial news about his person, faster than the schedule time.

The COURT. But cannot he carry the mail matter as fast as he chooses ?

Mr. INGERSOLL. Yes, sir ; but he cannot carry anybody else faster.

The COURT. Oh, yes.

Mr. INGERSOLL. And no other person has the right to carry any mail matter except that contractor.

The COURT. Either fast or slow ?

Mr. INGERSOLL. No, sir ; the community is absolutely at the mercy of the department.

Mr. HENKLE. He cannot carry the mail faster than the schedule time.

Mr. INGERSOLL. No ; he cannot.

The COURT. Why ?

Mr. CARPENTER. Because he has to carry it according to contract.

Mr. INGERSOLL. He has to carry it according to schedule.

The COURT. I do not know of any such regulation as that.

Mr. CARPENTER. The contract provides that he shall carry it by the schedule.

The COURT. I do not know that there is anything in the contract to forbid him carrying it faster than that.

Mr. CARPENTER. Yes ; there is.

Mr. INGERSOLL. Let us settle that. One would suppose that all questions would be settled in this case, but that is a new one.

Mr. HENKLE. The reason why is because the people along the route have a right to expect the mail to arrive at a particular time, and if it went either faster or slower than the schedule time, they would be deprived of the privilege of knowing exactly when it arrived.

The COURT. Mr. Henkle has the credit of making that discovery.

Mr. INGERSOLL. I think it is the law. It is the same as the railways; they have to advertise when they come and when they leave. Otherwise, you might wait there a week.

Mr. HENKLE. Your honor has forgotten. We had that question up at the former trial, and discussed it at the time.

Mr. MERRICK. Oh, no. This is the first time I ever heard it in my life.

Mr. HENKLE. I remember discussing it at that time.

Mr. INGERSOLL. Here is the contract at page 543, and I will read that part of it:

Not to transmit by themselves, or either of them, or either of their agents, or be concerned in transmitting commercial intelligence more rapidly than by mail; not to carry, otherwise than in the mail, letters, packets, or newspapers which should go by mail, or convey or transport any person engaged in carrying letters, packets, or newspapers which should go by mail.

Now I turn over to see what they will do with a man if he does that, and I find on page 554, at the last line of the first paragraph, that the penalty is equal to a quarter's pay in each case.

The COURT. Yes; but he is not forbidden to go faster than the schedule time.

Mr. INGERSOLL. Yes; he must carry it according to schedule.

The COURT. Where is that?

Mr. INGERSOLL. There it is in the contract.

Mr. HENKLE. Allow me to read it:

1st. To carry said mail with certainty, celerity, and security, using therefor such means as may be necessary to transport the whole of said mail, whatever may be its size, weight, or increase, during the term of this contract, and within the time fixed in the annexed schedule of departures and arrivals; and so to carry until said schedule is altered by the authority of the Postmaster-General of the United States, as hereinafter provided, and then to carry according to such altered schedule.

The COURT. That is, within the time.

Mr. INGERSOLL. No, "of departures and arrivals."

Mr. HENKLE. Excuse me; one of the main elements of such a contract is the schedule, to leave the starting-point at such a time and arrive at the destination at such another time, and thus to carry it on that schedule.

The COURT. Within the time.

Mr. CARPENTER. According to the schedule.

Mr. INGERSOLL. All I want to get at is that point, that no mail can be carried by anybody except the United States, and if a community wants more mail it has no right to establish an express that will carry the mail faster, because the United States has the monopoly. Now, if you want more mail, what are you to do? You cannot start one yourself; the Government will not allow it. What have you to do? You have to petition the Government to carry the mail faster or to carry it more frequently; and the reason you have to ask the Government to do this is because the Government will not permit you to do it; consequently you have only one resort. What is that? Petition. And, in this very case I believe his honor used this language:

Every man carrying the mail has the right to take care of his business. He has the right to get up petitions. He has the right to call the attention of the people to what

he supposes to be their needs in that regard. He has the right to do it, and the fact that he does it is not the slightest evidence that he has conspired with any human being.

Now, if the man carrying the mail has the right to call the attention of the people to their needs, have not the people the right to do all that themselves? If the man carrying the mail has the right to get up a petition, surely the people have the right; and if the people have the right, surely the man has that right. That is the only way we can find out in this country what the people want—that is, to hear from them. They have the right to tell what they want.

But these gentlemen say, "Anybody will sign a petition." Well, if that is true, there is no great necessity for forging one. Very few people will steal what they can get for the asking. If a bank or a man offers you all the money you want, you would hardly go and forge a check to get it. I will come to that in a few moments.

Now, gentlemen, according to this evidence you have got to determine, as I said in the outset, Was there a conspiracy? The second question you have to determine is, When? In every crime in the world you have got to prove the four W's—Who, When, What, Where? Who conspired? When? What about? Where? Now I want to ask you a few questions, and I want you to keep this evidence in mind. Was there a conspiracy when Dorsey received the letter from Peck or Miner? Had the egg of this crime then been laid? Had it been hatched at that time? Is there any evidence of it? The object then was to make some bids. It is not necessary to conspire to make bids. You cannot conspire to make fraudulent bids unless you enter into an agreement that the lowest bid is not to be accepted, or agree upon some machinery by which the lowest bid is not received, or put in a bid with fraudulent and worthless security. Will the Government say that there was a conspiracy at the time Peck or Miner wrote to S. W. Dorsey? What evidence have you that there was? None. What evidence have you that there was not? The evidence of Miner and the evidence of S. W. Dorsey. What else? Boone had not been seen at that time. John W. Dorsey was not here. Peck was not here. Peck or Miner had written the letter. Was there any conspiracy then? Is there any evidence of it? Is there enough to make a respectable suspicion even in the mind of jealousy? Does it amount even to a

Trifle light as air?

Was it when Dorsey sent for Boone? Boone says no. He ought to know. S. W. Dorsey says no. John W. Dorsey was not here. Miner had not arrived. The only suspicious thing up to that point is that Dorsey lived "in his house;" that he received this letter "in his house," and that Boone visited him "in his house." That is all. Now, if there is a particle of evidence, I want the attorney for the Government who closes this case to point it out, and to be fair. Was it when Miner got here in December, 1877? Miner says no. Boone says no. Stephen W. Dorsey says no. John W. Dorsey was not yet here. All the direct evidence says no. All the indirect evidence says nothing. Now let us keep our old text in view. I want to ask you if there is a thing in all the evidence not consistent with innocence? Was it not consistent with innocence that Peck and Miner and John W. Dorsey should agree to bid? Was it not consistent with innocence that John W. Dorsey met Peck at Oberlin, and that he met Miner in Sandusky? Was not that consistent with innocence? Was it not consistent with innocence for Peck to write S. W. Dorsey a letter? Was it not consistent with innocence for Dorsey to open it and read it and then

send for Boone and give it to him? Boone in the mean time proceeded to get information so that they could bid intelligently. Was that consistent with innocence? Perfectly. More than that, it was inconsistent with guilt. What next? May be this conspiracy was gotten up about the 16th of January, when John W. Dorsey came here. Dorsey says no; Boone says no; Miner says no; and S. W. Dorsey says no. That is the direct evidence. Where is the indirect evidence? There is none? Ah, but they say, don't you remember those Clendenning bonds? Yes. Is there anything in the indictment about them? No. Was any contract granted upon those bonds or proposals? No. Was the Government ever defrauded out of a cent by them? No. Is there any charge in this case relative to them? No. Everybody says no. John W. Dorsey entered into a partnership with A. E. Boone after he came here. Is that consistent with innocence? Yes. No doubt many of the jury have been in partnership with people. There is nothing wrong about that. He also entered into partnership with Miner and Peck. There were two firms, John W. Dorsey & Co., which meant A. E. Boone and John W. Dorsey, and Miner, Peck & Co., which meant Miner, Peck and John W. Dorsey. Is there anything criminal in that? No. They had a right to bid. They had a right to form an association, a partnership. There was nothing more suspicious in that than there would have been in evidence of their eating and sleeping. Now, then, was this conspiracy entered into on August 7, 1878, when Boone went out? Boone says no, and with charming frankness he says if there had been a conspiracy he would have staid. He said, "If I had even suspected one, I never would have gone out. If I had dreamed that they had a good thing, I should have staid in." He swears that at that time there was not any. Miner swears to it and S. W. Dorsey swears to it. Everybody swears to it except the counsel for the prosecution. Rerdell swears to it. That is the only suspicious thing about it. Now, at that time, August 7, when Boone went out, S. W. Dorsey was not here and John W. Dorsey was not here. Who was? Miner. What was the trouble? Brady told him, "I want you to put on that service. If you don't I will declare you a failing contractor." A little while before that Miner had met Dorsey in Saint Louis, and Dorsey had said, "This is the last money I will furnish. No matter whether I conspired or not, I am through. This magnificent conspiracy, silver-plated and gold-lined, I give up. There are millions in it, but I want no more. I am through." So Mr. Miner, using his power of attorney from John W. Dorsey and Peck, took in Mr. Vaile.

I believe that Mr. Rerdell swears that the reason they took in Vaile was that they wanted a man close to Brady. According to the Government they had already conspired with Brady. They could not get much closer than that, could they? Miner was a coconspirator, and yet they wanted somebody to introduce him to Brady. John W. Dorsey and S. W. Dorsey were in the same position. They were conspirators. The bargain was all made, signed, sealed, and delivered, and yet they went around hunting somebody that was close to Brady. Brady said, "I will declare you all failing contractors. I can't help it, though I have conspired with you. I give up all my millions. This service has got to be put on. The only way to stop it is for you to seek for a man that is close to me. You are not close enough." Now, absurdity may go further than that, but I doubt it. You must recollect that that contract was signed as of the 16th of August. You remember its terms. At that time not a cent had been paid to S. W. Dorsey. His Post Office drafts had been cut out by the subcontracts. Afterwards he had a quarrel with Vaile. We will

call it December, 1878. Was the conspiracy flagrant then? Let us have some good judgment about this, gentlemen. You are to decide this question the same as you decide others, except that you are to take into consideration the gravity of the consequences flowing from the verdict. You must decide it with your faculties all about you, with your intellectual eyes wide open, without a bit of prejudice in your minds, and without a bit of fear. You must decide it like men. You must judge men as you know them. Was there a conspiracy between these defendants in December, 1878, when S. W. Dorsey came back here and found out the security for his money was gone, and when he had the quarrel with Mr. Vaile? Is there the slightest scintilla of testimony to show that Mr. Vaile came into this business through any improper motive? I challenge the prosecution to point to one line of testimony that any reasonable man can believe even tending to show that Mr. Vaile was actuated by an improper motive. I defy them to show a line tending to prove that John R. Miner was actuated by an improper motive when he asked Vaile to assist him in this business. I defy them to show that Brady was actuated by an improper motive when he told them, "You must put on that service or I will declare you all failing contractors." Was there a conspiracy then? I ask you, Mr. Foreman, and I ask each of you, Was there a conspiracy at that time? Have the prosecution introduced one particle of testimony to show that there was? In March was there a conspiracy? Will you call dividing a conspiracy? Will you call going apart coming together? If you will, then there must have been a conspiracy in March. A conspiracy to do what? A conspiracy to separate; a conspiracy to have nothing in common from that day forward. Mr. Vaile entered into a conspiracy then that he would have no more business relations with S. W. Dorsey. He swears that at that time nothing on earth would have tempted him to go on. That is what they call being in a conspiring frame of mind. Not another step would he go. In March they separated, and each one went his way. It was finally fixed up, and finally settled in May. John W. Dorsey was out with his \$10,000, and Peck was out with his \$10,000. S. W. Dorsey, for the first time, became the owner of thirty routes, or something more, and Miner and Vaile of the balance, I think about ninety-six. According to that contract of August 16 John W. Dorsey only had a third interest in the routes he had with Boone, and not another cent. There was a division. If there was a conspiracy of such a magnitude, why should Boone go out of it? Why should John W. Dorsey sell out for \$10,000? Why should John W. Dorsey offer Boone one-third of it? Why was Mr. A. W. Moore offered one-quarter of it—a gentleman who could be employed for \$150 a month? I ask you these questions, gentlemen. I ask you to answer them all in your own minds. Recollect, on the 16th of August there was a conspiracy involving hundreds of thousands of dollars. In that conspiracy was the Second Assistant Postmaster-General. They had the Post-Office Department by the throat. They had the Postmaster-General blindfolded. Yet Mr. Miner went to Vaile and said, "Now, just furnish a little money to put on these routes and you may have 40 per cent. of this conspiracy." He was giving him hundreds of thousands of dollars. Is that the way people talk that conspire together? Would not Miner have gone to Brady and said, "Look here, what is the use of acting like a fool? What do you want me to give 40 per cent. of this thing to Vaile for? I had better give 20 per cent. more to you. That would allow me to keep 20 per cent. more too, and then there will be one less to keep the secret." He never thought of that. I want you

to think of these things, gentlemen, all of you, and see how they will strike your mind. What did they want of Boone? S. W. Dorsey they say was the prime mover. He hatched this conspiracy. Miner, his own brother, Peck, and everybody else were simply his instruments, his tools. What did he want Boone for? He had a magnificent conspiracy from which millions were to come. He told Boone, "I will give you a third of it." What for? He told Moore, "I will give you one-quarter." Seven-twelfths gone already. T. J. B. 33 $\frac{1}{3}$ per cent. That is about all. Then 65 per cent. more to the subcontractors. I want you to think about these things, gentlemen. If they had such a conspiracy what did they want of Mr. Moore?

Mr. DAVIDGE. Your honor, let me suggest that the hour of recess is at hand.

The COURT. I will consult Colonel Ingersoll about that.

Mr. INGERSOLL. I never refused to adjourn in my life.

The COURT. We will take a recess then, gentlemen.

Mr. WILSON. For how long?

Mr. INGERSOLL. Probably an hour, I suppose. Let us have an hour. I will speak faster for it.

At this point (12 o'clock and 5 minutes p. m.) the court took a recess for one hour.

AFTER RECESS.

Mr. INGERSOLL. [Resuming.] Gentlemen, was it natural for S. W. Dorsey to get the money back that he had advanced, or some security for it? Was that natural? When a man seeks to have a debt secured is that a suspicious circumstance? That is all he did. He was out several thousand dollars. He wanted to secure that debt and he took another debt of \$20,000 upon him as a burden. If this had been a conspiracy he could have furnished this money that he had to pay to others to put the service on the route. I leave it to each one of you if that action to secure that debt was not perfectly natural. I will ask you another question. If he was the originator of the conspiracy would he have taken 30 per cent. burdened with a debt of \$20,000? The way to find out whether there is sense in anything or not is to ask yourself questions. Put yourself in that place; you, the master of the situation; you, the author of the entire scheme. Would you take one-third of what you yourself had produced, and that third burdened with \$20,000 worth of debt, and then make your debt out of the proceeds? I want every one of you to ask yourself the question, because you have got to decide this case with your brains and with your intelligence; not somebody else, but you yourself. We want your verdict; we want your individual opinion; not somebody else's. There is the safety of the jury trial. We are to have the opinions of twelve men, and those opinions agreeing. Where twelve honest men agree, if they are also independent men, the rule is that the verdict is right. The opinion of an honest man is always valuable, if he is only honest, and if it is his opinion it is valuable. It is valuable if he does not go to some mental second-hand store and buy cheap opinions from somebody else, or take cheap opinions. In this case I ask the individual opinion of each one of you. I want each one of you to pass upon this evidence; I want each one of you to say whether if Dorsey had been the author and finisher of this conspiracy he would have taken 30 per cent., burdened with \$20,000 of debt to

others and \$15,000 of debt to himself? If you can answer that question in the affirmative you can do anything. After that nothing can be impossible to you, except a reasonable verdict. You cannot answer it that way. Why should he have cared so much about fifteen or sixteen thousand dollars with a conspiracy worth hundreds of thousands of dollars? Why run the risk of making the whole conspiracy public? Why run the risk of his detection and its destruction? You cannot answer it. Perhaps the prosecution can answer it. I hope they will try.

Mr. Ker, on page 4493, makes a very important admission.

After they—

Meaning the defendants—

had these contracts, there was a combination, an agreement between all these people, that they were to do certain things in order to get at the public Treasury and get more money.

What does that mean? That means that this conspiracy was entered into after the defendants obtained the contracts, so that Mr. Ker fixes the birth of this conspiracy after these contracts had been awarded to the defendants. That being so, all the bids, proposals, Clendenning letter, Haycock letter, proposals in blank, and bidders' names left out, fade away.

Mr. WILSON. And the Chico letter.

Mr. INGERSOLL. The Chico letter I will come to after a while. I will not be as afraid of it as were the counsel for the prosecution. I will not, like the Levite, pass by on the other side of the Chico letter. I will not treat it as if it were a leper, as if it had a contagious disease. When I get to it I will speak about it. All these things, then, under that admission, go for naught, and have nothing to do with the case, and consequently nobody need argue with regard to them any more, although incidentally I may allude to them again. There is no doubt, recollect, after this admission. There is no clause in the indictment saying that we endeavored to defraud this Government by bids, by proposals, by bonds, or by contracts. Not a word. That is all out; in my judgment it never should have been in the case at all. What is the next thing we did? It is alleged that the moment Dorsey got these contracts he laid the foundation to defraud the Government by a new form of subcontract. Let me answer that fully, and let that put an end to it from this time out. Until May 17, 1878, the Post-Office Department did not recognize subcontractors. After these contracts came into the possession of these defendants Congress passed a law recognizing subcontractors. Consequently the contracts of the subcontractors that were to be recognized by the Government had to be somewhere near the same form as the contracts with the original contractors. The moment the contract of the subcontractor was to be recognized by the Government then it was necessary and proper to put a clause in that subcontract for expedition and a clause in that subcontract for increase of service. Why? So that the Government should know, if the route was expedited, what percentage the subcontractor was entitled to. Instead of that clause in the subcontract being evidence that Mr. Dorsey was endeavoring to swindle the Government, the evidence is exactly the other way. It was put there for the purpose of protecting the subcontractor, so that if expedition was put upon the route the Government would know what per cent. of the expedition to pay to the subcontractor. If that clause had not been in that subcontract the Government could not have told how much money to pay the subcontractor, and as a conse-

quence the subcontract would have been worthless as security for the subcontractor. And yet a clause put in for the protection of the subcontractor is referred to in your presence as evidence that the man who suggested it was a thief and a robber. What more? They say to these witnesses, "Did you ever see such a clause as that in a subcontract before?" No. "Why?" The Government never recognized a subcontractor before that time, and consequently there was no necessity for such a clause. Think how they have endeavored to torture every circumstance, no matter how honest, no matter how innocent, no matter how sensible; how they have endeavored to twist it and turn it against these defendants. Gentlemen, whenever you start out on the ground that a man is guilty, everything looks like it. If you hate a neighbor and anything happens to your lot you say he did it. If your horse is poisoned he is the man who did it. If your fence is torn down he is the fellow. You will go to work and get all the little circumstances that have nothing to do with the matter braided and woven into one string. Everything will be accounted for as coming from that enemy, and as something he has done.

They say another thing: That we defrauded the Government by filing subcontracts. You cannot do it. When this case is being closed I want somebody to explain to the jury how it is possible for a man to defraud this Government by filing a subcontract. I do not claim to have much ingenuity. I claim that I have not enough to decide that question or to answer it. I can lay down the proposition that it is an absolute, infinite, eternal impossibility to fraudulently file a subcontract as against the Government. It cannot be done. Oh, but they say, the subcontractor did not take the oath. There is no law that he should take an oath and there never was. There may be at some time, but there is not now. The law that everybody engaged in carrying the mail and every salaried officer of the department shall take an oath was passed before the law of the 17th of May, 1879, allowing a subcontractor to file his subcontract. Before that time the Government had nothing to do with the subcontractor. If he actually carried the mail; if he actually took possession of the mail, he had to take the oath of the carrier. But I defy these gentlemen to find in the law any oath for a subcontractor. There never was such an oath. If there is one, find it. The law that every salaried officer and every carrier of the mail shall take the oath was passed years and years and years before the law was passed allowing subcontracts to be filed. What of it? Suppose a man who is a subcontractor carries the mail and does not take any oath. That is as good as to take the oath and not carry the mail. What possible evidence is it of fraud? Suppose it should turn out that the carrier did not take the oath, but carried the mail honestly. What of it. Is it any evidence of fraud? If a man tells the truth without being sworn, is that evidence that he is a dishonest man? If a man carries the mail properly and in accordance with law without being sworn to do so, it seems to me that is evidence that he is an honest fellow, and you don't need to swear him. So when a subcontractor takes a subcontract and carries the mail according to law it does not make any difference whether he swears to do so or not. Is there any evidence in this case that the subcontractors stole any letters on account of not having taken the oath? When they answer, let them point to the law that the subcontractor is to take an oath. There is no such law and never was.

Now, according to this admission of Mr. Ker, the conspiracy commenced after they got the contract. Very well. I need not talk about anything back of that. I do not know whether the admission is bind-

ing upon the Government or not. I believe the court holds that the Government is not bound by the admission of any agent, and that the Government only authorizes an agent to admit facts. May be he is mistaken. The Government only authorizes an agent to admit the law. At any rate Mr. Ker did the very best he knew how, and he says this conspiracy commenced when they got the contracts, and so we need not go back of that unless the Government is now willing to say that Mr. Ker has made a mistake. I lay down the proposition, gentlemen, that you need not go back of the division of these routes. Then you must go forward. What was done after that? Recollect the exact position of Senator Dorsey and the exact position of these other people.

The next claim is, although there was no conspiracy until after they got the contracts, that Senator Dorsey was interested in these contracts while he was a Senator of the United States. If they could establish that fact it would not tend to establish a conspiracy. There is nothing in this indictment about it. I admit that if he were a Senator, and at the same time interested in mail contracts, he might be tried and his robes of office stripped from him, and that he could be rendered infamous. But that is not what he is being tried for. They say he was in the Senate, and he was anxious to keep it secret. Mr. Ker says he was so anxious to keep it secret that he sent all these communications out West in Senate envelopes, so they would think a Senator had something to do with it. Then it turned out that all the envelopes were in blank; just plain white envelopes, with nothing on them, and away went that theory. If he were in the Senate and engaged in these routes also, and wished to keep it a profound secret, because if known it would blast his reputation forever, do you think he would have had all these circulars sent out in Senate envelopes and on Senate paper? If he did allow that to be done, it is absolutely conclusive evidence that he was not interested. Suppose I was trying to keep it an absolute, profound, eternal, everlasting secret that I had anything to do with a certain matter, would I write letters about it? Would I use paper that had my name, the number of my office, and the character of my business printed upon it? Would I? To ask that question is to answer it. Another thing: They claim that he was in the Senate and infinitely anxious to keep it a secret, and yet he found Mr. Moore, a perfect stranger, and said to him in effect: "Yes, Mr. Moore; I don't know you, but I want you to know me. I am a rascal. I am a member of the Senate, but I am engaged in mail routes. I hope you will not tell anybody, because it would destroy me. I have great confidence in you, because I don't know you." That is the only way he could have had confidence in Moore. He would have to have it the first time he saw him or it never would have come. To this perfect stranger he said, "Here, I am in the Senate, but I am interested in these routes. I am in a conspiracy. I want you to go out and attend to this business. I want you to do all these things, and the reason I tell you is because I am a Senator and I want it kept a profound secret. That is the reason I tell you." That is what these gentlemen call probable. That is their idea of reasonability and of what is natural. That may be true in a world where water always runs up hill. It can never be true in this world. It is not in accordance with your experience. Not a man here has any experience in accordance with that testimony or that doctrine; not one. You never will have unless you become insane. If this trial lasts much longer you may have that experience. It is a wonder to me it has not happened already.

There is another queer circumstance connected with this case. While

Dorsey told it all to Moore he kept it a profound secret from Boone. Boone, you know, was in at the first. Boone got up all this information. Boone was interested in these bids, and yet he never told Boone. He had known Boone, you see, for several weeks. He told Moore the first day, the first minute. He wished to relieve his stuffed bosom of that secret. Moore was the first empty thing he found, and he poured it into him. It is astonishing to me that he succeeded in keeping that secret from Boone, but he did. He even kept it from Rerdell. Rerdell never heard of it—a gentleman who picks up every scrap, who listens at the key-hole of an opportunity for the fragment of a sound. He never heard it. John W. Dorsey did not even know anything about it. Nobody but Moore. Now, I ask you, gentlemen, is there any sense in that story? I ask you. I ask you, also, if the testimony of Stephen W. Dorsey with regard to that transaction is not absolutely consistent with itself? Did he not in every one of those transactions act like a reasonable, sensible, good man? Oh, but they say it is not natural for a man to help his brother; certainly it is not natural for a man to help his brother-in-law, and nobody but a hardened scoundrel would help a friend, and Dorsey is not that kind of a man. Occasionally in a case an accident will happen, and from an unexpected quarter a side-light will be thrown upon the character of a man, sometimes for good, and sometimes for evil. Sometimes a little circumstance will come out that will cover a man with infamy, something that nobody expected to prove, and that leaps out of the dark. Then, again, sometimes by a similar accident a man will be covered with glory. In this case there was a little fact that came to the surface about Stephen W. Dorsey that made me proud that I was defending him. Oh, he is not the man to help his brother; he is not the man to help his brother-in-law; he is not the man to help a friend; and yet, when Torrey was upon the stand, he was asked if he was working for Dorsey, and he said no, and was asked if Dorsey paid him at a certain time, or if he owed him, and he said no. He was asked why, and he replied, "Because only a little while before, when I was not working for him, and my boy was dead, he gave me a thousand dollars to put him beneath the sod." That is the kind of a man Stephen W. Dorsey is. I like such people. A man capable of doing that is capable of helping his brother, of helping his brother-in-law, and of helping his friends. A man capable of doing that is capable of any great and splendid action. Is there any other man connected with this trial that ever did a more generous, nay, a more loving and lovely thing? How such a man can excite the hatred of the prosecution is more than I can understand.

Now we have got to the division, and the question arises, was there a division. Let us see. On page 5009 Mr. Bliss admits that Vaile, immediately upon Dorsey's coming out of the Senate, came here for the purpose of settling this business up; that he made up his mind to have no more to do with Dorsey. Then Mr. Bliss makes this important admission, and I do not want any attorney for the Government to deny it. Let me read it to you:

It was a division, gentlemen, as of the 1st of April, which was the end of a quarter. From the 1st of April they all agreed that those routes, respectively, should be set off by one for the others, and that thereafter they should be the absolute and uncontrolled property of the party to whom they were set off.

There is the admission. That is not all of it:

The assignment of the proportions of the indebtedness could not be made at once, because they could not tell what money they would get from the Post-Office Department on the 1st of April for the preceding quarter, not knowing what fines and deductions there might be.

That is on page 5009. He admits that in May there was a final division, and that that division was to take effect as from the 1st day of April, and that after that each party took the routes allotted to him, and they became the uncontrolled property of that person, no other person having the right to interfere. There is your admission, just as broad as it can be made. Mr. Bliss, after having made that admission, which virtually gives up the Government case, then threw a sheet-anchor to the windward and said, "But when they divided they made a bargain with each other that they would make the necessary papers." What for? To carry out the division. That is all. Now, the only cornerstone for this conspiracy, the only pebble left in the entire foundation is the agreement to make the necessary papers after the division. That is all that is left. The rest has been dissolved or dug up and carted away by this admission. Let us see what that agreement was. Mr. Bliss turned to the evidence of John W. Dorsey, on page 4105:

Q. At the time you sold out, was there any understanding about your making papers?—A. That was a part of the agreement. I was to sign all the necessary papers to carry on the business.

When he sold out he agreed to sign all the necessary papers. It is like this: Mr. Bliss says on such a day for instance, they divided. Suppose, instead of being routes it was all land. They divided the land and then they agreed to make the deeds? That was the conspiracy; not in the land; not in the agreement about the land; not in the bargain, but in the execution of the papers in consequence of the bargain. That was the conspiracy. They agreed to make all the necessary papers. That was the agreement. Then the court asked John W. Dorsey a question.

Q. You agreed to sign what?—A. All the necessary papers to carry on the business.

That is what he agreed to do. What else? What were those papers? First, they were to sign all the subcontracts that were necessary, all the Post-Office drafts necessary, and they were to sign letters like this:

The Post-Office Department, in regard to this route, will hereafter send all communications to the undersigned.

In other words the object was to let the person who fell heir to a given route in the division control that route. That was all. The man who was the contractor agreed that he would sign all the necessary papers. For what purpose? To allow each man who got a route to be the owner of it and control it and draw the money. That is all. And yet it is considered rascality.

Let me call your attention to another piece of evidence on this subject. On page 5016 Mr. Bliss is talking about all these papers and these letters that were written and apparently signed by Peck, but really signed by Miner, saying, "I want you to send all communications in reference to such a route to post-office box No. so-and-so, John M. Peck," sometimes with an M under it and sometimes without. He did that in consideration of the agreement at the time he got the routes that had been originally allotted to Peck. Mr. Bliss brought here a vast number of these papers, and then he continued, on page 5017:

All those, gentlemen, are orders, dated after the division, many of them coming away down into 1881, and all of them relating to routes with which Peck had no connection, because he severed his connection with all the routes prior to the 1st of April, or as of the 1st of April, 1879. John W. Dorsey tells you that he signed papers right along—

Of course he did. He agreed to—

and I have here a series of them. Many of them are orders not in blank. There are

among the papers orders signed in blank, but these are dated, and they are witnessed not always by the same person as indicating that they got together and signed a lot of orders at the time of the division. There is every indication that the dates are correct. The witnesses are different at different times.

The COURT. These same orders would have been made if the division had been perfectly honest.

That is what I say. That is what we all say, gentlemen.

Mr. BLISS. These same orders *might* have been made. I am only calling attention—

The COURT. [Interposing.] They have no tendency to prove a continuing conspiracy.

That is what I say. Then—

Mr. BLISS—

Not willing to be put down—

They have a tendency to prove that these parties having been, as we claim, in a conspiracy, they sold out and made a division. I am going to call your honor's attention after recess to some views that I entertain upon that subject.

Then the court hits him once more :

The COURT. What I mean to say is that these papers would have been entirely proper if the transaction had been honest.

If the transaction then had been perfectly honest the papers would have been precisely as they are. From the papers being precisely as they are, do they tend to show that the transaction was dishonest, when it is admitted by everybody and decided by the court that if the transaction had been perfectly honest the papers would have been just as they are? Recollect my text. Every fact when you are proving a circumstantial case has to point to the guilt of the defendants, and their guilt has to be found from all the facts in the case beyond a reasonable doubt. If there is one fact inconsistent with their guilt, the case is gone.

There is another little admission to which I call your attention. Nothing delights me as much as to have the prosecution in a moment of forgetfulness, or we will say on purpose, admit a fact. Mr. Bliss said, on page 5018 :

You will bear in mind that the division took place some eight months previous to that.

That was January 1st, 1880.

However that may be, these papers are all papers which on their faces might be innocent and fair and proper. They are papers which, under ordinary circumstances, might be executed to enable others than the contractor to draw the pay and to be filed with the department, though it appears, I think, by the evidence in this case that no draft could be filed except shortly prior to the quarter as to which it applied. As to these papers all that we have to say is this: they are papers on their face apparently innocent, papers calculated to go through in the ordinary practice as though there was nothing wrong about them. At the same time the evidence shows that they were papers executed by these several parties at the time of or in pursuance of the agreement of the division.

I do not want anything better. That settles the papers. They were made at the time they agreed to make them. It was the only way in which they could give the party who got the route absolute control of the route.

Now, gentlemen, apart from these papers, I believe they have three witnesses, at least they are called witnesses, in this case. The first witness that I will call your attention to, and who figures about as early as anybody, is A. W. Moore. I want to ask you a few questions about his testimony. I want you to understand exactly what he swears to and

the circumstances. Let us see. He swears first that he had a conversation with Miner, in which he told Miner that he would work for him for \$150 a month and expenses, with permission to put on some of his own service, I think, in Oregon and California, and that Mr. Miner accepted his terms, and employed him as the agent of Miner, Peck & Co. Recollect that, Miner, Peck & Co. Second, that Miner told him to report at Dorsey's house to get instructions. Miner at that time was staying at Dorsey's house. I do not know whether it was to get instructions from Dorsey or from the house, or from Miner. I take it, from Miner. No matter. Mr. Moore then swears that he reported to Dorsey and Dorsey asked him his opinion about the service. Moore had never been there and did not know one of the routes, but Dorsey was anxious for his opinion. How did he know any more about the service than Dorsey? There is no evidence that Moore knew the price. There is no evidence that he knew the amount the Government was to pay on a single route. He was a stranger. Then he had another conversation with Dorsey in which Dorsey told him that they had bid on the long routes with slow time, because that was the way to make money. Not satisfied with that, Mr. Dorsey showed him the subcontracts with the blanks and with the changes, and then he explained to him the descending scale, and he explained to him the percentage of expedition. He said Dorsey told him 40 per cent. of the expedition. Boone swears it was 65 per cent. There is a little difference; not much. Moore swears that he himself was to have 25 per cent. of the stealings. Let us see how that is. Boone swears that the subcontractor was to have 65 per cent. Rerdell swears that Brady was to have $33\frac{1}{3}$ per cent. That leaves $1\frac{2}{3}$ per cent. for the contractor. Do you see? The subcontractor got \$65 out of \$100, and then Brady got \$33.33 $\frac{1}{3}$. That makes \$98.33 $\frac{1}{3}$, leaving the contractor \$1.66 $\frac{2}{3}$. That was all he got. Did you ever know of anybody on earth doing business at a smaller per cent. and paying for the trouble? Now, Mr. Moore comes in with his statement. He says the subcontractor got 40 per cent., and then he himself got 25 per cent. That makes 65. Then, according to Rerdell, Brady was to have $33\frac{1}{3}$ per cent. That makes 98 $\frac{1}{3}$. There is the most wonderful coincidence in this whole trial. Rerdell and Boone and Moore agree exactly that the contractor gave up 98 $\frac{1}{3}$ per cent. to others and took $1\frac{2}{3}$ himself. Did you ever know as much humanity in a conspiracy as that? Did you ever know such a streak of benevolence to strike anybody? It reminds me of a case of disinterested benevolence that happened in Southern Illinois. A young man there went to a lawyer and said to him, "I want to get a divorce. I was married at a time when I was drunk, and when I sobered up I didn't like the marriage. I want a divorce." The lawyer asked, "What do you want of a divorce?" "Well," he said, "do you know the widow Thompson?" "Yes." "She has been a widow there for about forty years. Do you know her boy? He is the biggest thief in this county. He went over the Ohio River the other day and stole a set of harness and a mule." "What has that to do with this divorce case?" "Well," he said, "I want to get a divorce and I want to marry that widow." "What for?" "I want to get control of that boy and see if I can't break him from stealing. I have got some humanity in me." Here are S. W. Dorsey, his brother, his brother-in-law, Miner, and Vaile starting a charity conspiracy, and out of every hundred dollars that they steal they offer \$98.33 upon the altar of disinterested friendship. You are asked to believe that. You will not do it.

Mr. Moore also swears that he received some money by a check, but he does not know whether the check was payable to him or payable to

Miner, and that he got a power of attorney signed by Miner from John W. Dorsey and John M. Peck, and then he started, S. W. Dorsey assuring him in the meantime that he could tell the people out there that the service would be increased and expedited in a few days. Mr. Moore is a peculiar man. He says that that suited him exactly. He was willing to steal what little he could; he was willing to steal for \$150 a month if he couldn't get any more, or he was willing to steal for a part of the stealing. If he could not get that he would take an ordinary salary. I should think he was a good man from what he says. You heard him. They were wonderfully anxious to prove by Moore that Dorsey was the head and front of this whole business. That was the object, and so he swore as to the instructions. He said he was instructed to get up petitions so that they could be torn off and the names pasted onto other petitions. He swore he carried out those instructions. He swore that Major agreed to do it, and I think a man by the name of McBean was going to do it. Yet, gentlemen, there never was such a petition gotten up. Major swore here that he never heard of it; that he never dreamed of it, and never agreed to it; that it was a lie; that it was never suggested to him. Moore went out West and came back as far as Denver, and at Denver met John R. Miner, and then came here and saw Dorsey. What did he do with Dorsey? He swears that he went to Stephen W. Dorsey and settled with him, and that Dorsey settled in a very generous and magnanimous way, and did not want to look at his account, and did not want to look at the book; had no anxiety or curiosity about the items. He just said, "How much is it?" It happened to be even dollars—\$250. When a man goes out West and has hotel bills and all that sort of thing, when he comes to render his expense account it is always even dollars. Moore said \$250. Dorsey gave it to him; never looked at the book at all. Moore swears that he made that settlement with Stephen W. Dorsey on the 11th day of July, 1878. Dorsey was then in the Senate.

Look at page 1417. You see that Moore had been smart; that is, what people call smart. You know it is never smart to tell a lie. Very few men have the brains to tell a good lie. It is an awfully awkward thing to deal with after you have told it. You see it will not fit anything else except another lie that you make, and you have to start a factory in a short time to make lies enough to support that poor little bantling that you left on the door-step of your honesty. A man that is going to tell a lie should be ingenious and he should have an excellent memory. That man swore that he settled with Dorsey to the 11th day of July, 1878; swore it for the purpose of convincing you that Dorsey employed him; that Dorsey gave him instructions; that Dorsey was the head and front of the conspiracy. I then handed him a little paper, and asked him, "Do you know anything about that? Did you ever sign that?" And here it is:

[Miner, Peck & Co., mail contractors John R. Miner, John M. Peck, John W. Dorsey. Branch office, Washington, D. C. Care of lock-box 714.]

DENVER, COLO.—

It was admitted by everybody, I believe, that that word "Denver" should have been Washington. It was printed Denver, but it happened in Washington—

July 24, 1878—

Not July 11. That is the day he got the money of Dorsey.

July 24, 1878.

Received of Miner, Peck & Co. \$136, balance of salary and expenses in full to July 11, 1878.

A. W. MOORE.

To when? To July 24? No, sir; he settled with Dorsey to July 11, 1878. The gentleman had forgotten that he gave that. If he had only had a little more brains he would have avoided the \$250, that even amount, and he would have said, "Dorsey did look over my books, and we had a little dispute about some items, and we just jumped at \$250." But he swears that was the actual settlement, and then we bring in his receipt in writing, dated the 24th of July, 1878, saying that he received \$166 that day, and that it was in full of his salary and expenses, not up to that date, but up to the 11th of July, 1878. If his testimony is true, he stole that \$166. If his testimony is true, he settled with Dorsey in full for \$250, and then he was mean enough to go and get \$166 more for the same time. No, gentlemen, he was all right enough about it then; he told the falsehood here.

Now, what does Dorsey swear? Dorsey swears that he received an order from Miner to give this man \$250. Miner swears that if Dorsey paid him anything it was on his, Miner's, request. That is a perfectly natural proceeding for Mr. Miner to request Dorsey to pay this man \$250. The man came to Dorsey's house. Dorsey gave him \$250 upon Miner's order. He was trusting John R. Miner for the money, and it was none of his business whether Miner owed it or not, and consequently he did not look at his book. Now, every fact is consistent with the truth of Mr. Dorsey's testimony; the fact is consistent with the truth of Miner's testimony; and the receipt of this man given to Miner on the 24th of July, 1878, demonstrates that he did not tell the truth, under oath, in this court before you.

That is the end of Mr. Moore; that is the end of him. You never need bother about him again as long as you live.

Why, they say, "Why didn't you impeach him?" He impeached himself. "Why didn't you call so-and-so?" Because we had that receipt; that is why. No need of killing a man that is dead. You need not give medicine to a corpse. When a thing is buried, let it go. When a man commits suicide, you need not murder him. When he destroys his own testimony, let it alone; it will not hurt you. I am not afraid of the testimony of Mr. Moore. If these gentlemen can galvanize it into the appearance of life, I should be very happy to see them do it. Everything that he swore upon this stand that in any way touched the defendants is shown not to be true.

Why should Dorsey have told him in 1878 to get up fraudulent petitions? Even Rerdell does not swear that in 1879 Dorsey instructed him to get up fraudulent petitions, and certainly he would go to the limit of the truth. After he made his story out of a piece of true cloth there would be very few scraps left. He would certainly go clear to the line. And yet, even he does not swear that when he went West to make contracts, to get up petitions, he was instructed by Mr. Dorsey to get up a fraudulent petition—not once. And yet Moore swears that in 1878, when Dorsey was in the Senate, he told him to get up these fraudulent petitions. It will not do.

Mr. Major swears that what he says about it is not true; Mr. McBean swears that what he says about it is not true; and then we have Moore's own receipt showing that it is not true.

On page 4757 Mr. Bliss tells you what kind of a man Moore is. He says, in effect, he is no account:

Then again, gentleman, when Mr. Moore was on the stand there was a great show of an intention to contradict him. On his cross-examination he was asked: Did you not tell Mr. Pelham so-and-so?

And did you not say so-and-so to Mr. Betts? And then we called

Betts and the court thought we had not the right to contradict him, and that was the end of it.

They finally put Mr. Betts on the stand—

Mr. Bliss says—

but they were forced to take Betts. As if you would believe Betts as against Moore. * * * Moore stands before you, therefore, so far as all this testimony is concerned, wholly and absolutely uncontradicted.

His testimony was that he was employed by Dorsey; his testimony was that he was settled with by Dorsey, and the testimony of the receipt that he signed is that he settled with Miner and not with Dorsey; the testimony of Miner is that he was settled with by Miner, and not with by Dorsey; the testimony of Dorsey is that he never had any conversation with him in the world except at the time he paid him the \$250. They say Rerdell was present at the conversation. Why did they not prove it by Rerdell after Dorsey had sworn to the contrary? And yet Mr. Bliss tells you that he is not contradicted—"utterly uncontradicted."

Mr. Ker, it seems, has an opinion of this same witness, I believe. He says, at page 4511:

He says he started out and went to work, as these records show, and made the sub-contracts according to his instructions, and got up the petitions according to his instructions.

He swears he did not get up a petition at all, not one; he swears that he had not time. And yet these gentlemen say that he got up petitions according to his instructions, and he swears he did not. He swears he told Major to, and that Major signified his willingness to do it. Major swears that that is a falsehood. He swears the same with reference to McBean, and McBean swears that it is a falsehood. Now Mr. Ker goes on:

He fixed them up and changed the language a little in some and in some he did not take the trouble to change, but he fixed them all so that there was a space between the writing and the names, so that they could be cut off and pasted onto other papers.

He expressly denies that he ever fixed a petition in the world.

Mr. KER. What page?

Mr. INGERSOLL. You ask the page! Talk to the jury seven days! I say that this man never fixed up a petition, and he never says that he fixed up a petition. Where is the page on which he says it? He was willing to do it, but he had not the time. I will show you that language. There is what they say about this man. Then he says he got a note from Miner, and went to Denver and met Miner. That is right. Then Miner offered him a quarter interest in the routes in this vast conspiracy.

Let us find what Moore thinks of himself. We find that on page 1398. He is a good man, worthy of this case, according to the eternal fitness of things. I come to this quicker than I thought I would. It is page 1396:

Q. Were you to leave space enough to have that written on, or was it to be cut off?—A. I was to leave space enough between the petition and where the names were, so that when it was signed that space would be there.

Q. Did you get them up in that way?—A. Well, sir, I did not have but very little opportunity to get up petitions.

Q. Did you get up any in that way?—A. I didn't get up—

Q. [Interposing.] Did you not get up any in that way?—A. No, sir; I didn't have the time.

There it is. Now, of course, Mr. Ker forgot. I call your attention to

this to show you how little weight such evidence is entitled to in reference to a conversation five years ago, when Mr. Ker could not remember this with the book before him.

Mr. KER. I asked you for the page on which Mr. McBean's testimony appears.

Mr. INGERSOLL. Mr. Moore is the witness. Mr. Moore swears that he never got up such a petition. Mr. Ker says he did. He and Mr. Ker will have to settle their own difficulty.

Now I come to another opinion as to what kind of a man this fellow Moore is. "Oh," Mr. Bliss says, "he is not a high style of man." I admit it. He says Mr. McBean did not agree to get up any petitions. That is so. But he agreed to get up petitions and circulate them.

Q. After you explained the matter in accordance with your instructions, he said he would go on and take the contract?—A. No, sir; after he had agreed to get them up I showed him how I would get them up.

Q. What did he say? Did he say he would not get them up in that way?—A. He did not say he would or he would not.

Mr. MERRICK. You did not give the page.

Mr. INGERSOLL. That commences on page 1397, and I am now reading on page 1398:

Q. Did you see anything wrong in that yourself—I mean, if you were getting \$150 a month for it?—A. At that time I was not getting \$150 a month.

That is a good, square answer.

Q. What were you getting then?

Then he thought he would be smart.

A. I was to get one-fourth of all the stealings.

Q. Were you to help steal? Do you now say to this jury under oath that you were to help steal?—A. I was to do what I agreed to do.

Q. Were you to help steal? Do you now swear to this jury that you were then a thief?—A. I understood when I signed that contract that I was entering into a conspiracy as much as any of them.

Q. That you were entering into a conspiracy to steal? Face the word. Don't hang over a word. Were you then under a contract to steal?—A. [No answer.]

Q. Answer the question?—A. Well, it might as well be called in plain English stealing, because it was stealing any way. It was robbing the Government.

Q. What do you call it?—A. We generally call it robbery. It is the same thing.

Q. Were you at that time under a contract to rob the Government?—A. I was, sir.

Q. You so understood it?—A. I did, sir.

Q. Do you so understand it now?—A. I so understand it now, sir.

Q. And you were to have one-fourth of what might be stolen?—A. One-fourth of the profits after paying certain expenses.

Q. One-fourth of the *stealings*. Do not call it profits. STEALINGS. Were you to have one-fourth of the stealings?—A. That is what I was to have, sir.

Now, we will end Mr. Moore right there, and if the court is willing I will let the court adjourn until Monday morning.

The COURT. It is rather early.

Mr. INGERSOLL. I shall be all the shorter.

Mr. CRANE (foreman of the jury). Do we adjourn to 11 o'clock Monday morning?

Mr. MERRICK. Oh, yes; let it be till 11 o'clock.

The COURT. I understand, Colonel Ingersoll, that you are making the closing argument for the defense?

Mr. INGERSOLL. Well, I do not know that I can say that entirely, but I do not think we will have any trouble about it.

Mr. MERRICK. I do not know that the counsel for the Government have any right to make any inquiry in regard to that—

The COURT. [Interposing.] I asked the question because I wanted to have some regard for the time.

Mr. INGERSOLL. I will take pains to give the Government counsel ample notice, so that they will not be taken by any surprise.

The COURT. For this once we will adjourn at this early hour, and until Monday morning at 11 o'clock.

Thereupon (at 2 o'clock and 13 minutes p. m.) the further hearing of this case was adjourned until Monday morning, May 21, 1883, at 11 o'clock.

MONDAY, MAY 21, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. INGERSOLL. [Resuming.] If it please the court and gentlemen of the jury, on last Friday, in reply, I think, to a question of Mr. Kerr, I stated that I thought McBean swore that Mr. Moore did not make any arrangement with him to get up false petitions. In that I was mistaken. Mr. Moore swore that he made an arrangement with McBean to get up petitions. He did not quite swear that McBean agreed to get up false and fraudulent petitions. He just came to the edge of it and did not quite swear to it. Afterwards McBean was recalled by the Government and the Government did not ask McBean whether he had ever agreed to get up any petitions or whether he had ever made any such arrangement with Moore. They did not ask him and we did not ask him. I do not know why they did not ask him. They probably know.

I also stated that Moore swore that he got his instructions about these petitions from Dorsey. The evidence is that he got his instructions not from Dorsey but from Miner; that Miner so instructed him, and that thereupon he made the bargain to get up such petitions with a man by the name of Major on the Redding and Alturas route. I make this correction because I do not want you or any one else to think that I wish any misstatement made in our favor. We do not need it and consequently there is no need of making it. You will remember that after Moore swore that he made a bargain with Major to get up false petitions, Major swore that it was untrue. You will also remember that Judge Carpenter called for the petitions that were gotten up upon the routes that Moore had something to do with, and I think he showed you on one route eleven or twelve petitions. Mr. Major swears that every petition was honest, that the statements in each petition were true, and that the signatures were genuine. All those petitions were shown to you. So that the result of the Moore testimony is this: Moore swears that Miner told him to get up such petitions. He then swears that he made that bargain with Major. Major says it is not true. Moore almost swears that he made the same bargain with McBean. McBean says nothing on the subject. Then we bring here the petitions upon those very routes, and especially upon the Redding and Alturas route, and we find no such petitions as are described by Moore. That is enough in regard to Mr. Moore upon that one point.

There is one little piece of testimony to which I failed to call your attention on Friday, and to which I will call your attention now. Moore was the friend of Boone. Boone recommended him to Miner. It was through Boone that Moore was employed? Now, I ask you if it is not

wonderful that Moore never told Boone that there was a conspiracy on foot? Is it not wonderful that Moore did not tell Boone, his friend, the man to whom he was indebted for the employment, "There is a conspiracy in this case. Senator Dorsey as good as told me so. I know all about it." The fact is he never said one word, and the reason we know it, is that Boone swears that when he went out on the 7th or 8th of August he never even suspected it. I cannot, it seems to me, make this point too plain. Boone had been known by Dorsey for a long time. They were very good friends. Dorsey had enough confidence in him to select him as the man to get the necessary information after he had been requested so to do in the letter. Boone was the man who attended to this business more than anybody else. Boone was interested with John W. Dorsey. Boone had every reason to find out exactly what was happening. He was at Dorsey's house, where Miner was. He talked with Miner day after day. He helped get up the bids. He did a great deal of mechanical work. He had the subcontracts printed. Yet during all that time Dorsey never let fall a chance expression that gave Boone even the dimmest dawn of a hint that there was a conspiracy. Nobody told Boone. Moore, his friend, never spoke of it.

Now, there is one other point with regard to Mr. Moore. Mr. Moore swears, on page 1371, that Miner offered him a fourth interest in these routes. That was the conversation in which he said Mr. Miner told him they were good affidavit men. According to Moore's testimony he then knew there was a conspiracy, and he understood that he was part and parcel of it. Let me ask you right here, is it probable that Moore would have been offered a quarter interest at that time if a conspiracy existed, and if they had their plans laid to make hundreds of thousands of dollars, and if the profits had depended upon the affidavits alone? I ask you, as sensible, reasonable men, if he would have been offered a quarter interest under those circumstances? Now comes in what I believe to be the falsehood. Mr. Moore says that the interest was offered to him by Miner, but Miner said it would have to be ratified by Stephen W. Dorsey. That is brought in for the purpose of having some evidence against Dorsey. You must recollect, gentlemen, that this evidence was all purchased. This evidence was all bargained for in the open shamble. You must recollect that there are upon the records of this court some seven or ten indictments against A. E. Boone. You must remember that Moore was Boone's friend. You must remember that Moore was a part of the consideration that Boone was giving to the Government for immunity.

Mr. MERRICK. Is there any proof of that?

Mr. INGERSOLL. I think there is. Mr. Moore swears as to the number of indictments against Boone. He was his friend. I ask you gentlemen now if it is not a fact that Mr. Moore refused to go upon the stand until a bargain was made for the immunity of Albert E. Boone?

Mr. MERRICK. I know nothing of any such bargain.

Mr. INGERSOLL. Very well.

Mr. MERRICK. If there is any proof of a contract by which Mr. Moore's testimony was to be given in consideration of Boone's immunity, I will ask the counsel to point it out to me that I may have the opportunity of commenting upon it.

Mr. INGERSOLL. I will say this: That according to the testimony of Moore there are some seven or ten—I think that was his expression—indictments against Boone. Moore was the friend of Boone. The jury have a right to infer what motive prompts a witness. Moore wished to swear enough, so that Mr. Boone would not be troubled. In my judg-

ment, Mr. Boone, being under indictment, gave evidence in this case in order that the Government would take its clutch from his throat. He swore under pressure. That is the system, gentlemen, that is dangerous in any country. Whenever a Government advertises for witnesses; whenever a Government says to a guilty man, or to a man who is indicted, "All we ask of you is to help us convict somebody else;" whenever they advertise for a villain, they get him. That is the result of what they call the informer system—an infamous system. A court of justice, where justice is done between man and man, is the holiest place on earth. The informer system turns it into a den, into a cavern, into a dungeon, where crawl the slimy monsters of perjury and treachery. That is the informer system. It makes a court a den of wild beasts. What else does it do? Under its brood and hatch come spies; spies to watch witnesses, spies to watch counsel, spies to follow jurymen, so that a juror cannot leave his house without the shadow of the spy falling upon his door-step. That is not the proper attitude of a Government. The business of a Government is to protect its citizens, not to spread nets. The business of a Government is to throw its shield of power in front of the rights of every citizen. I hold in utter, infinite, and absolute contempt any Government that calls for informers and spies. Every trial should be in the free air. All the work should be done openly. These sinister motions in the dark, the crawling of these abnormal and slimy things, I abhor.

Now, to come back to this witness, Moore. Upon my word I think he was trying to help his friend. After Mr. Miner had offered him a quarter interest, then he came back to Washington. He arrived here according to his evidence about the 11th day of July, I think. He went immediately to see Stephen W. Dorsey. Recollect that. That was the time Dorsey settled with him without looking at his books. After he settled with him and gave him \$250 he asked him to telegraph to see if the service had been put on The Dalles and Baker City route. He waited here until he received an answer, and after that he talked with Dorsey not only about that matter, but in that conversation Dorsey said, according to Moore, that it took a good deal of money to keep up their influence in the department. When I asked him when that conversation was, he said two or three days after the first conversation. According to the evidence in this case Stephen W. Dorsey left this city on the 12th of July. This man Moore arrived on the 11th, and he says two or three days after his arrival Dorsey said it took money to keep up their influence here. When he swears that Dorsey told him that, Dorsey was in the city of Oberlin, Ohio. Recollect these things. Whoever tells stories of this character should have a most excellent memory.

Now, there is another thing. When did Miner get back? He got back by the 24th of July, because on the 24th of July he settled with Moore, and I believe then Moore went West again. Now, remember there was a contract made as, Moore swears. He has not got it. Nobody sees it. He says there was a contract made by which he had a fourth interest in something. He got back here I believe some time in November, and on the 20th of November he and Miner settled. I will now look on page 1430 for that settlement. I want you to see how everything was situated at that time. [To the stenographer.] I want to say right here, Mr. Reporter, that in looking over the report of my remarks on Friday, I find several things that I did not say. I find one word at least that I did not use, "reasonability." It was either reasonableness or probability; because there was no "reasonability" in my argument nor is there such a word as "reasonability." [To the jury.] Now, gentlemen, I do not

blame the reporter. It is not only hard to remember what is said, but it is hard to put it down. Mistakes are made even in these reports when the gentleman who makes them does his level best to have them correct. If mistakes are made of that character, I ask you how much reliance you can place upon the testimony of a gentleman who details a conversation that happened five years ago, a conversation about a subject in which that gentleman at that time had no interest. I find on page 1430 that Mr. Miner settled for everybody with Mr. A. W. Moore. Remember the situation. Moore knew there was a conspiracy. All the service was on. You see, this was November 20, 1880. Vaile was in. They had got a man who was close to Brady. Everything was running in magnificent style. Mr. Moore understood that there was a conspiracy. What more did he understand? That he had the claw of his avarice in the flesh of a United States Senator and in the flesh of a Second Assistant Postmaster-General. Hundreds of thousands of dollars were to be made. He came back here and settled up and sold out his interest for how much? Six hundred and eighty-two dollars. Do you believe that? Credulity would not believe it. Nobody believes it, that is, if the rest of the story is true. Why did he settle with him for so little? He said Mr. Miner told him he hadn't a dollar. He did not reply to him, "When this conspiracy is completed you will have plenty. I can wait." No. Miner said he hadn't anything and so Moore settled for \$682. Then I asked him, "You had a contract with Dorsey, did you?" "Yes; verbally." "Did you ever say anything to Dorsey about it?" "No." "Did you ever claim anything from Dorsey?" "No." "Did you ever write to him?" "No." "Did you ever say anything to anybody that you had any claim against Dorsey?" "No." You saw Mr. Moore, gentlemen, here upon the stand. Do you think he is the kind of man who would let such a chance slip? It is for you to judge. In my judgment that is the eternal end of Moore's testimony. We can call him buried. We can put the sod over his grave. We can raise a stone to the memory of A. W. Moore. Let him rest in peace, or to use the initials only, let him R. I. P. That is the end of him. If the Government wishes to dig up the corpse hereafter let them dig.

Mr. KER. I would like——

Mr. INGERSOLL. [Interposing.] I don't want to hear from you.

Mr. KER. I am not talking to you.

Mr. INGERSOLL. I don't want to be interrupted.

The COURT. You do not know what he is going to say.

Mr. INGERSOLL. He may be intending to make a motion that the jury be instructed to find a verdict of not guilty.

Mr. KER. I have a question to ask which I want answered properly.

Mr. INGERSOLL. I will answer you properly.

Mr. KER. When I address you. If your honor please, I would like to have the page to which the counsel referred when he said that Moore met Dorsey subsequent to the 11th of July. I simply want to get the page upon which Moore made that statement.

The COURT. He says Dorsey left town.

Mr. KER. As Mr. Merrick will have to answer, he simply wants to know the page.

Mr. INGERSOLL. If Mr. Merrick wants to know the page he shall have the page, or anybody that wishes to answer. If counsel had simply asked me for the page, without getting up in such a solemn manner, I would have told him.

Mr. KER. The easiest way is the best.

Mr. INGERSOLL. That is right.

Mr. KER. I propose to be treated properly. I do not want to be treated in that way, and do not propose to stand it.

Mr. INGERSOLL. You need not stand it. If there is anything you want to do, do it. There will be no trouble about not standing it.

Mr. KER. We might as well have it out first as last.

Mr. INGERSOLL. Oh, yes; I think better.

On page 1406, Mr. Moore says that he went to Dorsey and got the money, and that then Dorsey requested him to telegraph to The Dalles, and that he did not see Dorsey after he got the answer to his dispatch, I think, for two or three days. He reached Washington, he says, about the 11th. On page 1372, he speaks of telegraphing to The Dalles by instructions from Dorsey.

Now I wish to say one word, if the court please, on the subject of withholding documents. Mr. Bliss admits that they would have had the right to go only to a particular page and point as to which they had asked the production of the books. That was in reply to the reason given by us why we did not wish to produce the books and papers.

As showing, or endeavoring to show, that the reason was not a good one, Mr. Bliss says that they would have had the right to go only to the particular point as to which they asked the production of the books. They asked for the letter-books, and I understood your honor to rule that the letter-books themselves were secondary evidence, and that under a notice to produce letter-books, letter-books need not be produced, because they in themselves were only secondary evidence; that the notice should be to produce primary evidence, and not secondary. Their notice was too general, I believe your honor decided; not specific enough.

As to the presumption arising from that, I make the point, may it please your honor, that there is such a thing as a presumption of law, and also a presumption of fact, and that all presumptions of fact are to be decided by the jury; that while the court may decide presumptions of law, the jury must decide presumptions of fact. So that if we did refuse to produce a check or a book it is for the jury to say what that presumption is, if there is any presumption. I insist that there is no presumption; that the only consequence that follows is that they may prove the contents of the book or paper by secondary evidence; and upon that subject I will read from a little monograph, published by Seymour D. Thompson, called *Charging the Jury*. I read from page 64:

A presumption of fact differs from a presumption of law in this: A presumption of law is a conclusive or indisputable inference which the law, by a settled rule, draws from a given fact. Such an inference is therefore made by the judge, and not by the jury. But a presumption of fact is simply an inference or conclusion of the existence of a fact from some other fact. It is always drawn by the jury, who are the triers of questions of fact. It is, therefore, merely a repetition of what has already been said to say that it is for the jury, and not for the judge, to draw presumptions of fact; and that for the judge to tell the jury what presumptions of fact they ought to draw from a given fact or series of facts is a usurpation of their functions. Thus, in an action for assault and battery it was proved that the defendant came to the house of the plaintiff, with whom he had been on friendly terms, and said to him, "How dare you send a letter to my house?" and immediately assaulted him. The court charged the jury that there was no evidence that the letter was offensive or insulting, and that they could not infer that it was so. This was held error. It was for the jury, and not for the judge, to draw inferences or presumptions of fact from the evidence.

This writer refers to the following cases: *Bond vs. Warren*, 8 Jones, 191; *Easterling vs. State*, 30 Ala., 46; *Williams vs. Cannon*, 9 Ala., 348; *Knight vs. Vardeman*, 25 Ala., 262; *White vs. Hass*, 32 Ala., 430;

Glover vs. Duhle, 19 Mo., 360; *State vs. Lynott*, 5 R. I., 295; *Burt vs. Gwinn*, 4 Harr. & J., 507; *Case vs. Weber*, 2 Ind., 108.

I do not know whether your honor will take the ground that if we have been notified to produce, say, a check, and have failed to produce it, we cannot after that time produce it.

The COURT. There is no such fact as that in the case, is there?

Mr. INGERSOLL. I did not know but what that would be applied to the check upon which the money is said to have been drawn.

The COURT. You produced no check in contradiction of the evidence of the witness.

Mr. INGERSOLL. It may be said to be in contradiction. The witness, in his statement to MacVeagh and James, called it \$7,000. We were notified to produce, as I understood it, these checks. We refused to do it, until after the testimony of the witness was closed. Then we did produce a check for \$7,500, together with other checks.

The COURT. That evidence is in without objection, and it is in at the instance of the other side, and why should a question be made about it now? You produced it and the other side did not object to it. The evidence is before the jury for what it is worth.

Mr. INGERSOLL. Do I understand the court still to hold that if a notice is given to us to produce a paper, and we refuse, and they go on and prove the contents of the paper, we are not afterwards allowed to introduce the paper?

The COURT. You have not made any such offer as that.

Mr. INGERSOLL. I simply want to show that the position we took on that subject is upheld by authority.

Now, gentlemen, I am going to call your attention for a little while to another witness, Mr. Rerdell. And in the commencement, I need not refresh your minds with regard to the part he has played. I need not, in the first instance, tell you about his affidavit of June, 1881, nor his affidavit of July 13, 1882, nor his pencil memorandum, nor his Chico letter, nor his offer to pack the jury on behalf of the Government, nor the signals he had agreed upon, nor the reports he made from day to day, nor the affidavit of September that he made for the Government, nor of November nor of February. All these things you remember and remember perfectly. I will speak of them as I reach them, but I want you to keep in your minds who he is.

I need not call any names. Epithets would glance from his reputation like bird-shot from the turret of a monitor. The worst thing I can say about him is to call him Mr. Rerdell. All epithets become meaningless in comparison. The worst thing I can say after that would have the taint of flattery in it. You will remember that when Enobarbus was speaking to Agrippa about Cæsar, he says, "Would you praise Cæsar, say Cæsar. Go no further." And I can say, "If you wish to abuse this witness, say Mr. Rerdell. Go no further." That is as far as I shall go.

You will remember that Mr. Rerdell was in the employ of Stephen W. Dorsey, and had been for several years. He does not pretend that he was ever badly used; he does not say before you that Mr. Dorsey ever did to him an unkind act, ever said an unkind word. In all the record of the years that he was with him he finds no page blotted with an unjust act, not one. He has no complaint to make. Under those circumstances he voluntarily goes to see a man by the name of Clayton, I think an ex-Senator from Arkansas, known by him at that time to be an enemy of Stephen W. Dorsey, an enemy of his employer, an enemy of his friend—his friend, whose bread this witness had eaten for years, whose roof had protected

him, who had trusted and treated him like a human being. Yet he goes to this man Clayton, and he says, in substance, "I want to sell out my friend to the Government." He was not actuated exactly by patriotism, although he says he was. The promptings of virtue may have started him, but after he got started he said to himself, "I do not see that it hurts virtue to be rewarded." So he said, "I want some pay for this; I want a steamboat route reinstated; I want the Jennings claim allowed. Of course I am disinterested in what I am doing, but I might as well have something, if it is going." "What else do you want?" The disinterested patriot suggested that he would like to have a clerkship for his father-in-law. "Anything else?" If you will read his letter of July 5, 1882, which I will read to you before I get through, you will see that he says, "If I had remained with the Government I have every reason to believe I would have had a good position by this time." So he must have demanded a clerkship for himself—good, honest man. At that time he did not know, but swore it afterwards and swore it here upon the stand, that Dorsey had never done anything wrong; and yet he was willing to sell him to the Government, believing that he had never done anything wrong. So he went and saw the Postmaster-General. The Postmaster-General did not appear to take any great interest in the matter. He turned him over to the Attorney-General. He showed the Postmaster-General what he had, and read him, I believe, or showed him some memoranda. Then he went and he saw the Attorney-General. The Postmaster-General did not seem to give him encouragement. Then when he went to see MacVeagh he took with him a letter-book—I do not know but more than one—but we will say a letter-book. Now, what was in that letter-book? And, gentlemen, the only way to find whether a man tells the truth is to take all the circumstances into consideration. What did he want to do? What was his object? And what were the means at his command? For instance, it is said that a man left his house with the intention of murdering another, and that he had on his table a loaded revolver, and also had on his table a small walking-stick, and he took with him the walking-stick. You would say he did not intend to commit the murder; that if he had so intended he would have taken the deadly weapon. In other words, you must believe that men, acting for the accomplishment of a certain object, use the natural means within their power.

Now, what did he have in that letter-book? He swears now that in that letter-book there was a copy of a letter from Stephen W. Dorsey to James W. Bosler; that the original letter was written by Stephen W. Dorsey. That press-copy, of course, would show that the original letter was in the handwriting of S. W. Dorsey. What does he swear was in that letter? He swears that Dorsey made a proposition to Bosler to go into the business; told him the profits, and told him that he had to give $33\frac{1}{3}$ per cent. to T. J. B.; that he had already paid him, I think, \$20,000, and had more to pay him. According to the testimony of Mr. Rerdell, that was in the letter-book that he took to Mr. MacVeagh. Now, recollect that. Why did he not show it? He had forgotten it. He showed him what he had. Recollect now, that he had a tabular statement. I think the letter showed so much money to T. J. B., and the tabular statement $33\frac{1}{3}$ per cent. to T. J. B. He had that tabular statement, and that was in Dorsey's handwriting. He says he had it. Well, after that, the Attorney-General must have told him, "That is not enough; I want some more." "Well," he says, "I can let you have some more." "What more can you let us have?" Well, then he told him about the red books; I do not know that he

said they were red, but he told him about the books, and that those books were in New York, and he would go over there and get them; that he was going to steal them; he says he went over to get them, and afterwards admitted, I believe, that he was stealing them.

Now, we must remember the position that Rerdell was in. He had been to Clayton, to the Postmaster-General in company with Mr. Woodward, and to the Attorney-General in company with Mr. Woodward, and yet there was not enough. Well, it was all he had. What more could he do? He suddenly found himself caught in his own trap. He had furnished enough to trouble him, but not enough to convict Dorsey, and not enough to be promised immunity. Now, what had he to do? He did exactly as he did with Mr. Woodward in September, when he made that affidavit, and when Woodward said it was not enough; he said, "Very well, I will make another," the same as he did when he made the affidavit of seventy pages in November and found it was a little weak. He made another, and he would have made them right along. He had a factory running night and day. Now, he tells you that while he was talking with MacVeagh, just towards the last of the conversation, the idea flashed into his brain that he might save Dorsey too. Don't you remember that testimony? And as quick as he thought of that, he agreed to go to New York and steal the books. The very last thing that MacVeagh said to him, according to MacVeagh's testimony, and I believe according to his own, was to be sure and get the books; that they were all-important. So he went, as he claims. Now, did it occur to him that he would save Dorsey in that way? Did he think of saving Dorsey by going and getting these books? That was the last thing, and he was going to get the books to be used as evidence against Dorsey.

In a few days he says he started for New York, and the question arises, why did Rerdell go to New York at all? Why did he want to see that the books were in New York? Why did he pretend that he had any more evidence unless he had it? You see you have got to get at the philosophy of this man; you have got to find what actuated him; and although in many respects he is abnormal, unnatural, monstrous, and morally deformed, still it may be that we can find the philosophy upon which he acted. Why did he say he was going to New York? Because the Attorney-General told him—he must have told him—that the evidence he then had was not sufficient. Rerdell could not break down right there and say, "That is all I have got." That would give up the fight; that would tell him that he had endeavored to sell out his friend and nobody would buy the evidence; that would tell him that he had tried this and had failed; that he had simply succeeded in showing his own treachery without involving his friend. He could not stop there. You must recollect the evidence he had, and the evidence he wanted.

Let us see what he had. Mr. Bliss says "Why did he say the books were in New York? Why did he not say they were in Washington?" That would not have given him time, gentlemen. He would have been told, "Go and get them." Then he could not have produced them. Consequently he put them in the possession of somebody else, so that if he failed to get them, then he could say that the other man destroyed them or had hid them; he could have said, "I have done my best; they exist; but they have been destroyed, or they have been hidden, or they have been put out of the way." He wanted time, and knowing that no such books existed, he could not say "I have them in Washington," because then he could give no excuse for their

non-production. He must state it in such a way that he could reasonably fail; that is to say, that he could give a reason for his failure. He could not say "I have them in my house," because he would have been told to go and get them. So he put them in the possession of another man, so that, failing to get them, as fail he must, he could give a reasonable excuse for the failure.

Why did he go to New York? I will tell you what my philosophy is: He found that the Government did not wish to purchase the evidence that he had. He found that, in the judgment of the expert of the Department of Justice, it was not sufficient. The next thing was to retrace his steps. He did not want to jump off of one boat into the sea and find no other boat to rescue him. He said: "I have been too hasty; I will go to New York." Why? To find out whether Dorsey had heard of this or not. That is what he went there for. The inferior man always imagines that the superior knows what he is doing, and knows what he has done. He found that he was about to fail with the Government, and then the important question to him was: Has Dorsey found this out? Can I go back to Dorsey? Or must I go on and be cast away by him and be refused by the Government?

Now let me call another thing to your minds. I will come to it again, but it forces itself upon me at this place, and it seems to me it ought to be absolutely conclusive. He swears that on the day after he went to MacVeagh with that letter-book, in looking it over he found the press-copy of the original letter that Dorsey wrote to Bosler on the 13th of July, 1879. He says that the next day he found that copy in that copy-book. Why did he not steal the book? Conscientious scruples, gentlemen! You see he was going to New York to steal another. Why not steal one that he already had possession of? And how much better that book would have been than the other that he was going to get. This was a copy of a letter in Dorsey's handwriting, in which he admitted that he had paid \$20,000 to T. J. B., and was going to pay him some more, while that book in New York was not in Dorsey's handwriting—admitting, for the sake of the argument, that there was a book—but was in the handwriting of Donnelly or Rerdell. See? And right there he had the evidence, absolutely conclusive, in the handwriting of S. W. Dorsey himself, and he did not even keep it, he did not even steal it, but he gave it back and went to New York to steal a book that Dorsey did not write. He threw away primary evidence to get secondary evidence. He threw away that which would have convicted Dorsey beyond a doubt, which would have made him a welcome recruit to the Government. He threw that away and went to New York to get another, a line of which Dorsey never wrote; and then he would have to establish, after he got that book, that "William Smith" stood for Thomas J. Brady; he would have to prove after they got that book that "John Smith" or "Samuel Jones" stood for Turner. Now, gentlemen, do you believe that that man, with his ideas of honor, with the kind of a conscience he has in his bosom, with the copy of a letter in Dorsey's handwriting in his possession admitting that Dorsey gave \$20,000 to T. J. B., would give that up and then go to the city of New York to steal a book not in Dorsey's handwriting and that did not prove that Dorsey had ever paid a cent to Thomas J. Brady, in which there was one charge to "William Smith," and that would have to be eked out by the testimony of Rerdell himself, when he had right there in his own grasp and clutch the press-copy of the original letter written by Dorsey himself? Do you believe it? There is not a man on that jury believes it; there is not a lawyer prosecuting this case who believes it.

What else did he have? He had a letter that he himself, as he claims, wrote to Bosler on the 22d of May, 1880, after he, Rerdell, had been summoned to appear before a committee of Congress. He had, he says, those three sheets.

What else did he have the morning after he was talking with Mac-Veagh? He had the tabular statement in the handwriting of Stephen W. Dorsey, and over the Brady column, "T. J. B., 33½ per cent."

What more did that man have? He had the balance-sheets made out, as he swears, by Donnelly, of those books. Were the balance-sheets just as good as the books?

Now, just think what he had, according to his own testimony: A copy of the original letter, written by Dorsey to Bosler, in which he admitted his guilt; a copy of the tabular statement, written by Dorsey, in which he put down 33½ per cent. to T. J. B. What more? Copy of the letter that he had written to Bosler on the 22d of May, 1880. He had all that, and he must have had this memorandum, though I will show you that he had not, and I think I will show you when he made it. And yet he was going to New York to get some more evidence. He was going to steal another book in New York that would simply create a suspicion, while he gave up a book that was absolute certainty. That is the theory. But they say, "Oh, he did not do that quite." What did he do? He went and had that copied. He swears that he had copied that letter of May 13, 1879, that Dorsey wrote to Bosler, in which he admitted that he gave \$20,000 to Brady. Now, a copy would not show in whose handwriting the press-copy was, would it? That is a very important point. Who copied it? I think he said Miss Nettie L. White copied it. We never hear of Miss Nettie L. White again, though. These gentlemen admit that you are not to believe Mr. Rerdell on any point that is not corroborated, and when he swears that Miss Nettie L. White copied the letter you are not bound to believe there was such a letter unless they bring Miss White or account for her absence. They did not bring her. That is an extremely important point in their case, infinitely more important than whether the red books ever existed. Did Dorsey write a letter to Bosler in which he admitted his guilt? This man says that he had complete and perfect evidence of it in his own hand; that he gave that up; that he had that copied by Miss White. And they did not bring Miss White. Certainly he had no scruples about tearing it out. He says he tore out his letter to Bosler of the 22d of May, 1880. He had no scruples about that. He did not refuse to keep the book because it touched his honor, because in a day or two he was going to steal another not half as good as that one, not one-tenth part as good. Just think. He gave up evidence that was absolute and complete, and went to steal evidence that was secondary and of the poorest character. You do not believe it. He would have kept that book if he had kept any. If he was going to steal any evidence, and had the best, he would have kept it. The trouble was that there was no such letter in that book. There was his letter of May 22, 1880; no doubt about that; and that man tore it out, and then he made up one in his own mind, and had it of that date; that is all.

So he went to New York, and he swears that he went right up to the Albemarle Hotel; that it was early in the morning; that Dorsey was not then up; and that he had a conversation with Dorsey, in which Dorsey charged him with having had something to do with the Government, with having gone over to the Government. Dorsey had heard that there was something going on about that time, and I suppose he

asked Mr. Rerdell about it. Rerdell denied it; said there was no truth in it; that nothing of the kind, character, or sort had ever happened.

Now let us just see whether I can demonstrate to you that Rerdell, in the conversation he had with Dorsey at the Albemarle Hotel, denied that he had gone over to the Government, or that he had done anything that was not perfectly honest, straightforward, and upright. I refer to it now, although I may come to it again.

And, gentlemen, I am sorry for you; I pity every one of you, that you have to hear all that has to be said in this case. But you must put yourselves, for the moment, in our places. You must remember that these defendants have borne this agony, have been roofed and surrounded with disorder for two years. You must remember that the agents of the Government have pursued them, they have watched over them and spied them night and day. You must remember that they have been slandered for years in the public press, although the tone of the public press is now changing, and changing in such a marked degree that one of the attorneys here for the prosecution claimed that we had bought up the correspondents. When you take into consideration what my clients have suffered, the position they are now in, fighting this great and powerful Government, I know you will excuse us for inflicting upon you every thought and every argument that we think may be for our defense. I am doing for my clients what I would do for you, or any of you, if you were defendants, and I am doing for them what I would want them to do for me were I a defendant and they my counsel.

Now I am going to demonstrate this. When Mr. Rerdell got to Jersey City he telegraphed back, according to the evidence of Mr. Dorsey:

Up to this moment I have been faithful to every trust.

I believe Rerdell swears that he did not send that. He had a memorandum-book which he took out of his pocket. I think a leaf was torn from it, and he ran his pencil through this line on the page on which he had taken a copy of this dispatch, "Up to this moment I have been faithful to every trust," and says he did not send it. Why did he put his pencil through that? Because that line would not agree with the testimony he had given upon the stand. "Up to this moment I have been faithful to every trust" was in that dispatch. I believe that little leaf from his memorandum-book was filed among the papers, and I would like to see it. [The paper was handed to Mr. Ingersoll by the clerk.] I want to ask you if you believe that Rerdell could have sent that dispatch to a man to whom he had admitted that very morning that he had gone over to the Government? Do you believe it? How perfectly natural it would have been for him to send a dispatch from Jersey City that harmonized and accorded with his denial of that morning.

Up to this moment I have been faithful to every trust.

Just look at that [handing the paper to the foreman of the jury]. Just read it. I want the jury to look at it. He rubbed it out of his memorandum-book. When? At the time? No, sir; when he found that he wanted something to harmonize with his evidence here. Even he had not the brazen effrontery to swear that he had told Dorsey that very morning that he (Rerdell) had gone over to the Government, and then that very afternoon to telegraph him—

Up to this moment I have been faithful to every trust.

Why, in comparison with that cheek brass is a liquid.

Up to this moment I have been faithful to every trust.

What is the next sentence?

The affidavit story is a lie.

Why did he leave that in? Because technically that was true. He had not then made an affidavit, and there is nothing so pleases a man who has made up his mind to tell a lie as to have mixed with the mortar of that lie one hair of truth. It is delightful to smell the perfume of a fact in the hell-broth of his perjury. Just look at that. These two things show that he had not admitted to Dorsey that he had told the Government anything against Dorsey. He wanted Dorsey to understand that he, Rerdell, had not communicated with the Government. Now, if you admit his evidence to be true, at the time he sent that dispatch he had the stolen book under his arm, and you, gentlemen of the jury, are asked to believe a man who would do that thing. I would not. I would not convict the meanest, lowest wretch that ever crawled between heaven and earth upon such testimony. Never. Neither can you do it. A verdict must rest upon a fact. The fact must rest upon the testimony of a witness. That witness must be, or seem to be, an honest man. And unless a verdict is based upon the bed-rock of honesty, it is infinitely rotten, and the jury that will give a verdict not based upon honesty is corrupt.

Mr. CRANE (foreman of the jury). I notice that this dispatch seems to have been written with different pencils at different times.

Mr. INGERSOLL—

Up to this moment I have been faithful to every trust—

Is written very dimly.

The affidavit story is a lie, but confidence between us is gone—

Is in still a different hand.

I resign my position and will turn everything over to any one you designate—

Is still another hand. Three hands, three pencils, in the one memorandum. Just look at that, Mr. Greene [handing the paper to Mr. Greene, a juror]. These papers have been manufactured, and when the Government said "This is not enough," another paragraph has been added.

How hard it is to perpetrate a piece of rascality and do it well. There are an infinite number of things in this universe, and everything that is in it is related to everything else; and when you get a falsehood in it that does not belong to the family, it has not the family likeness; and when anybody sees it who is acquainted with the family, he says "That is an adopted young one." [Laughter.]

Mr. Rerdell now says, I believe, that he did not send that line, "Up to this moment," &c. Dorsey swears that he did. Rerdell then produces this book and this paper which I have shown to you.

Now, let us follow Mr. Rerdell from the Albemarle Hotel. He tells us where he went, I believe to get his breakfast.

The COURT. He got his breakfast before he went to Dorsey's.

Mr. INGERSOLL. I think he got a lunch afterwards.

The COURT. No.

Mr. INGERSOLL. Here, gentlemen, is another illustration of what I said before. Now, my memory was this: That after he was at Dorsey's he went and got a lunch; that he got breakfast, perhaps, before; that after he was there he got lunch, and then went down-town. Anyway he got down to Mr. Dorsey's office about 12 o'clock; that is his testimony; no doubt about that.

The COURT. From 11 to 12.

Mr. INGERSOLL. There is another instance in point; the court may be right, but my memory is 12 o'clock. I think the court got the 11 o'clock from what Mr. Bliss stated when he was going to try to prove that his own witness had sworn falsely by saying that he went there may be nearer 11 than 10. But I may be mistaken about that.

The COURT. You may be right about it.

Mr. INGERSOLL. I do not say that I am, but I simply want to call the attention of the jury to it in order that they may see how hard it is to remember; and, then, I want them, by this standard, to measure those gentlemen who come from the vast plains of the West, the womb of the cyclone, and weigh their testimony and fix its value.

Now, here it is, and the court is nearer right than I am. I read from page 2443:

Then I went and got my breakfast.

That is after the talk with Dorsey. Your honor is right:

Q. What time was it when you left Dorsey?—A. I think about 10 o'clock.

Q. And then you went and got your breakfast?—A. Then I went and got my breakfast.

Q. How long did it take you to get your breakfast?—A. Oh, it took half or three-quarters of an hour.

Q. That would make it about 11 o'clock?—A. About 11 o'clock.

Q. And then it took you three hours to go down to Torrey's office?

The WITNESS. From 11 to 12?

Now, the court is right:

Mr. INGERSOLL. Was it 12?

The WITNESS. I said about 12 o'clock.

Q. Did you go to any other office or any other place after breakfast before you got to Dorsey's office?—A. I don't remember whether I did or not. I may have had some other business to transact and attended to it, but I don't remember what it was.

Q. Do you remember any other business?—A. I said I did not remember.

Q. Do you remember seeing any other person with whom you talked after you got your breakfast and before you got to Dorsey's office?—A. No, I do not; that is, nobody that I knew.

Now, I will go a little further:

Q. After you got the book and walked up and down with it under your arm for about an hour, where did you then go?—A. Then I went to Jersey City.

Q. Did you see anybody with whom you talked about this mail business or anything connected with it after you left Torrey's office?—A. I did not.

They tried to prove to you that he went to Torrey's office immediately after he got off the ferry-boat on the New York side, when he went from Jersey City.

Mr. MERRICK. No.

The COURT. The court refused to admit that evidence.

Mr. INGERSOLL. They offered to prove it.

Mr. MERRICK. No.

Mr. INGERSOLL. Well, we will see; I will come to that in a moment.

Mr. MERRICK. Mr. Ingersoll will probably recollect that he stated that he was under the impression that he went from the ferry-boat to Mr. Torrey's office, and the Government replied that its purpose was to prove that he went to Torrey's office along about 9 o'clock; between 9 and 10.

Mr. INGERSOLL. I will come to that in a little while. I understood the Government to offer to prove that he went to Torrey's office before he went to Dorsey's.

The COURT. That evidence was excluded.

Mr. INGERSOLL. I understand that; but have I not the right to say they offered to prove it? Is not that part of the record?

The COURT. No; that was a matter for the court and not for the jury.

Mr. INGERSOLL. But did they not offer to prove it?

The COURT. They did.

Mr. INGERSOLL. Very well; then I think I have the right. If I have not, I do not want to say a word about it.

The COURT. It is not evidence in the case, because it was not admitted.

Mr. MERRICK. If counsel comment upon it the right will follow to me to do so also.

Mr. INGERSOLL. I do not know whether he ever went there or not; but it seems to me, if the court please, that I have the right to say that the prosecution proposed to prove a certain thing by a certain witness.

Mr. MERRICK. I have no objection to giving you the privilege of commenting upon the offer, if I have it.

The COURT. It opens the door to retaliation, and I think it ought not to be done.

Mr. INGERSOLL. I have no objection to Mr. Merrick's answering every word that I say, and I hope he will not understand that I have.

Mr. MERRICK. I do not understand that you have.

Mr. INGERSOLL. I am endeavoring to give the best reasons I can in favor of my clients and against the testimony introduced by the prosecution.

Mr. MERRICK. I hope the counsel will understand that my object was simply to correct the impression created by him. I would like to have full comment upon the subject.

The COURT. Before we leave this point I want to refer to the testimony of Rerdell on page 2281:

Q. Where did you go when you reached New York on Monday morning?—A. After getting my breakfast I went to the room of Stephen W. Dorsey, in the Albemarle Hotel.

Mr. INGERSOLL. Yes.

The COURT. That is my recollection.

Mr. CARPENTER. It is both ways.

Mr. INGERSOLL. He was hungrier than he thought when he first started. On cross-examination he remembered the appetite that he had forgotten on his direct examination. I am much obliged to the court for pointing out that contradiction. It is one that had escaped me.

The COURT. Further down on the same page:

Q. What did you take with you when you left his room?—A. I did not take anything.

Q. Where did you go when you left his room?—A. I went down to his office and took this book.

Q. What book?—A. The original journal. After getting a lunch I left for Jersey City.

He got his lunch after he got the book, then.

Mr. INGERSOLL. Yes, in that case. That I have got. He afterwards swears that he did not.

The COURT. I do not know about that.

Mr. INGERSOLL. I will show that he crosses himself on almost every fact that he endeavors to swear to. Just take this case. He swears that he went to Dorsey's; that from Dorsey's he went immediately to Torrey's office; that he then went and got lunch and then went to Jersey City. He also swears that he got his breakfast before he went to

Dorsey's. In the next examination he swears that he got his breakfast after he went to Dorsey's, and after he got the book he went to Jersey City, first walking up and down Broadway for about an hour. He had forgotten about the lunch. There is nothing in it but a mass of contradiction. He swears that he went down to Torrey's office. Why did he not make it earlier, as soon as he got off the boat? Because he did not have any key to the office. It would not do to swear that he broke into the office and that nobody ever heard of it, and so he had to put the time after the office would naturally be open. Well, now we have got him as far as the office. He swears that he went in there and saw Mr. Torrey. As he went into the door Torrey's desk was right there [illustrating]. He had a very pleasant chat with Mr. Torrey. Right over there [illustrating] was Mr. Mullins's desk, and right there [illustrating] was the door leading into the next room. After chatting a little with Torrey, and telling him the object of his visit, Torrey took him into the next room and took these books from a shelf or desk, or something of that kind, and handed them both to him, and he looked them over at his leisure, while Mr. Torrey went back to his business. He finally took the journal and left the ledger. Why did he leave the ledger? I will tell you after a while. Every lie, as well as every truth, has its philosophy. He took the journal and came along out with it under his arm, not wrapped up, not concealed. Then he had another chat with Torrey about the weather or something, and then he went on. Why did he swear that he had a conversation with Torrey in that office? I will tell you. When he was giving that testimony Torrey was in mid-ocean, between New York and Liverpool. I guess Mr. Rerdell had heard that the man was away. He thought he would be absolutely and perfectly safe, and so he said he had a conversation with Torrey. The moment he repeated that conversation with Torrey I said, "Where is Torrey?" We telegraphed to New York and we found that Torrey had left for the old country. We sent a cablegram to Queenstown and we intercepted him. I think he staid a day in the old country, and took the next ship and came back, arriving here in time to swear that Rerdell never visited that office, that he never had that conversation with him, and that he never got that book from that office; more than that, that that book never was in that office. Who are you going to believe, Torrey or Rerdell?

Another man was there on that very day, Mr. Mullins. He never had any recollection of seeing Rerdell until he saw him here. All the books were kept in the safe except the books that Torrey had in his desk. No such books were in the safe and no such books were in Torrey's desk. Gentlemen, no such books existed, and I will demonstrate it to you before I get through. No doubt the man had some little expense-books of his own. He has widened them, he has lengthened them, he has thickened them, he has colored them. He has refreshed other people. When the Government tells a man, "You have got an office, haven't you?" "Yes." "Well, we want you to remember this." Then he is refreshed on the subject. The words the Government speaks are rain and dew and sunlight upon the dry grass of his memory and it springs up green. He says he has been-refreshed. Before I get through I will show you that these things were proved only by gentlemen who had been refreshed.

Now, why did Rerdell say he took the journal and left the ledger? I will tell you. There is more in the shirt theory than you would think. He had a shirt in a paper, folded up just once over the bosom. Unexpectedly he met Mr. James on the train. He was very much sur-

prised to meet him, because James swears he was very much surprised to meet Rerdell. James knew that he had gone over to New York to get those books, and he asked him, "Did you get the books?" Rerdell had that beggarly little package. He could not call that "books," because it was not large enough, and so he had to say he had a book. That was the reason he said journal and not ledger. He had too small a package for "books," and consequently he told James he had the "book," and he is sticking to it; only one book. Another reason: He said to James, and it was very smart of him, "I don't want to show you what I have got in this package, because there is a fellow looking," and so the shirt, in conscious innocence, reposed unseen. Who was the fellow who was looking? Chase Andrews. You recollect him. He came into the depot at Jersey City at the time Rerdell was writing this virtuous dispatch, this certificate of his honor and of his faithfulness. He shook hands with Rerdell. Rerdell said he had a carpet-sack, but it was not big enough to get one of these books in. He wanted the jury to think it was a pretty big book. He hated to lose a chance of adding to the size of the book, and so he swore that it was too big to put in the carpet-sack. If he had only had sense enough to put it in the carpet-sack, and let it alone, we never could have proven anything about it by Chase Andrews. Andrews would not have sworn that he looked through the carpet-sack. But Rerdell in his anxiety to have that book a big book said he could not get it into the carpet sack, and consequently must have held it in his hand. Chase Andrews saw him in the depot at Jersey City, and rode in the next seat in the Pullman car from Jersey City to Washington, and Rerdell had no book. Who will you believe, Chase Andrews or Mr. Rerdell?

Now, gentlemen, one other point. This is a wonderful case for points. When he sent that dispatch from Jersey City to Dorsey, if Rerdell's evidence is true, Rerdell knew Dorsey would know it was a lie the moment he got it. If Rerdell had told him in the morning of what he had done, and then telegraphed from Jersey City that he had been faithful up to that moment, he sent a dispatch to Dorsey that Dorsey must have known was false the moment he received it. That was not a very smart piece of business.

There is one other thing to which I wish to call your attention, and I will ask the court first whether I have the right to do it. Mr. Bliss proposed to prove a certain thing by Mr. Newcomb, who was a post-office clerk or perhaps a detective in New York. The court will remember him. Have I a right to call attention to anything that Mr. Bliss left out of his proposition?

The COURT. I understand the case to be this: An offer was made by counsel to prove certain facts by a witness, and the offer was refused by the court.

Mr. INGERSOLL. Yes.

The COURT. I do not think the offer itself or anything contained in the offer is a subject of comment to the jury, and for this reason: You may comment upon the offer and find fault with the offer, and yet if the witness had been examined and cross-examined, his testimony might possibly have explained the very point you make against the offer.

Mr. INGERSOLL. I am not making a point against the offer. I want to call attention to what they did not offer to prove by that man.

The COURT. You have a right to comment upon the failure of the Government to prove any fact.

Mr. INGERSOLL. Very well.

The COURT. But not upon an offer that was made and refused.

Mr. INGERSOLL. The point I want to call attention to is that the Government failed by any witness to prove that Rerdell brought anything away from that office that morning either at 10 or 11 or 12 o'clock. In addition to that, I think I have the right to show that the prosecution did not offer to prove by anybody that he got a book or a package or anything that morning.

Mr. MERRICK. I suppose I shall have the right to reply to that, covering the same broad latitude.

The COURT. Either side have the right to comment upon the omission of the other to prove facts.

Mr. INGERSOLL. I want to call your attention to the fact of their omission, then. Let me read their offer, from page 4376:

We expect to prove that this witness followed Mr. Rerdell, and saw him actually go into Mr. Torrey's room at about 10 o'clock that day—not very far, I apprehend, from 10 o'clock of that day. I should think more likely it would be a little after than before, but it probably cannot be definitely fixed, although not far from that.

The COURT. About 10 o'clock.

Mr. BLISS. Yes, sir.

What I want to call your attention to is that they did not propose to prove by that witness, who saw Rerdell go in that office and come out of that office, that Mr. Rerdell had a book or package, or anything presumptively a book. That is what I want to call your attention to.

Mr. MERRICK. If your honor will allow me, perhaps I had better explain the matter now. Mr. Newcomb, when he went into the office, left another man in his place, by whom, if the testimony of Newcomb had been admitted, we would have proved the fact complained of as left out of the offer.

The COURT. That shows the impropriety of commenting upon it.

Mr. INGERSOLL. It simply shows that I would have proved by another man that the second man did not exist.

The COURT. That strengthens my objection.

Mr. INGERSOLL. I asked the permission of the court before I said what I did.

Mr. MERRICK. And I asked the court that I might have the same breadth of latitude.

At this point (1 o'clock and 2 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. INGERSOLL. [Resuming.] May it please the court and gentlemen of the jury: It is also claimed by the prosecution that on the evening of the day on which Rerdell was in New York and sent the telegram from Jersey City, Dorsey wrote a letter to Rerdell in which he begged him for the sake of his family, for the sake of his children, and everything, to go no further. I believe it is claimed that after Mr. Rerdell got back here to Washington he showed that letter to his brother. It struck me as extremely wonderful that he did not show his brother the book; that was such an important thing, it being the thing that he went after, being something that was to decide his fate with the Government. There was nothing about that. Let me say right there: Suppose his story is true that he told Dorsey that he had been to

the Government. Would Dorsey write to that man a letter begging him for God's sake not to go further? Would he not rather have sent some man to see him? He knew at that time that he was utterly dishonest, having received that very afternoon, according to Rerdell's testimony, a telegram from Rerdell, in which Rerdell admitted that he had told a falsehood. Would he have then put himself upon paper? Would he have put himself in the power of that same man? I ask you, because you know there is about as much human nature in one person as in another on the average, and the only way you can tell what another man will do is by thinking "What would I do under the circumstances?"

I am going to demonstrate to you now that there were no such books just with one point. When Rerdell came to make the affidavit of June 20, 1881, Dorsey knew that Rerdell had talked with MacVeagh, James, and Clayton. He also knew that Rerdell, according to his statement, had promised to go to New York and get the red book. Rerdell swears in the affidavit of June, 1881, that he promised MacVeagh to go to New York and get those books. Dorsey knew at that time whether such books existed or not. If he knew they did exist then he knew that Rerdell went after them. Why did not Dorsey ask Rerdell at the time he made that affidavit "Did you get a book in New York?" Admitting, for the sake of the argument, that Rerdell's story is true that the books were there and that Dorsey knew it, would not Dorsey have asked him, when he was making the affidavit of June 20, 1881, "Did you get a book in New York? What did you do with it, if you did?" Rerdell swears that Dorsey did not mention that subject; that it was not talked of between them. Why? Because both knew that no such books existed. That is the reason he did not ask him if he got it. He knew he did not get it. Why? Because the book was not there to be obtained. Can you explain that on any other hypothesis? Dorsey knew at this time, according to the testimony of Rerdell, that Rerdell was dishonest; knew that Rerdell had tried to sell him out to the Government; knew that Rerdell had promised MacVeagh he would go to New York and get those books; knew that Rerdell had been to New York; knew that Rerdell had gotten back, and yet did not ask him, "Did you get a book?" Would not he have naturally said "I want that book that you got in New York. I want it now." It also appears in evidence that on the very day that Rerdell was in New York and says he was in Torrey's office, Torrey in the afternoon went to the Albemarle Hotel to do some writing for Mr. Dorsey. Is it conceivable that Torrey would not in that conversation have told Dorsey, "Your clerk, Rerdell, came to the office to-day and I gave him the mail book or one of those books?" Not a word. That affidavit was made in June, 1881, and was the affidavit in which Rerdell disclosed what he had done with the Government, and that he had agreed to get that very book, and yet Dorsey did not take interest enough in the matter to ask him if he got a book.

Mr. MERRICK. Is there any evidence of the conversation between Torrey and Dorsey?

Mr. INGERSOLL. No. The evidence is that Torrey went there that evening. You claim that that was the topic of conversation, and that Dorsey sent dispatches to Rerdell that night and wrote a letter to Rerdell. So I say, under the circumstances, and with the excitement then prevailing, it is inconceivable that Torrey should not have said, "Your man Rerdell has been at my office to-day, and got one of the books."

Mr. MERRICK. I ask the question whether there is any evidence as to what he did tell Dorsey, or did not tell Dorsey?

Mr. INGERSOLL. No, sir; not that I know of.

Mr. MERRICK. Then we do not know.

Mr. INGERSOLL. I say it is inconceivable that he did not tell him, and therefore Dorsey must have known it had it been a fact, and had it been a fact when Rerdell made the affidavit of 1881, Dorsey would have said, "I want that book. I want the book you stole from my office." He did not even mention it. It was not the subject of conversation. Yet, in that same affidavit, he said that he agreed to go and get it, and in that same affidavit he said that no such book ever existed. He swore to that affidavit from friendship. You see, gentlemen, about how much friendship that man is capable of. He swore for friendship that no such book existed; he now swears that it did. What is that for? You want to consider these things. Nobody asked about that book. The matter drifted along. The summer wore away. Autumn touched the woods with gold. Nobody ever mentioned the book. Winter came. That book was in a little carpet-sack hanging in a woodshed. A magnificent place to secrete property. The snows descended; the winds howled around that woodshed. The carpet-sack hung there with the book in it. Nobody touched it. I think the next year, may be that summer, he wrote or telegraphed to Mrs. Cushman to get the book. It suddenly occurred to him that a woodshed was not a safe place for it. She got a book. She looked into it enough to find out it was about the mail business. She put it away; finally that book was brought from its hiding-place on the 13th of July, 1882, when Rerdell says he handed it over to Dorsey, and there is not one syllable of evidence going to show that it was ever spoken of from the time he visited New York until he brought it to Dorsey, as he claimed, at Willard's Hotel. What made him give it to him? Dorsey was mad. Dorsey threatened that he would have Rerdell arrested for perjury, because Rerdell had sworn that he, Dorsey, was innocent. That is enough to excite the wrath of an ordinary man. Dorsey was then on trial. The first trial was then going on. We were right in the midst of it. The year before that Rerdell had solemnly taken his oath that Dorsey was an innocent man, and here Dorsey was in a court insisting that he was innocent. Yet he threatened to have Rerdell then and there punished for perjury because he had sworn that he was innocent. That frightened Rerdell. I think it was calculated to frighten any man.

Why did Dorsey allow Rerdell to keep that book? There is only one possible explanation: The book never existed. That is all. Torrey would have told about it if it had been taken from his office, because I believe the evidence shows that that affidavit was shortly afterwards published. Nobody seemed to have taken any interest in that book. All interest faded away. Now, Mr. Rerdell made that affidavit on the 20th of June, 1881. I believe, on page 2468, Rerdell swears that when he made the affidavit of June 20, 1881, he had the copies of the original journal and ledger at Dorsey's office. Afterwards he swears he had not. He swears that he then gave them to Dorsey. Afterwards he says they were sent to New York the year before. I will come to that after awhile. Now, let us see what the position of affairs was on June 20, 1881. At this time Rerdell had furnished the Government all the information he had, except the book. Then they had said to him substantially, "The evidence is insufficient. We want more." Rerdell agreed to furnish them the books, and went to New York to get the

books. Now, he had Dorsey absolutely in his power, according to his account. What did he do? He had, according to his testimony, the copy of the letter Dorsey had written to Bosler on the 13th of May, 1879, the copy having been made by Miss Nettie L. White. He had the tabular statement in Dorsey's own handwriting, showing 33 $\frac{1}{3}$ per cent. to T. J. B. He had the letter that he himself wrote to Bosler on the 22d of May, 1880. He had the red book. According to his statement, on that day he had Dorsey in his power. All he had to do was to take the next step and secure absolute safety for himself and crush his employer. What did he do? He then said, "I went to the Government and played the detective." He retreated. He voluntarily put himself in a position a thousand times as perilous as he had been in before. He put himself in a place where he had to swear that what he told the Government was a lie, and that he was simply endeavoring to find out the Government's case and was acting as a detective. You must recollect that Rerdell is a man who does nothing for money. He will make an affidavit for unadulterated friendship. He will make it also from fright. He will make it also, he says, in the interest of truth. At that time he made an affidavit, as he says, for friendship, and it is for the jury to determine how much a man like Rerdell—because you know what he is just as well as I do—would do for friendship. You have seen him here day after day. You saw him sitting right at the door when Mr. Ker and Mr. Bliss were demonstrating to you that he was a guilty wretch, and you saw his face beaming with pleasure. He was absolutely delighted. Yet when Mr. Wilson stood here and endeavored to show that the man was not as bad as he said he was, endeavored to show that his plea of guilty was absolutely false, he slunk away, covered with the shame of innocence. He did not want to hear that. He wanted it understood that he was guilty, and that it was the proudest moment of his life. Now, it is for you to determine how much such a man would do for friendship. It is for you to determine how you can take advantage of his finer nature. He had Dorsey in his power, according to his story, but instead of carrying out his original design he turned against the Government. Why did he do that? Because of patriotism? No. Why? He did it for his own benefit, gentlemen. He never acted from any other motive. Why did he not stay with the Government? Because they would not give him his price for his evidence. Why would they not give him his price for his evidence? Because his evidence was not worth it. If he had had the copy of the letter from Dorsey to Bosler they would have given him his price. They would have followed him all over the United States to have given him his price. There was the absolute evidence against Dorsey. There was the evidence against the man whom Mr. MacVeagh wished to drag down. Why did they not buy it? Because the man did not have it. Why did he desert the Government? Because the Government would not give him his price. Again I ask why would not the Government give him his price? Because he had not the goods; he had not the evidence. Then what did he do? He sneaked back and asked protection of the man he had endeavored to betray. That is what he did. He again asked Dorsey to stand by him. Dorsey did not need this man. This man needed him, and he instantly deserted the Government and went back to Dorsey. For the sake of saving Dorsey? No. For the purpose of saving himself. He had not the evidence. Yet, according to this testimony of his, he had what I told you. What else did he have? He had the route-book. What was the route-book, gentlemen? From the evidence it

appears that this man kept a route-book, and that in it he had the name of each route, the number of the route, where it started from, and where it went to, the name of the contractor, the amount per year, the name of the subcontractor, the amount per year, and then a column showing whether it had been increased, and, if so, how much, and whether it had been expedited, and, if so, how much. He had that book. He says he was subpoenaed to appear before the Congressional committee. What book would that committee want? They would want the book that showed the original contracts, the subcontracts, the description of the routes, how much the Government paid to the contractor, and how much the contractor paid to the subcontractor. That was the book they wanted, and that was the book to hide if any hiding was to be done. That was the book to have copied. That was the book in which figures should have been changed, if in any. And yet he never said one word about that route-book. He had it in his possession. Why would he not expect the committee of Congress to call for that book? He did not tell you. He did not have that book copied, and yet that was the book that had in it every particle of information that the Congressional committee wanted. Not a word on that subject.

It appears, too, in the evidence, that Mr. Rerdell had in his possession certain notes that passed between him and Mr. Steele about the red books. Why were not those notes produced in evidence? Mr. Steele was here on the subpoena of the Government. Why were not those notes produced in evidence? Not a word about that. Is it possible that those notes were about the route-book? Why were they not produced? Rerdell went before that Congressional committee. He did not take any route-book. What did he take? He said that he had these books made up to take. Did they contain the accounts of the subcontractors? No. Donnelly swears there were not more than twelve accounts in the book. What was the use of taking that book, or those books, before the committee? Another thing: He says that he went immediately and got those books copied. Would he try to palm off the copies as originals? Would not the committee ask him the very first thing, "In whose handwriting are these books?" He could not say, "They are in mine," because then he would be caught. He would have to say, "They are in Mr. Donnelly's handwriting." The next question would be, "Where is Mr. Donnelly?" And the answer would be, "Here in town." The committee would send for him and would ask, "Mr. Donnelly, did you write in those books?" "Yes." "Did you make the entries at the time they purport to have been made?" "No, sir; I copied them from another set of books that Mr. Rerdell gave to me." He would either say that or swear to a lie. Then they would say, "Mr. Rerdell, we want the original books," and then he would be caught. You cannot imagine a more shallow device. More than that, the books would not have any information that the committee wanted, nothing about these contracts, and nothing about the amount paid the subcontractors. If the committee wanted anything they wanted to show that the Government was paying a large price and the contractors were paying to the subcontractors a small price. Rerdell says that when he was subpoenaed to bring his books he never thought of the route-book. He thought of the red books, and yet the route-book was the only book that had any information that the committee wanted. How was he to palm that off? Is it possible to think of a reason having in it less probability, less weight, less human nature than the reason he gives for having those books copied? There is another question. If Rerdell expected to palm off the copies as the originals, why did he keep the originals? For

instance, I have a book here that I don't want Congress to see and so I have it copied. I am going to swear that that copy is the original; otherwise the device is good for nothing. Why keep the original and run the perpetual danger of discovery? Why not burn the original? Why keep the evidence of my own guilt, liable to be found at any moment by accident, by a servant, by a stranger? That is not human nature, gentlemen. Then there is another question: If he were going to have a book copied and then swear that the copy was the original, he would have copied it himself. If a man intends to swear to a lie the first thing he does is not to take somebody into the secret. Why should he have put himself in the power of Donnelly? He was the man to be the witness before the committee, and if his device worked he intended to swear before the committee that the copies were the originals; and yet, by going to Donnelly to have the work done, he manufactured a witness that would always stand ready to prove that he, Rerdell, had sworn to a falsehood. What men work in that way? When a man makes up his mind to swear to a lie does he take pains to go to one of his neighbors and say, "I am going to swear to a lie to-morrow and I want to give you the evidence of it. I am going to swear that a copy is an original. I want you to make the copy so that I can swear to it." Would not the neighbor then say, "I will be a witness against you in that case. You had better copy it yourself." Just see what he did. He took pains to have a witness so that if he swore falsely he could be contradicted and convicted. Why did he not copy the books himself? After he got the originals copied why did he not burn up the originals so that nobody could ever find them in his possession?

Let us take another step. Finally, he got before the committee. When he got before the committee what did he swear? He swore that he kept some expense-books showing how he stood with the contractors. I think that was the truth. I think that is what he did keep. He did not tell the committee about the route-book. Not a word. That was the only book that he concealed in his testimony. He said he kept some expense-books and those were all that he kept. He did not tell about the route-book. That is the only book that he failed to mention. Consequently, it seems to me, that was the only book he did not want to show. Why? Because he thought at that time they were going to make a great outcry about what was paid to the subcontractor and to the contractor and he had no advices from anybody, except from whom? Except from Mr. Bosler. What did Bosler tell him? Bosler told him, "I see no reason why you should not exhibit your books and papers." Now, according to Rerdell's testimony, on the 13th of May the year before, Dorsey had written a letter to Bosler informing him that he had given \$20,000 to T. J. B. Bosler knew, if the testimony of Rerdell is true, that that letter had been written, and Bosler had that information. He knew if the letter had been copied, too, because every letter that one receives gives evidence whether it has been copied or not. And yet, knowing of that letter, he wrote to Rerdell or telegraphed him that he saw no reason why he should not show all his books and papers. Nobody believes that. Nobody ever will believe it! The earth may revolve in its orbit for millions of years, and generations may come and go, countless as the leaves of all the forests, and there never will be found a man of average intelligence to believe that story. Just think of it. Bosler, according to the testimony of Rerdell, had gone into partnership with Dorsey knowing there was a conspiracy, knowing Dorsey was paying to Brady 33½ per cent. of the profits, and thereupon the clerk who attended to the business writes or telegraphs to him, and says he

has been subpoenaed to appear before the Congressional committee with the books and papers, and Mr. Bosler knowing of the existence of the conspiracy, and knowing that Brady is getting 33½ per cent., writes or telegraphs back that he sees no reason why all the books and papers should not be presented to the committee. Gentlemen, that is impossible; it never happened and it never will.

Ah, but they say these books did exist. Why? Because Mr. Donnelly copied them. Let us see whether he did or not. There is nothing like examining these questions. Mr. Rerdell says that in his interview with Brady, Brady suggested to him that he had better have them copied. This, I believe, was on the 21st of May, 1880. Now he swears that in accordance with that view or suggestion that he received from Brady he had the books copied by Donnelly. When did he have it done? He had it done after the 21st day of May, 1880. On page 2638 Donnelly swears that he copied these books in the latter part of April or the forepart of May. On page 2636, where he was asked if he had anything to do with copying a book of accounts for Rerdell, he says that he had; and on being asked what kind of books they were, says they were a small set of books. Donnelly swears that they related to the mail business, and seemed to be the books of a firm. At that time nobody was interested in the matter except S. W. Dorsey. How did they appear to be the books of a firm? Donnelly swears, on page 2640, "there were not more than a dozen accounts in the book." Let us see if these were mail the books. He says there was an account against S. W. Dorsey; that is one. An account against John W. Dorsey; that is two. Against Donnelly himself; that is three. M. C. Rerdell; that is four. Interest account; five. A mail account; six. An expense account; seven. A profit and loss account, eight; and an account with William Smith, nine. That is all he gives. But he says they were not to exceed a dozen. On page 2644 Gibbs says there was an account against Colonel Steele and Mrs. Steele. I take it they would be in one account. That makes ten. Then there was an account against Jennings, making eleven; and an account against Perkins, making twelve. Let us see if we can go a little further. Mr. Rerdell swears to a cash account; that is thirteen. Also an account against J. H. Mitchell; that is fourteen; and one against Belford, making fifteen. You can deduct your Jones and your Smith and have one more account in the book than Donnelly swears was in it. He swears they were not to exceed a dozen. That was the book with all this mail business. We will follow it up a little. Rerdell says he opened the books according to the memorandum, and swears consequently that there was a cash account and an account with J. H. Mitchell. J. B. Belford I believe he afterwards mentioned. Now, according to Gibbs's testimony there was an account with Perkins. Understand I say that the only book he had, if he had any, was a private book in which he kept his own expense accounts and his own matters, and it was not a book with which Stephen W. Dorsey had any connection. I say that the William Smith and Samuel Jones account he has added for the purpose of having something to sell to the Government. That is my claim. I say they were his private books. There was an account with Perkins. You have heard all the testimony, gentlemen. You know all the contracts in this case. You know all the subcontracts. There is not a single solitary account in this book with any subcontractor mentioned in any of these subcontracts except Perkins and possibly Jennings. Who was Perkins? Perkins was a subcontractor on the route from Rawlins to White River. That is the route that Rerdell had an interest in himself. Rerdell made the subcontract with

Perkins himself, and consequently he had an account with Perkins in his own private book, and had not any account with the rest of the subcontractors. We also find, according to Gibbs, that there was an account against Jennings. Who was Jennings? That brings us to the Jennings claim. That is the claim that he told Mr. Woodward about when he wanted to sell out in the first place, and that is the claim that he told MacVeagh and the Postmaster-General about. Strangely enough and wonderfully enough we find that claim in this very book. That shows whether it was a private book or whether it was a book kept for the accounts of Dorsey. Now, on page 2489, Rerdell happened to tell what kind of a book he kept. I think I was cross-examining the young man at that time:

Q. Did you have anything at all to do with the Vaile and Miner routes?—A. Not anything.

Q. What did you do with the drafts that were not payable to you?—A. I would send them to the contractors or to the persons to whom they were payable. That was the general rule.

I was trying to get at what he did with the drafts on the Toquerville and Adairville route.

Q. Will you state specifically what routes you received money on from the Post-Office Department?—A. I received some of the money on route 38152.

Q. What other routes?—A. I received some money on one of the California routes or the Oregon routes. Let me refer to my book.

Mr. INGERSOLL. I have no objection. I want to know as a fact.

The WITNESS. Probably I can find one or two items here. [Referring to book.]

He kept two sets of books, don't you see.

I see on September 12, 1879, that I received \$400 from Lewis Johnson & Co., which was for drafts hypothecated on mail service.

Received by him.

That was on one of those specific routes that you mentioned?—A. It was on some of the Dorsey routes. I do not know which ones. I see on November 13 there was a Post-Office draft for \$208. I do not know what routes it was for.

Q. Let me ask you right there, did you get the proceeds of those drafts personally?—A. This was deposited to M. C. Rerdell as agent. Those that I read off just now, \$400 and \$208.64, I received Post-Office drafts for. I do not know what routes.

Q. Now go to the specific routes, if you can?—A. This does not give it. Then I see another place: Post-Office draft, \$31.40. I see in another place, Post-Office draft, \$87.

He was still looking on his book.

Q. Can you tell from your book what route that is on?—A. This I know is on route 38152.

Q. How did you come to get that?—A. If I remember right, I got two orders on that route, one by reason of filing a draft, and the other by sending it to John W. Dorsey and getting his indorsement and then charging it up to myself.

Q. That was a warrant indorsed to you?—A. One of them was. I don't know which it was. I got \$87 twice.

Q. There was not anything due you personally on that route?—A. Not anything.

Q. Now go to the specific routes where something was due to you by virtue of your being subcontractor or contractor.—A. I do not know that it ever came into my hands, but it came through me. There was an amount paid to Jennings of \$994.

Q. Were you contractor or subcontractor then?—A. I was then the subcontractor of record.

Q. What was the number of the route?—A. 40104.

Q. That was paid to you in April, 1880, was it?—A. I do not remember the date when it was paid. Yes, it was paid in 1880.

Q. And you turned that over to Jennings?—A. It went to him. I think I turned it over to his lawyer.

Now, by looking at the Post-Office reports I find that \$994 was paid to Rerdell for Jennings on the 14th day of April, 1880, and the question I ask is did he keep two sets of books at that time? He produced

in court a book of his own kept at that time with the Jennings account in it. The book that was copied had the Perkins account, and why? Because it was a special account in which Rerdell was interested. They have failed to prove that there was in that other book any account in which Dorsey was necessarily interested, except the account kept with Rerdell showing Rerdell's transactions with Dorsey.

By referring to the first volume of this trial, page 733, I find that \$944 was paid to Rerdell on the 14th day of April, 1880. We now come to the testimony of Mr. Gibbs. Mr. Gibbs says his wife copied a journal between Christmas, 1879, and the 1st of March, 1880. Rerdell says that she copied the journal and ledger both. The witness, Gibbs, gives the color of the book. He says it was not red; it was either brown or black. Mr. Gibbs remembers nothing about the Smith account, whether it was large or whether it was small. He finally swears that he does not really recollect anything about it, except that Rerdell brought the book there and said he wanted to get a copy made to send to Dorsey in New York, and that he returned the book and the copy to Rerdell. He swears that he remembers as names in this book Smith, Jones, and S. W. Dorsey, and M. C. Rerdell. Those were all he could think of. He does not remember the name of John H. Mitchell. On page 2646, he says he believes that Rerdell came to him and asked him during the trial if he recollected the name of William Smith, and he swears that when Rerdell asked him if he recollected the name of William Smith, he distinctly told him that he did not. Then he asked him if he recollected the name of Jones, and he swears that he told Rerdell when he asked him that question that he did not. I read from page 2646:

Q. Did he ask you if you recollected the name of William Smith?—A. Yes, sir.

Q. Did he tell you anything about Samuel Jones or Jones?—A. He asked me if I remembered the name of Jones.

Q. At the time he came to you did you tell him first that you recollected those names, or did he first tell you the names and then ask you if you did not recollect?—A. He asked me the names, and asked me if I did not recollect them, and I told him I did not.

Q. When he first came to you he asked you if you remembered the names and you said you did not?—A. Yes; and I have always told him so.

Q. Then he told you the names that he remembered, did he?—A. No, sir.

Q. How did he call your attention to Smith and Jones?—A. He came up and asked me if I could remember any names in the book, and I told him I could remember one or two, or a few of them, and I went over them to him; then he asked me if I remembered the name of Smith, and I said, "No, sir;" then he asked me if I remembered the name of Jones, and I said, "No, sir;" neither did I at that time.

Q. As a matter of fact have you not told a number of persons that you did not remember the names in that book?—A. Possibly so, sir.

* * * * *

By Mr. MERRICK:

Q. Your memory being now refreshed, have you any doubt about your recollection of the name of Smith?—A. Not the slightest.

Q. Or Jones?—A. No, sir.

By the COURT:

Q. How do these things come into your mind so recently?—A. Your honor, I tried not to remember anything of this.

How can a man try not to remember? What mental muscle is it that he contracts when he tries not to remember? That is a metaphysical question that interested me greatly when the man was testifying, for he said he tried not to remember. Why did he try not to remember?

I didn't want to be called into court if I could possibly help it, and for quite a long time did not mention the fact that I knew anything of the books. But when I was called into court, I thought of all the circumstances connected with the time that I

copied the books; and a few days ago, or a week or so ago, in going home one night, and thinking this thing over in my mind, and thinking of everything I could think of, my mind reverted to a conversation I had had at the time, laughing and looking over the books.

It was not only one book, then.

And I wrote a great many letters, and read a great many names—

They must have been in the letter-books—

and was laughing about the peculiarity of the names, and even made the remark, "There is even Smith and Jones in it."

What a wonderful circumstance! In copying the books and making an index of the three letter-books he found Smith and Jones. The difficulty would have been not to find Smith or Jones. Then I say:

Let me understand the last part of that answer. * * *

By Mr. INGERSOLL:

Q. You made that remark when; at the time the books were copied?—A. After they were finished; before they were turned over to Rerdell.

By the COURT:

Q. These are the circumstances that brought to your mind—

A. [Interposing.] The fact.

Q. The names of Jones and Smith?—A. Yes, sir.

By Mr. INGERSOLL:

Q. Now let me understand; when he first came to you you did not remember anything about Smith and Jones?—A. No, sir.

Q. And for a long time afterwards, or for several weeks afterwards?—A. It has not been such a great while since it came to my mind.

Q. How long?—A. Probably a week.

Q. Then, all at once, you remembered that at the time you copied the books you saw that there were the names of Smith and Jones in the book and were astonished?—No, sir; I was not astonished.

Q. You would have been astonished if Jones had not been in the book?

The WITNESS. If it had been?

Mr. INGERSOLL. If it had not been?—A. No, sir; I would not.

Q. Were you astonished to find Jones in that book?—A. No, sir.

Q. Were you astonished to find Smith in the book?—A. No, sir.

Q. If you were not astonished, how did it happen that you made that remark?—A. We all know there is a peculiarity about the combination of the names of Smith, Brown, Jones, and Robinson.

Q. And you were astonished that Brown and Robinson were not in?—A. I was not astonished. Simply looking over the books and speaking about them, and making remarks in regard to them, and the great number of peculiar names, I said, "Why, there is even Smith and Jones in it."

Q. Did you say that because Smith and Jones were so peculiar?—A. I don't know that they were peculiar.

Q. You said there were lots of peculiar names in that book, "And there is even Smith and Jones in it?"—A. Yes, sir.

Q. Did you mean by that that they were exceedingly peculiar?—A. No, sir; just coupling the names.

Q. Such funny names?—A. I didn't say that.

Q. Was J. W. Steele a strange name?—A. Yes, sir.

Q. You consider that rather a strange name?—A. Yes, sir.

The COURT. It depends upon how you spell it, I suppose? [Laughter.]

Mr. MERRICK. A very common name in that book.

Q. Did you think at that time of what the judge has just said; was that the reason you thought it was such a funny name?—A. I suppose I thought of the metal.

Q. Did you regard Dorsey as a strange name?—A. No; I don't know that I did.

Q. Then, there was profit and loss. What other names of individuals were there?—A. Mr. Perkins, and there was Mrs. Steele.

Q. That would not be strange, as Steele was the name of her husband?—A. No, sir; I don't know that I can place any others just now. If I heard the names I could tell you in a minute.

Q. At that time you thought they were so peculiar?—A. Yes, sir.

The COURT. [To the witness.] Was not this the idea that struck you—

Mr. INGERSOLL—

I will not read that. Then the testimony goes on:

Q. What name was it struck you as being so peculiar?—A. I can't place any particular name now, but there were quite a number of them.

Q. Where were you walking along when you thought about this?—A. Going home from the hotel.

Q. About when was that?—A. It was within a week.

Q. Whereabouts were you at the time you thought of this?—A. I was on Eleventh, between F and G.

Q. About the middle of the block?—A. Yes, sir.

Q. It suddenly came into your mind what you had said?—A. Yes, sir.

Q. Was that the first time that you remembered it?—A. That was the first time that I remembered it.

Q. To whom did you make that remark?—A. To my wife.

Q. Just a little fun amongst yourselves?—A. Exactly.

Then I ask him another question:

Mr. MERRICK. Let me ask a question.

Mr. INGERSOLL. One more question, which my associate wishes me to ask.

Q. How long before that struck you on that block had you talked to Rerdell?—A. I think a few days before that. I was trying all along, connecting the different circumstances, from the time I first met Rerdell up to the time the books came.

Q. At that time, had you read in the testimony anything about William Smith or Sam. Jones?—A. Yes, sir.

Q. You already knew that Rerdell had sworn to that, did you?—A. Yes, sir.

Q. But it never struck you like it did that evening?—A. No, sir.

That is the evidence of that man. When Rerdell first went to him, he told Rerdell distinctly, "I remember no name of Smith; I remember no name of Jones." And then he waited until Rerdell went on the stand and swore that he copied those books, and that the names of Smith and Jones were in them, and then his memory was refreshed, and he came here and swore that the names of Smith and Jones were there. All of a sudden it came to him, like a flash, and he subsequently had the conversation with his wife. Gentlemen, you may believe it; I do not; not a word of it. He is mistaken. He has mistaken imagination for memory; he has mistaken what Mr. Rerdell told him now for something he thinks happened long ago. He took the letter-books, too. May be there is where he found some of his strange names.

Rerdell says, in swearing to the letter which he says was written by Dorsey to Bosler on the 13th of May, 1879, that he (S. W. Dorsey) took that book, all his own books that were not used for the mail business, and boxed them up. When? In 1879. Mr. Kellogg swears that after they were boxed up they were sent to New York. When? In 1879. And yet Rerdell swears that between Christmas and New Year's, 1879, those books were at the house of Mr. Gibbs to be indexed. It will not do. And Rerdell swears that he had the letter-book containing the letter of May 13, here in 1881, when he went to MacVeagh, and yet, according to his own testimony, that book was sent to New York in 1879. And he swears that the three letter-books—and I will call your attention to them after a while—that he had here, commenced on the 15th of May, and ended, I think, in April or May, 1882. He swears that the letter written by Dorsey to Bosler was written on the 13th of May, 1879, and then he swears that the first letter in the three letter-books was dated the 15th of May, two days afterward. So he had not the book here. I knew he did not have it, because if he had had such a book with such a letter, he never would have gone to New York to steal a book; he would have stolen that one.

Torrey took charge of the books January 27, 1880, and he kept them until the 1st of May, 1880, in the Boreel Building, and then at that time moved to 145 Broadway, and kept them there until the last of April, 1882.

Now, gentlemen, I will come to those red books again in a moment, perhaps. Here is a little piece of evidence about the books. You know it was the hardest thing in the world to find out how many books this man had, how many times they were copied, who copied them, and what he did with the copies; and he got us all mixed up—counsel for the prosecution, the court, counsel for the defense—none of us could understand it. “How many books did you have? What did you do with them?” “Well, I took them to New York. No, I did not; I had some of them here.” Finally I manufactured out of my imagination a carpet-sack for him. I said, “Didn’t you take these books over to New York in a carpet-sack?” He said “Yes,” he did. He jumped at that carpet-sack like a trout at a fly. Let me call your attention to some other evidence, on page 2637, near the bottom. Donnelly is testifying:

Q. Was it an exact copy of the book?—A. It was not.

Q. In what did it differ from the book you were keeping?—A. There were some items left out.

Q. How did you come to leave out those items?—A. I left them out by direction of Rerdell.

Q. Were there any marks to indicate what was to be left out?—A. There was a pencil-mark drawn through.

Q. What accounts did you leave out?—A. That I don’t remember.

Q. Can you name any one?—A. Yes, sir; I left the William Smith account out.

Q. What was the amount of the account?—A. I don’t remember the exact amount.

Q. Come as near as you can.—A. Well, I should judge it was something about \$30,000.

Q. What did you do with that amount in order to balance the books?

Now, I want you to pay particular attention to this answer.

A. My recollection is that I carried it to profit and loss.

Q. On the books or on the balance sheet?—A. On both.

Now, remember, these were the books made out to fool the committee. I suppose there are some book-keepers on this jury. I suppose Mr. Greene knows something about book-keeping, and Mr. Evans, and Mr. Crane, and Mr. Gill. I do not know but you all do. And you know that when you carry an amount to profit and loss you do not throw the name away; you keep the name. If you have charged against Robert G. Ingersoll \$5,000, which you never expect to get, and you want to charge it to profit and loss, you make the charge and you put my name against that. You put profit and loss against Robert G. Ingersoll’s debt. Everybody that ever kept a book knows that. If you carry an amount to profit and loss you rewrite the name of the person who owes the debt. So that when he says, “My recollection is that I carried it to profit and loss,” there would be a name twice in the book instead of once. If it was simply in the book once it would be, “William Smith, debtor, \$18,000.” But if you carry that to profit and loss you must credit profit and loss by this William Smith amount, and consequently get the name in the book twice instead of once. And that is what they call covering it up. They were so afraid that somebody would see an account against William Smith in one part of the book that they opened another account in the profit and loss business and put it in again. That would be twice. Now, let us go on a little:

Q. Were there any other accounts transferred in the same way?—A. I rather think there were, but I am not certain. I can’t tell what accounts there were. I don’t know.

Another refreshed fellow:

Q. How many were there so transferred?—A. There might have been two or three amounts, and might have been only two; I am not certain.

Q. Two or three accounts?—A. Two or three accounts or amounts; I am not certain.

There might be two amounts in one account, but not very well two accounts in one amount.

Q. Did you make the books balance on your copy?—A. Yes, sir.

Q. How long were you working on that copy?—A. I was working on it two evenings and all of one night.

Now recollect, in the copy that he made, he carried the account of William Smith—and may be Jones, he does not remember—to profit and loss.

Now, let us take the next step. Let us go to page 2269. This is as good as a play. Now, we come to Mr. Rerdell's testimony, and this is after he had had the conversation with General Brady—such a natural conversation, too. Brady was afraid that Rerdell would not know that he (Brady) had conspired with Dorsey. Brady, you know, had a great deal of confidence in Rerdell. He liked his appearance:

Q. Very well; what did you then do, acting upon the suggestion of General Brady, in reference to having the books copied?

Now, recollect, this was in the latter part of May, 1880.

A. I then put a man at work upon them; gave him the books, designating such entries as should be left out by drawing a pencil through them in that way (making a X mark), and told him to make up a new set of books leaving out those entries, but to leave the books so that they would balance, taking the entries that were stricken out, also the same amount that had been carried to profit and loss. There is where Mr. MacVeagh's evidence was mixed. The items that had heretofore been charged to William Smith had, in the mean time, when the books were balanced, been carried to profit and loss.

They carried this amount to profit and loss. Donnelly swears that when he made the first copies of the books, he, Donnelly, carried those amounts to profit and loss. Consequently, when Donnelly got through, there were four books. But before that time, Gibbs had made a copy of one (according to Rerdell, of both), so that at that time there were six books. See?

Also the same amount that had been carried to profit and loss.

Rerdell says:

There is where Mr. MacVeagh's evidence was mixed.

And I call the attention of the court to this testimony:

The items that had been heretofore charged to William Smith had, in the mean time, when the books were balanced, been carried to profit and loss.

Now, Donnelly swears that when he made the first copy he carried the William Smith account and some other to profit and loss. Rerdell swears that acting upon the hint of General Brady he got a man to do—what? To make another copy and leave out the items that had heretofore been charged to profit and loss. Donnelly swears that he balanced the books, and he is the only man that ever did balance the books, according to the testimony. After Rerdell had been subpoenaed to appear before the Congressional committee, he got another man, whom he swears he put to work on the books, designating the entries to be left out by drawing a pencil mark through them; that he told him to make up a new set of books, leaving out those entries, but to leave the books so that they would balance, taking the entries that were stricken out, and also the same amount that had been carried to profit and loss, and leave them entirely out. Rerdell swears that prior to that time these accounts had been carried to profit and loss, and that he struck out the credits to Dorsey. This occurs at page 2363, at the bottom of the page:

The COURT. Go on.

Q. You drew the cross marks against what?—A. Against all the charges made against William Smith, and the credits of course to Stephen W. Dorsey, which would

be the same thing, and also indicated the same amounts where they had been carried prior to that time to profit and loss.

There it is. You charge William Smith with \$18,000 and credit S. W. Dorsey with \$18,000, and in order to carry it to profit and loss you have to again write the name of William Smith and again write the name of S. W. Dorsey. So that instead of covering it up, it would simply make it twice as apparent.

Then the evidence as it stands is this: Rerdell swears that Mrs. Gibbs copied the journal and ledger. Gibbs does not swear it, but Rerdell does. That made four books. Then he got Donnelly to make another set of books with the William Smith and Dorsey accounts carried to profit and loss. That is six books. After he had been subpoenaed by the committee he got another man to make a new set of books and leave out the William Smith and Dorsey accounts and the profit and loss account, and that makes eight books. And there we are, so far as that is concerned.

Now, gentlemen, I have come to one other view of this case. I hope that you will not forget—because I do not want to speak of it all the time—that this man Rerdell swears that he had the original letter-press copy of that letter which he says Dorsey wrote to Bosler. Do not forget that. He says he had that before he went to New York to steal the red books; do not forget that. And that he gave that testimony away; do not forget that. That he says he had it copied by Miss White, and they do not introduce Miss White to show that she copied it; do not forget that. Do not forget, too, that he had when he was there the tabular statement in the handwriting of S. W. Dorsey.

Now, I would like to call your attention to the pencil memorandum, but I am afraid it is too dark for that purpose. [The court-room at this time being very dark on account of a severe storm.]

I call your attention now, gentlemen, to the affidavit of June 20, 1881. That is after the return of Rerdell from New York. It is really too dark to read anything.

The COURT. You can omit that for the present.

Mr. INGERSOLL. I will throw off half an hour from my speech if the court will adjourn now.

The COURT. How are you to get home in this storm? We may as well stay here.

Mr. MERRICK. I cannot work here. I cannot see.

The COURT. Wait a few moments.

Mr. INGERSOLL. I would like to have the court adjourn.

Mr. MERRICK. It is really too dark for me to take notes, and I can readily appreciate the difficulty of referring to papers under these circumstances.

Mr. INGERSOLL. It is pretty hard to read print.

Mr. MERRICK. I can appreciate that.

Mr. INGERSOLL. I would like, if the court please, to have the court adjourn now, because I am proposing to take up the pencil memorandum, and that cannot be very well argued without a comparison of handwritings.

The COURT. You want to adjourn now?

Mr. INGERSOLL. I guess so; it is half past 3.

Mr. MERRICK. I would certainly desire an adjournment if I were speaking myself.

Mr. INGERSOLL. I am obliged to you, Mr. Merrick.

The COURT. Adjourn the court.

Thereupon (at 3 o'clock and 26 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock .

T U E S D A Y, M A Y 22, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. INGERSOLL. [Resuming.] Gentlemen, on page 2286 Mr. Rerdell gives the contents of a letter which he says Dorsey wrote to him the night he, Rerdell, left New York, and when he says he had the book with him. He swears, you remember, that afterwards Dorsey tore the letter up. Let me read you the letter as he says it was written :

The letter started out by stating that he did not believe the report that had been brought to him in reference to myself, and that he also believed the affidavit story to be a lie. He plead in the letter for the sake of his wife and children and himself, and his social and business relations, and the friendship that had long existed between us not to do anything for his injury ; for God's sake to reconsider everything that I had done and take no steps further until he could see me. It was in that strain, simply begging me not to do anything further until he could see me.

Now, let us analyze that letter, keeping in our minds what Rerdell has sworn. Rerdell has sworn that when he went to the Albemarle Hotel he told Dorsey what he had done; that he had had the conversations with MacVeagh and James. Let me call your attention to the dispatch from Jersey City. First, Dorsey wrote to Rerdell that he did not believe the report that had been brought to him ; *that had been brought to him*. He could not have used that word "brought" if Rerdell had been the bringer. If Rerdell had made the report to him in person he could not have written to Rerdell, "I do not believe the report that has been *brought* to me." The use of the word "brought" shows that somebody else told him ; not the person to whom he wrote. "The report." What report? There is only one answer. The report that Rerdell had been in consultation with the Government. He writes to Rerdell, "I don't believe that report that has been *brought* to me," and yet when he wrote it, if Rerdell's testimony is true, he knew that Rerdell had given him that very report and he knew that Rerdell would know that he, Rerdell, had told Dorsey that very thing. Second, that he, Dorsey, believed the affidavit story to be a lie. There is again in this horizon of falsehood one little cloud of truth. Rerdell had not made an affidavit. He had told James, MacVeagh, Woodward, and Clayton what you know, but he had not made any affidavit, and when he was charged, if he was, with having made an affidavit, it delighted him to have one little speck of truth, just one thing that he could honestly deny. That was the one thing. He had not yet made an affidavit. Third, Dorsey plead with him in the letter for the sake of his wife, his children, himself, his social and business relations, and the friendship that had long existed between them, not to do what? Not to do *anything further*. According to Rerdell, he told him in the letter he did not believe he had done *anything*. Rerdell swears that he wrote to him in the letter that he did not believe the report; that is, that he had yet done anything, and then wound up the letter by begging him, for God's sake, not to do anything *further*. How came he to use the word "further?" "Don't take any further steps. I know that you have not taken any

step at all, but do not, I pray you, take any further steps." That letter will not hang together. Dorsey swears he never wrote it. Finally, the letter comes down to this: "I don't believe the report. I do not believe you have done anything. But, for God's sake, do not do anything more." It is like the old Scotch verdict when a man was tried for larceny. The jury found him not guilty, but stated at the end of the verdict, "We hope the defendant will never do so again." The first part of this letter shows that Dorsey did not believe that he had done anything. The last part of it shows that he did believe he had done something and that he must not go further. No one can tell why he introduced the word "further" into this letter upon any other hypothesis. Now, I read to you, from page 2287, what Rerdell says happened at the Albemarle Hotel:

After speaking to him, and taking a seat in the front room—there were two rooms—he was in bed, and he got up and came out in his night clothes. As soon as he got out he charged me with holding interviews with Mr. James, the Postmaster-General, and the Attorney-General, saying at the same time that he was well posted as to everything that was going on in Washington; that he knew the very day and time that I had the interviews, and asked me what I meant by it. I told him my action was in his behalf; that I had been keeping up with the newspapers, and knowing the facts in regard to this mail business, what I had done was done in his behalf.

If he told him that at that time, is it possible that Dorsey afterwards wrote to him that he did not believe it?

I told him my action was in his behalf.

That is, he did not deny that he had these conversations, did not deny the report, did not deny that he had met the Attorney-General and the Postmaster-General, but said:

My action was in your behalf.

And then, according to Rerdell, after that Dorsey wrote him a letter, in which he said, "I do not believe the report," although Rerdell had made the report to him himself. May be that is the reason he did not believe it.

Now, let me read to you the conversation on his return from New York and see how it gibes with the letter. It is on page 2288:

Mr. Dorsey came to the door; he shook me by the hand and says, "Come downstairs." We walked down in the office together, when he immediately brought up the conversation that we had had over in New York, and what I had done by going to Mr. MacVeagh, and asked me if I intended to ruin him. I said no, I did not; it was not my intention to ruin him; it was my intention to help him out of what I thought to be a bad difficulty.

Q. What did he say?—A. He then asked me if I had done anything further since I had left him.

Yet in the letter that he wrote him from the Albemarle Hotel he said that he did not believe the report and did not believe that he had done anything against him. The first thing he asked him when he got here was, "Have you done anything further against me?"

I said no, I had not; I had not been near Mr. MacVeagh. He then says, "Well, how shall we get out of this?" I says, "Mr. Dorsey, I will do anything that I can except to commit perjury."

A very natural remark for Mr. Rerdell to make. He would do anything but that. That testimony shows that Dorsey never wrote the letter which Rerdell says he did write from New York. That testimony shows that they did not have the conversation in New York that Rerdell says they had. That testimony shows that they did have exactly the conversation which Mr. Dorsey swears they had.

Now I come, gentlemen, to the affidavit of June 20, 1881. I would

like the letter of July 5, 1882, which is on page 3733. You understand this affidavit was made in consequence of the conversation, as he says, that he had with Dorsey after Dorsey came back from New York, in which he said he would do anything except commit perjury, and when Dorsey told him, "Damn it, what does that amount to when a friend is involved? I would not hesitate a moment." Consequently he swears that he made up his mind for the sake of friendship to swear to a lie for Mr. Dorsey. That is what he says now. On the 5th of July, 1882, while we were in the midst of the other trial, and when Mr. Rerdell, as he says, contemplated going over to the Government, and when he would not put evidence in our hands against himself, he wrote this letter:

JULY 5, 1882.

SENATOR: What I am going to say here may surprise you, while, judging from certain circumstances that to me are easily to be seen, you may not be taken by surprise.

I believe there is no claim that Dorsey wrote this letter. I will call your attention to the similarity of style and the similarity of expression in this letter to that of the affidavit of June 20, 1881:

To commence with this, it will be necessary to go back about a year to the time when, looking forward to the inevitable result of the star-route matters—

Matters—

I started to put myself in accord with the Government. At that time I had no thought of being included in any prosecution or indictment, supposing that as an agent I could not be held criminally responsible. Had I for one moment thought it possible nothing could have changed my mind, even anxious as I was to benefit you. The consequence was, I listened to Bosler and did what I will ever regret.

He comes upon this stand and swears that he made that affidavit because S. W. Dorsey begged him for the sake of his wife and children to make it. On the 5th of July, 1882, speaking of this affidavit, he says:

The consequence was, I listened to Bosler and did what I will ever regret. First, because of the unenviable notoriety given me in consequence of doing what he persuaded me to do.

Who persuaded him? Mr. Bosler. He writes that on the 5th of July, 1882, when, as he said, he had made up his mind to go over to the Government, and when he would not willingly put a club in our hands with which to dash out his brains.

Second, because, let this case go as it may, I am still left under a cloud—

That is a pitiable statement. That man under a cloud!—

both with your friends and acquaintances, and the public generally.

Here comes, gentlemen, the blossom and flower of this paragraph:

And that, too, almost penniless.

Then the letter goes on:

These are stern facts, and cannot be ignored, while had I continued acting with the Government my reputation would have been clear, and no doubt been appointed to a good position.

The Government must have promised the gentleman an office when he went, in June, 1881, to Woodward and to Clayton and to the Attorney-General and to the Postmaster-General. According to this letter, among other things he was to have an office, the steamboat route was to be reinstated, the Jennings claim was to be allowed, his father-in-law was to get a clerkship, and according to this letter he also was to have a position. That is civil service reform! What does he say?

At least I have every reason to believe such would have been the result.

He would have had an office, he has every reason to believe. Why? They must have promised it to him.

This now brings us to the present time. I have an opportunity to redeem myself, and think it best to do so, as by so doing I can be entirely relieved of the indictment.

The Government then must have promised him in 1882 that the indictment should be dismissed as against him. Is it possible that he would tell a lie, gentlemen? Is it possible the prosecution will say that he lied on the 13th of July, 1882, but in 1883, having met with a change of heart, he told the truth? No.

In taking this step let me say this: It is the result of much thought and also of preparation.

I think so. The preparation of several papers.

I have realized the fact that all you and Bosler desired was to use me, and when no longer needed I could go to the devil.

Well, I think that is where he has gone.

Therefore I have concluded to *be used* no longer, and propose to look out for myself.

To-day I am putting things in order, so as to commence right to-morrow. I regret this on your family's account, but I too have a family, and owe it to them to put myself right.

You see, gentlemen, he wanted to leave an unspotted reputation to his children.

I deem it as being due to you that I should give you notice of my intention.

Very truly,

M. C. RERDELL.

Now, gentlemen, he comes on the stand and swears that he made this affidavit, not being overpersuaded by Bosler, but because Dorsey with tears and groans besought him to make it. Yet on the 5th of July, 1882, he says he made it because he was overpersuaded by Bosler, and he says, too, "Had I remained with the Government my reputation would have been clear, and I have every reason to believe I would have had a good position." He says, "I have another opportunity to be entirely relieved from the indictment." These gentlemen say he never was promised immunity. That simply shows you cannot believe Mr. Rerdell when he is not under oath, and what he has sworn to here shows you cannot believe him when he is under oath.

Now I come to the affidavit. I will not spend a great deal of time upon it. Mr. Rerdell with extreme ease, without the slightest hesitation, went through that entire affidavit, picking out with all the facility imaginable, every paragraph written by Dorsey and every paragraph written by himself. I was astonished at his exhibition of memory. I finally asked to look at the copy of the paper he had, and when I got that in my hand I found that every word that he swore was written by Dorsey had been underscored with a blue pencil. That accounted for the facility with which he testified. I found afterwards that that paper had been given him by Mr. Woodward and that he had gone through and had marked such portions as Mr. Dorsey wrote, according to his testimony, or had marked those that he wrote, leaving the others unmarked, so that at a glance he could tell which way to swear. Before I get through with the papers in this case there is another thing to which I want to call your attention. All the papers as to which witnesses were called on the subject of handwriting are marked. I will show you that every one has a little secret mark upon it, so that the

man who swore might know which way to swear simply by looking at the signature and at no other part. There has been a great deal of *preparation* in this case.

Now, Rerdell swears as to the parts of the affidavit that Dorsey wrote and the parts that he wrote. His object in swearing was to entirely relieve Messrs. James and MacVeagh from having made any bargain with him to steal Mr. Dorsey's books, and to entirely relieve them from any suspicion, as well as to relieve every other official of the Government from any suspicion of having promised him any pay in any shape or manner for the making of this affidavit. He swears, in the first place, that Dorsey wrote this :

My story captured them completely, and I took occasion to refer to the steamboat route and the Jennings claim. Mr. James remarked that he knew all about the Jennings matter, that Jennings had been badly treated, and he ought to get the money, and should ; that he would investigate the steamboat route and see if anything could be done ; that that was the worst part, and his special agents had reported it ; nevertheless he would see if something couldn't be done.

On page 2506, in his cross-examination, Mr. Rerdell swears that the words—

Mr. James remarked—

were not written by Dorsey, but were written by himself. On the same page he swears that the words—

That Jennings had been badly treated—

were not written by Mr. Dorsey, but were written by himself. On his examination-in-chief he swore that those words were written by Dorsey.

On his examination-in-chief he swore that Dorsey wrote this :

And to further deceive them and learn their plans, carried the letter-book containing—

And then *he* wrote—

the much-talked of Oregon correspondence.

Afterward, when cross-examined, he swears, I think upon the same page, 2506, that he himself wrote the words :

Carried the letter-book containing.

That Dorsey did not write them. He also swears in his examination-in-chief that Dorsey wrote these words :

Making only one mistake, or rather slip, by which Mr. MacVeagh could, as a good lawyer, have detected me, and that was by stating that I had kept a set of books.

On his examination-in-chief he swears that Mr. Dorsey wrote those words. On cross-examination he admits that Dorsey did not write them and that he wrote them.

On his examination-in-chief he swears that he wrote this himself:

He said, " Well, Mr. Rerdell, I am in a position where I cannot make promises, but if you will place yourself in full accord with the Government, you shall not lose by it, and I would advise you not to receive any salary from Dorsey this month. It will be all right."

On cross-examination he takes it back, and swears, on page 2503, that Dorsey wrote the words :

It will be all right.

He was afraid those words might be given too wide a significance and might in some way touch the Attorney-General, and consequently he swore that he swore wrong when he swore that he wrote them, and that as a matter of fact Dorsey wrote them. Then, on his examination-in-

chief, with the marked paper before him, and having plenty of time to manufacture his testimony, he swore that he wrote the words:

He asked me—

In his own handwriting, and that Dorsey wrote these words—

when I was going to New York to get those books. I replied, "On Sunday night." He said, "Don't put it off too long, as they are all-important."

On his examination-in-chief he swore that Dorsey wrote those words, and on cross examination he admitted that he wrote every one of those words himself. When he was cross-examined he had not the paper before him. His memory was not refreshed by the blue pencil mark. So on his examination-in-chief he swore that he wrote these words:

As I was about leaving he—

Meaning the Attorney-General—

said, "Mr. Rerdell, you have put yourself in full accord with us, and I have this to say, you shall be well taken care of and your matters shall be attended to."

On cross-examination, on page 2500, he swears that Dorsey wrote the words:

Your matters shall be attended to.

But he still admitted that he, Rerdell, wrote the words and put them in the mouth of the Attorney-General:

You shall be well taken care of.

He says in his letter of July 5, 1882:

If I had remained with the Government I have every reason to believe I would have a good position.

What next? Mr. Rerdell, in his examination-in-chief, swears that he himself wrote these words:

The next evening I called on Mr. Woodward to see if he had anything more to say, and he told me a place had been found for my father-in-law, and to give the application to Senator Clayton; to make the application for the Interior Department, as it was best not to put him into the Post-Office Department for fear of criticism; that the appointment should be made at once. It was all arranged. The next day I saw Clayton, who said the same thing.

On cross-examination, at page 2505, he swears that Dorsey wrote a part of this; that Dorsey wrote the following words:

As it was best not to put him into the Post-Office Department for fear of criticism.

When he testified on direct examination he had this marked paper before him; in the absence of the paper, on the cross-examination, he takes his solemn oath that he did not write it, but that Senator Dorsey did. What confidence can you put in that kind of testimony? I would like to have you, gentlemen, some time, or I would like to have anybody who has the slightest interest in the thing, read this affidavit and see whether it is the work of two or the work of one. You let two men write, one writing one paragraph and the other another paragraph, and then you read it; there is no man in the world accustomed to read books that cannot instantly detect the difference in style, the different mode of expression, the different use of language. But this affidavit emanated from one brain—was written by one hand. Let me read to show you how they run together in the same style. We will commence at—

WASHINGTON, D. C., June 20, 1881.

MR. PRESIDENT: I think it is my duty to you, the Administration, and common fairness that I should make to you the following statement under oath:

On or about the 8th day of June, 1881, I met ex-Senator Clayton on Fifteenth street,

near the Riggs House, who, after a minute's conversation, invited me to visit him at his rooms, 1334 G street, and fixed the time at 7 o'clock that afternoon.

Knowing he was taking an active part against Senator Dorsey in the star-route investigation, I conceived the idea of acting the part of a detective in order to learn why ex-Senator Dorsey was attacked so savagely by the newspapers of the country, and also to ascertain if there were any real grounds for such abuse, and what part Clayton was taking in the matter.

During our interview I intimated that I knew of a great many things in connection with the so-called "star-route frauds," and that I would be a damaging witness against Dorsey, Brady, and others, and if called upon and put on the witness-stand I would tell all.

This statement of mine resulted in a request from Clayton that I meet Mr. James, the Postmaster-General, and go over the matter with him. This I assented to, but remarked that there were certain things I wanted done in consideration of furnishing the evidence he desired to convict Dorsey.

First. I wanted a steamboat route on Savannah River, No. 15099, re-established, this route having been discontinued by the Postmaster-General, and in which I had a profitable interest.

Second. I represented to him that I had a large interest in a claim one Isaac Jennings had against the Post-Office Department. That this claim was a just one and ought to be paid.

Third. That I was supporting my father-in-law and his wife, and I wanted a position for him in some of the departments. To all of which he (Clayton) assented and said he would do what he could for me, and would speak to the Postmaster-General.

On the next day I received a card from Clayton stating that an interview had been arranged for Mr. James and myself at the Arlington Hotel, at 8 o'clock in the evening.

At the appointed time I went there and met Clayton, when we went up to the room of Mr. James. Immediately after entering his room Mr. Woodward came in. I objected to his being present, as I knew he was a detective, and I was afraid I could not cope with him in that line, but, on the repeated request of Mr. James, I consented to his being present.

Having started out in the role of a detective, I of course had prepared my story, and to give effect to it pretended to have in my possession certain memoranda of Mr. Dorsey's, as well as a letter from him to me. These I exhibited to Mr. James as confirmation of my story.

I desire to say here that, from long association and connection with Mr. Dorsey as his stenographer and business agent, I have learned to imitate his handwriting, and can sign his name so near like he does that he himself cannot tell it, and I have signed checks that passed the bank.

All of these memoranda and the letter I exhibited were written in pencil, with the exception of a statement Mr. Dorsey made showing the pay of each route after it was increased. I wrote them in pencil so that I could more easily pass them off as genuine.

Now, gentlemen, I have read to you fifteen paragraphs, and of these fifteen paragraphs Mr. Rerdell has sworn that seven were written by Mr. Dorsey. Nobody can see any difference in the writing; nobody can see the slightest difference in the mode of expression; the sharpest verbal mechanic that ever lived cannot see a joint between these paragraphs. They emanated from the same brain; they were written by the same hand; and if any man, who has ever read one book clear through, will read that he will see that one person wrote it all. But Mr. Bliss tells you that here is a passage that shows the handiwork of S. W. Dorsey, because Dorsey was a politician:

He also said that you, Mr. President, had told Mr. Dorsey you could not interfere in this investigation and prosecution; that if you did, the public would say that the President and a Secretary, who shall be nameless, but whose name I could guess, had taken the money of the star-route ring while they were in Congress, or the Postmaster-General and Attorney-General had taken it since, and therefore he (Dorsey) must look to the courts for vindication.

That is the passage upon which Mr. Bliss relies, among others, to show that this was formed in the brain of S. W. Dorsey; and yet Rerdell swears that that passage he wrote himself. It will not do, gentlemen.

Now, in order that you may know just about how much force to give

to that, let me read you a little from page 2379; and I read this for the purpose of letting you know the ideas that this man Rerdell entertains of right and wrong. He is asked whether he thought it was wrong to fill up these affidavits and change petitions:

The WITNESS. I did not draw any inference at all that anything was wrong either about writing in a petition—in fact, I had forgotten all about it—I did not think it was wrong, and would not have hesitated at the time to have done it.

He did not think it was wrong.

The same thing about these blank affidavits. I did not think they were wrong; it never crossed my mind, not having a legal mind; and a great many things I see now that I did not see then and had not seen up to that time.

Q. Up to the 13th of July, when you made this affidavit, it had not occurred to you that there was anything really wrong?—A. Yes, sir; it had up to that time; there had been a great many things that had occurred to me, but I did not know at the time that I signed that.

That is, on the 13th of July, 1882, when we were in the midst of the other trial; when he knew that it was claimed by the prosecution that these petitions had been interlined, and that these affidavits about the number of men and horses had been made in blank and filled up; and yet he swears that on the 13th of July, 1882, it had not occurred to him that that was wrong.

I had forgotten the fact, and it was only recalled to my mind by seeing the papers, what particular things S. W. Dorsey had done, as, for instance, filling out some of these affidavits. I don't think I knew it at that time—

July 13, 1882—

that is, I had forgotten it; it passed out of mind; the paper refreshes my mind upon that.

Q. At the time, then, that this statement was made, you did not remember that S. W. Dorsey had given you directions about filling up these affidavits or writing in those petitions; it had escaped your mind?

He found he was getting in a hard place, and he said:

A. Oh, no; that had not escaped my mind, and the fact that he had given me those instructions; but, as I say, I had forgotten that in one or two instances he himself had filled them in.

Q. That he had written them?—A. Yes, sir; and then I hadn't forgotten that he had told me to fill them in, not at all, but I didn't think of the wrong.

Q. Now, let me get at your exact idea: You remembered then that he had told you to fill them up, but it did not occur to you then that he personally had filled up any?—A. I had forgotten that fact.

Q. And in your then state of mind, remembering that he had told you to do it, and not remembering that he had done it, it did not occur to you that what he had done was wrong; is that right?

He says:

I don't catch your idea.

Q. Perhaps you do not. Here is the idea: At the time you made this affidavit—

July 13, 1882—

you did remember that Dorsey had told you to fill out some affidavits and write in some petitions, but you did not remember that he had personally done that himself; is that right?—A. That is it.

Q. And so, remembering that he had told you, it did not occur to your mind at that time that what he did was wrong; that is, it did not occur to you that it was wrong in him to tell you to fill up the affidavits?—A. It had not occurred to me at that time that it was wrong, if I remember now.

Q. And the reason you swore that he had not done any wrong was because you did not at that time recollect that he had personally filled up any of these himself; is that right?—A. Yes, sir; that is right; and then there is another thing—that is, I never knew of my own personal knowledge—in other words, I did not see—the word “inference” is in there, I admit that, but I did not see S. W. Dorsey pay Thomas J. Brady any money, nor did I ever know Mr. Bosler to do it, nor did I ever see Mr. Bosler pay any money to Brady for remissions.

We will come to that in a little while :

Q. On the 13th of July, when you made the affidavit that Dorsey had done nothing wrong, although you then remembered that he had told you to fill up certain affidavits and write in certain petitions it did not occur to you at that time that it was wrong in him to have done that?—A. I did not regard it at that time as being wrong—that is, an offense; an offense is what I want to say, and I did not believe it up to almost the end of the trial.

Q. At that time you remembered that he had told you to do this and that you had done it?—A. Oh, yes; I hadn't forgotten it.

Q. But you did not consider that you had done wrong in doing it?—A. I did not.

Q. Neither did you consider that he had done wrong in doing it?—A. I did not.

Q. If you had at that time remembered that he personally did it, then would you have thought it wrong?

Mr. MERRICK. Wait a moment.

Finally, after a little talk, we come down to this :

Q. And do you now say that you did not, at that time, regard that as wrong?

The WITNESS. As wrong for him to suggest it, do you mean?

Mr. INGERSOLL. Yes.

A. No, I did not; I did not regard that as particularly wrong.

Now, I want you to get at the moral nature of this man; I want you to thoroughly understand him. When you examine these affidavits, when you think of his testimony, I want you to know exactly the kind of nature he has, and I want you to remember that he came here upon this stand and swore in this case that he did not consider that it was wrong to interline petitions; that he did not think it was wrong to fill up affidavits; and that is the reason he made the affidavit of July 13, 1882. Although he then knew that these things had been done, still he did not regard them as wrong. You see it is worth something to get at a man, to get at his philosophy of right and wrong; it is worth something to know how he thinks; why he acts; and when you have found that out about a man, then you know whether to believe him or not.

I believe the jury did look at this paper and saw all the parts that had been marked by blue pencil, and those parts, I believe, he said Dorsey wrote. That is the paper he had before him at the time he testified in chief (exhibiting the paper to the jury). But when he came to be cross-examined, not having the paper then before his eyes, he swore in very many important things exactly the other way. You see how he had it fixed, Mr. Greene. We were all astonished at the facility with which he remembered, he pretending to know what parts he wrote and what parts Mr. Dorsey wrote. I want you to understand this man, and before I get through with him you will. I want you to know him.

Now, we come to an exceedingly important thing in this case, in the eyes of the prosecution. It is the principal pillar supporting the testimony of Mr. Rerdell. Without that pillar absolutely nothing is left, everything falls into perjured ruin.

The first question that arises with regard to the pencil memorandum (31 X) is who wrote it, and in order to ascertain who wrote it we must take into consideration all the facts and circumstances that have been established in this case. It is already in evidence, as you remember it, that Rerdell kept a route-book in which were entered all the routes in which Dorsey had any interest, the number of the route, the names of the termini, the amount received by the contractor and the amount to be paid to the subcontractor; all that was upon that route-book. You will also remember that Mr. Dorsey had books of his own; that he had a book-keeper of his own, Mr. Kellogg; that Mr. Kellogg swears that he kept those books and that nobody else ever made a scratch of the pen in them; that he kept them up till the fall of 1879; they were then sent to New York; that Mr. Torrey took possession of those books on the

27th of January, 1880, and kept them continuously to the last of April, 1882, and that nobody else ever put a mark in them. That is the evidence. The evidence also is that there was in those books a complete mail account. The evidence is also that in those books kept by Mr. Kellogg were the charges and credits growing out of the purchase of John W. Dorsey's interest and Peck's interest in the mail routes.

Mr. MERRICK. Pardon me; point me to that evidence.

Mr. INGERSOLL. I will, sir.

Mr. MERRICK. My impression is that the court excluded all evidence of what the books contained.

Mr. INGERSOLL. I will find it before I get through.

Mr. MERRICK. I want to understand now, before we go further, if that is so.

The COURT. He has a right to interrupt you.

Mr. INGERSOLL. Certainly, and I have the right to say to him that I will furnish it to him before I get through. I do not propose to stop now and wait an hour to look that up.

The COURT. You made a statement as to what the evidence was.

Mr. INGERSOLL. And I will show what it is before I get through, but I want to go on now with the pencil memorandum.

Mr. MERRICK. I wish to ask the court at this time whether your honor did not exclude all evidence of the contents of any books not produced?

The COURT. There is no such evidence now before the jury, and this statement of the evidence I understand to be substantially retracted for the time, because Mr. Ingersoll says he will produce the evidence when he comes to it.

Mr. INGERSOLL. My recollection of the evidence—and I presume I will find a reference to it before I get through with this branch of the case—is that Mr. Kellogg swears that he was the book-keeper, kept the books, and that these identical charges or credits on the top of this memorandum appeared in those books. That is my recollection.

Mr. DAVIDGE. Or rather that he got instructions to enter them.

Mr. INGERSOLL. I will refer to it hereafter.

The COURT. It passes for nothing for the present, then.

Mr. MERRICK. We will understand that it passes for nothing for the moment.

Mr. INGERSOLL. I will find it. I do not wonder, gentlemen, that they dislike this pencil memorandum.

Mr. MERRICK. No, sir; I only want to keep you within correct limits.

Mr. INGERSOLL. I understand that. I do not blame anybody for disliking that pencil memorandum.

Mr. MERRICK. You can convict Rerdell as much as you like.

Mr. INGERSOLL. When you come to show that he is guilty his countenance will light up with the transfiguration of joy. There will be no more delighted auditor than Mr. Rerdell when his crimes are painted blackest. It shows you the moral nature of the man.

Now, as I say, the evidence is that there was a route-book kept; that that route-book contained all the information that Mr. Dorsey or any one else would want about the routes themselves; consequently, that there was no propriety in keeping any other set of books. Mr. Rerdell could keep books for himself, but not for S. W. Dorsey. Dorsey had a set of books, and had another book-keeper. Why should he have another set opened by Rerdell? Rerdell kept a route-book that gave him all the information that he could possibly desire.

Mr. WILSON. Rerdell did not handle the money.

Mr. INGERSOLL. Of course not ; there was no money at that time to handle ; they had not got as far as the handle.

Now, there is another little point : Why should Dorsey voluntarily put himself in the power of Rerdell by saying, "I have paid money to Brady?" What was the necessity of it? What was the sense of it? Rerdell was his clerk. Why should he take pains to put himself, the employer, absolutely in the power of his clerk? Why should he take pains to make himself the slave of the man he was hiring by the month? Why did he wish not only to make Mr. Rerdell acquainted with his crime, but to put in the hands of Rerdell evidence written by himself? See, gentlemen, you have got to look at everything from a natural stand-point. Of what use was it to Mr. Dorsey to keep that account? Dorsey at that time had no partner. Dorsey at that time did not have to respond to anybody. Of what use was it to him to put down in a book "I paid Brady \$18,000?" Was he afraid Brady would forget it? Was he afraid he would forget it? Did he want his clerk to help him keep the secret, knowing that if the secret got wings it would render him infamous? Let us have some sense. The Government introduced it. They also introduced a witness to prove that it was in Dorsey's writing. Rerdell swore that it was. Their next witness, Boone, thought part of it might be and part might not be; it did not look right to him; he rather intimated that Mr. Rerdell wrote part of it. And right there the Government dropped. No expert was brought. There were plenty of experts right over here at the Bureau of Engraving and Printing, plenty of experts in Philadelphia and New York, plenty of judges of handwriting. Right up here in Congress were twenty or thirty Senators who sat for six years in the Senate with Stephen W. Dorsey, served on the same committees with him and had seen him write every day; clerks of those committees who had copied page after page of his writing. Not one of them was called. The Government, with its almost infinite power, with everything at its command, brought no expert. That was the most important piece of paper in their case. And yet they allowed their own witness to discredit it; their own witness swore, in fact, that Rerdell had manufactured the incriminating part of it. And yet they sent for no expert to swear to this writing. Don't you believe that they talked with somebody? Has not each one of you in his mind a reason why they did not bring the ones that they talked with. They left it right there without another word. Now, why? Simply because they could get no man to swear, except Rerdell, that this is in the handwriting of S. W. Dorsey. That is the reason.

You know that Rerdell "kept this as a voucher." What for? Was any money paid out on it? No. Was it a receipt for any money? No. But he "kept it as a voucher." You see he was in a difficulty. How did he come to keep it all this time? It would hardly do for him to say that he did not try to keep it, that it had just been in the waste-basket of forgetfulness, and had suddenly come to life by a conspiracy of chance and awkwardness. It would not do for him to say that he made it. So that he had to say that he kept it, and then he had to give a reason for keeping it. What was the reason? He said he "kept it for a voucher." I suppose you [addressing Mr. Greene, a juror] have kept books. Is that what you would call a voucher? Yet that is the reason the poor man had to give. I pitied the man when he got to the point. I am of such a nature that I cannot entirely, absolutely, and perfectly hate anybody, and when I see the worst man in trouble I do not enjoy it much; at

least I am soon satisfied, and would like to see him out of it. Here he was swearing that he had this for a voucher.

Now, there are some little things about this to which I will call your attention. Here is the name of J. H. Mitchell. An account was opened with Mitchell, but he does not tell him to charge Mitchell with anything; there is nothing opposite Mitchell's name. How would he open an account with Mitchell without anything to be charged against him or to be credited? He put in the index of the book, "J. H. Mitchell, page 21." You turn over to page 21, and you find Mitchell debtor to nothing, creditor the same—silence. [Laughter.] Not a cent opposite the name on either side. Mitchell was not an employé. Mitchell was not a fellow that they were to have an account with by the day. Then John Smith is rubbed out and Samuel Jones written under it. Rerdell says he wrote Samuel Jones. I say he did not. I want you to look at it after awhile and see whether he wrote it or not.

Now, gentlemen, it so happened that when this pencil memorandum was introduced it struck me that the M. C. R. looked a great deal like Rerdell's handwriting, and you will remember that I suggested it instantly, and said to the jury, "Look at the M. C. R." Now, gentlemen of the jury, I want you to look at that M. C. R.; I want you to see how the first line of the M is brought around to the middle of the letter, and then I want you to see exactly how the C and the R are made. Take it, Mr. Foreman, and look at it carefully. And, in connection with that pencil memorandum (31 X), I will ask the jury also to look at this settlement with John W. Dorsey, made in 1879 (87 X), and compare the initials M. C. R. where they occur on both papers. M. C. R. occurs twice, I believe, on this 87 X. Now look at the formation of the M. C. R. on both papers, Mr. Lowery, and do a good job of looking, too. [The two papers were exhibited to the jurors, Mr. Ingersoll calling attention to the similarity on the two papers of the initials M. C. R.]

The COURT. Let me look at the papers.

Mr. INGERSOLL. Yes, sir; I will show them to you. [The papers were then handed to the court.]

Now, gentlemen, this is one of the most valuable pieces of paper I have ever had in this case, and it is as good luck as ever happened. I want you to look at the J. W. D. on that paper, and then compare it with the J. W. D. on this paper; you cannot spend your time better.

I did not suppose I would ever find one paper that would have everything on it. But, as if there had been a conspiracy as to this paper, there is an S. W. D. on this paper which is substantially the same as the S. W. D. on the other. The M. C. R., the S. W. D., and the J. W. D. on both these papers are all substantially the same, and I think when the jury have looked at it they will say they were written by the same hand. Before I get through with this branch of the case I shall probably show you some more papers on the same subject.

Now, gentlemen, there was the testimony of Mr. Boone that he thinks the upper portion of this pencil memorandum (31 X) was written by S. W. Dorsey; that it looks like his handwriting down to and including "profit and loss," I believe; I may be mistaken; it may be down to "cash;" and then after "profit and loss" come the names of J. H. Mitchell and J. W. D., exactly the same J. W. D. that appears on 87 X.

Now, what paper is that 87 X? That is an account of John W. Dorsey against S. W. Dorsey in 1879. He had been out West to take care of some of the routes, and when he came back he settled, and Mr. Rerdell wrote up the account. That is 87 X, and I proved that it was

made in 1879. I believe the prosecution thought at first that it was 1878.

The COURT. Is that paper in evidence?

Mr. INGERSOLL. Yes, sir.

The COURT. How did it get in?

Mr. INGERSOLL. I introduced it when John W. Dorsey was on the stand, and proved that he settled by no book; that he just came here and had some little memoranda, and he and Rerdell made out and settled that account.

Mr. BLISS. I objected to its introduction at first, and then withdrew my objection.

Mr. INGERSOLL. They imagined at first that it was in 1878, but Mr. John W. Dorsey swore that the settlement was in 1879. That paper shows that it was manufactured by the one who wrote this paper, and by nobody else.

Now, as I said before, there is no account against J. H. Mitchell. Opposite William Smith there are the figures 18,000. And Rerdell says that he wrote Samuel Jones himself at the suggestion of Mr. Dorsey. Again I ask you, gentlemen, why would Mr. Dorsey give such a paper to Rerdell? Why would he give him this false name? Why would he put himself in his power? It is very natural that he should give the amounts \$10,500, \$10,000 for John W. Dorsey and \$10,000 for Peck, because the evidence shows that those transactions actually occurred. The evidence shows, not only in one place but in many, that the \$10,000 was paid to John W. Dorsey, the \$10,000 was paid to Peck, and that the \$10,500 was advanced at that time by S. W. Dorsey. Consequently that is natural; it is proper. But my opinion is that he never wrote one word, one line of the pencil memorandum. It was all made, every mark upon it, by Mr. Rerdell. He is the man that made it. Did he have it when he went to MacVeagh? No, sir. Did he have it when he went to the Postmaster-General? No. Did he have it when he went to Woodward? No. Did he have it when he made his affidavit in July, 1882? No; or he would not have made it. Did he have it when he went to Mr. Woodward in September? No; or else Mr. Woodward would have taken the stand and sworn to it. Did he have it when he made his affidavit in November? I say no. Who made it? Rerdell manufactured it for this purpose: That he might have something to dispose of to this Government; that he might have something to swap for immunity. He "kept it as a voucher."

Why did not these gentlemen bring Senator Mitchell to show that he had some account with Senator Dorsey in May, 1879? Why did not the Government bring Mr. Mitchell? They knew that their witness had to be corroborated. They knew that the law distinctly says that such a witness cannot be believed unless he is corroborated. They also know that the law is that unless such a witness is wholly corroborated he cannot be believed; that you are not allowed to pick the raisins of truth out of the pudding of his perjury. You must believe him all or not at all. He must be received entire by the jury, or with the foot of indignation he must be kicked from the threshold of belief. They know it. Why did they not bring Senator Mitchell to show that he had some account with S. W. Dorsey in 1879? But we heard not a word from them.

What more? Rerdell says that was either in April, before he went West, or in May, after his return; and at that time, according to his testimony—that is, according to this memorandum—\$18,000 had been paid to Mr. Brady for expedition. And then following, in the

month of June, before the quarter ended, \$18,000 more. That makes \$36,000 paid to Brady. What else? \$10,000 to John W. Dorsey; \$46,000 that makes. \$10,000 paid to Peck; \$56,000 that makes. He had also advanced himself \$10,500; that makes \$66,500 advanced, and not a dollar yet received from the Government. And that by a man who gave away 70 per cent. of a magnificent conspiracy because he had not the money to go on. All you have to do is to think about this. Just think of the situation of the parties at the time. I tell you I am going to stick to this subject until you understand it.

Mr. Gibbs swears that the name of Mitchell was not in the books when he saw them, and yet those books were opened from this memorandum. Gibbs is the man who has such a control over his mind that he can "try not to remember." When I was a boy I used to hear a story of a man going around saying that nobody could control his mind for a minute; that nobody could think of one thing for a minute without thinking of something else. But there was one fellow who said, "I can; I can think of a thing a minute and not think of anything else." He was told, "If you do it, I will give you my horse, and he is the best riding-horse in the country; if you can say the first verse of "Mary had a little lamb," and not think of anything else, I will give you my horse, and he is the best riding-horse in the country." The fellow says, "How will you tell?" "Oh, I will take your word for it." So the fellow shut up his eyes and said:

Mary had a little lamb,
Its fleece was white as snow,
And everywhere that—

"I suppose you will throw in the saddle and bridle?" [Laughter.]

Mr. Gibbs is the man who had such control of his mind, and he tells you that the name of J. H. Mitchell was not in the book.

Mr. BLISS. I do not think he says so.

Mr. INGERSOLL. He said "I do not remember it."

Mr. BLISS. Ah, that is another thing. He says he does not remember seeing it.

Mr. INGERSOLL. You wait until I get to your speech.

Mr. BLISS. You are at liberty to attack my speech, but do not misrepresent the evidence.

The COURT. There must be order in the court-room, or I will clear out the whole crowd. I see one man there [pointing] who is continually laughing, and another here making a noise, and I will point them out distinctly if it is repeated.

Mr. INGERSOLL. Now, Mr. Gibbs says that he does not remember of any such name in the book as J. H. Mitchell; Mr. Donnelly says he does not remember any such name as J. H. Mitchell, and yet he holds an office. He has the poorest memory for any one under the present Administration I ever saw. He does not remember the name of J. H. Mitchell. Who does remember it? Mr. Rerdell. But Mr. Rerdell does not say what he had charged to J. H. Mitchell; he does not say what was in the book as against J. H. Mitchell; he fights clear of that charge. And why? He was afraid that John H. Mitchell might testify. According, I think, to Mr. Rerdell, there was a charge against Belford on those books. I do not know why Belford's name did not appear on the memorandum, but I will come to Belford afterwards.

Mr. BLISS. Mr. Ingersoll, Mr. Donnelly does not mention in any way and is not asked on the subject of Mr. Mitchell.

Mr. INGERSOLL. I think he is.

Mr. BLISS. I have the evidence before me, and I have not found it.

Mr. INGERSOLL. I do not care which side you have the evidence upon. I will find it after awhile if I can, and if I cannot I will admit that you are right. I do not know where it is.

Mr. BLISS. Mr. Donnelly's evidence is at page——

Mr. INGERSOLL. [Interposing.] I do not wish to be interrupted.

Mr. BLISS. I claim the right.

Mr. INGERSOLL. I do not wish to be interrupted.

Mr. BLISS. Your honor——

Mr. INGERSOLL. [Interposing.] You are to have the close, gentlemen.

Mr. BLISS. I claim the right.

Mr. INGERSOLL. Well, go on; the poor man only had seven days in which to make his speech.

Mr. BLISS. I have before me Mr. Donnelly's evidence, and he does not mention the name of Mitchell in any manner, and is not asked about it, so far as I can see. I think when the statement is persisted in there should be some reference given to the page.

The COURT. Yes; only counsel of course cannot always bear in mind the exact amount or character of evidence; but when he is challenged as to any statement in regard to the evidence the burden is on him to show the evidence.

Mr. MERRICK. As a matter of course, and there will be no interruption whatever not made in perfect good faith.

Mr. BLISS. I made no interruption until after I had turned to the testimony in order to be sure.

Mr. CARPENTER. He is asked what accounts there are, and he undertakes to tell.

Mr. INGERSOLL. It is on page 2637.

Q. Whose name?—

That is, whose name was on those books?

A. Mr. Dorsey's——

Q. [Interposing.] What Dorsey?—A. S. W. Dorsey, Mr. Rerdell, an account called mail account, an account called expense account, several accounts of the kind.

Q. Name over some more accounts—A. There was a profit and a loss account.

Q. Name over some more.—A. There was a William Smith account.

Q. Name another one.—A. J. W. Dorsey; there was an account of my own.

Q. Any Joneses in there?—A. I can't remember; I don't remember any Jones.

Q. Did you ever keep those books?—A. I did.

Mr. DAVIDGE. And at page 2639, about two inches from the top.

Mr. INGERSOLL. [Reading:]

Q. Be kind enough to give all the names of accounts that you can that were on that book.—A. There was mail account, profit and loss account, S. W. Dorsey's account, J. W. Dorsey's account, my own account, Mr. Rerdell's account, William Smith account, interest account; I think there was some small interest account.

Q. What other names?—A. That I don't remember; I remember these names, Dorsey's and my own and the Smith account, but I don't remember any others.

Now, I stated that Donnelly did not remember (and said he did not) the account of J. H. Mitchell. He says here that he has all the accounts, and that name is not included, and distinctly swears that he does not remember any other account. Now, let us see what next:

Q. You do not recollect any more?—A. No, sir.

Now, I think I was certainly justified in saying that Donnelly remembers no J. H. Mitchell account.

Mr. MERRICK. Mr. Ingersoll, from your statement that he said he did not recollect the J. H. Mitchell account, you left the impression that he had been interrogated.

Mr. INGERSOLL. Yes, and that was my recollection, that I had asked him. I know that I asked somebody, and I thought I asked Gibbs. Let me on with this; may be I will find more than I thought:

Q. Was there any account there against James B. Belford?—A. No, sir.

Q. Any account against James N. Tyner?—A. No, sir.

Q. Any against A. M. Gibson?—A. No, sir.

Q. Any against Fred. Lilley?—A. No, sir; I think not.

Q. Any against James McGrew?—A. No, sir.

Q. Was there any account in the name of J. B. B.?—A. No, sir.

It shows how easily we are mistaken. I was absolutely certain that I asked that man that question, "Was there any J. H. Mitchell account?" Well, gentlemen, it is sufficient for my purpose, which is this: That he gave the names of all the accounts he could remember, and in that list of names he did not give the name of J. H. Mitchell. So I think I can fairly say to you that that man did not remember any account against J. H. Mitchell. Mr. Gibbs was asked directly whether there was any account against J. H. Mitchell, and he did not remember any such. Now, the only person that swears to it at all is Mr. Rerdell. Then you come across this contradiction: Why should the name of J. H. Mitchell be there with nothing opposite to it? I do not know. The prosecution, of course, will be able to find writing of S. W. Dorsey that will resemble some of the writing on this pencil memorandum. There is no doubt about that. If it was written by Rerdell in imitation of Dorsey's writing, it is not surprising that writing really written by Dorsey can be found that looks like it. Why? Because it was written in imitation of his writing, and therefore you can find writing of Dorsey's that looks like it; otherwise it would not be an imitation. The next question arises, Can you find writing of Rerdell's that looks like it? Yes; 87 X. The M. C. R., the S. W. D., and the J. W. D. are all exactly like it. Now, is it not infinitely surprising that Dorsey should imitate Rerdell without trying and without an object? Is it not perfectly wonderful that this memorandum should be in imitation of Rerdell's writing, when it was written by Dorsey? But if it was forged by Rerdell, it is not wonderful that it looks like Dorsey's writing. If Dorsey wrote it without thinking of Rerdell, I say the accident is infinitely wonderful that he imitated Rerdell. Which is the more probable—that Dorsey imitated Rerdell without design and without trying, or that Rerdell imitated Dorsey with a design, and when trying to do so? That is the way to put this argument, and I hope the gentlemen will answer it. The ingenuity that would be displayed in the answer would a thousand times pay me for the loss of the point. I want them to account for this, how Dorsey's natural handwriting comes to look like Rerdell's, and how it is that this looks precisely like Rerdell's in many instances. Why is it, gentlemen? I will tell you. Mr. Rerdell had written the initials J. W. D., S. W. D., and M. C. R. so often that when he came to put them upon this memorandum he forgot to disguise his hand. That is the reason. You find on 87 X the J. W. D. precisely as it is on the pencil memorandum. You find the M. C. R. precisely as it is on the pencil memorandum. You see if you have done the same thing many times with your hand, the hand gets a mind of its own. It is in that way that you learn to play upon the piano. The hand becomes educated and follows the keys through all the mazes of melody without asking one question of the mind. You can write a name so often, you can make initials so often, that when you come to write them, no matter what your object is, the hand, educated with a mind of its own, pursues

the old accustomed motions and paths. That is the reason that J. W. D. and S. W. D. and M. C. R. are exactly in the handwriting of Rerdell in this pencil memorandum. According to that, Dorsey had paid out in all, I think, about \$65,000, or something like that. There is no truth in it, gentlemen.

Now, in order to prepare your mind for the next point I am going to make, and in order that you may know something about this man Rerdell, I will give you some further information about him. I do not think you are sufficiently acquainted with his character, and any little points that I have I want to give to you. I want to paint his portrait in every lineament, every mark. I want to give you every hair in his head. Remember that this witness is to be corroborated. He is to be propped and indorsed. Everybody admits that he is the pewter of perjury and has to be plated with the silver of respectability gotten from somebody else. They all admit that. He is an empty bag. Somebody has to fill him up before he can stand upright. They admit that. I want to call your attention to a few things as to which he lacked corroboration.

On page 2215 Rerdell swears that Miner told him that the amounts in the bids were filled in by S. W. Dorsey. On page 4177 *Miner* denies this, and says that he filled in the bids with only two exceptions.

On page 2216 Rerdell swears that the mail matter for J. W. Dorsey, Peck, and Miner was handed him by S. W. Dorsey, and that Dorsey said that he was going to take the business out of Boone's hands. On page 3766 *Dorsey* swears that he had no such conversation with Rerdell.

On page 2217 Rerdell swears that S. W. Dorsey applied to him to go West. On page 3768 *Dorsey* swears that he did not employ him to go West.

On page 2218 Rerdell swears that he received instructions from S. W. Dorsey as to what to do on the Bismarck route. On page 3769 S. W. Dorsey swears that that is utterly untrue.

On page 2219 Rerdell says that he was instructed to establish a *paper post-office* sixty miles north of the route. What was that for? According to his testimony there was a mistake in the advertisement, and the route was too long, and this was a device to shorten it by adding sixty miles to it to make a post-office thirty miles off the route, or sixty altogether, so as to get pay for the increase of distance. If it was to be a fraud, why put the post-office off the route? Why not have it on the route? Where would the fraud be if they traveled the sixty miles except in having a post-office where none was needed? They certainly would make nothing from the Government by traveling the sixty miles. If they traveled the sixty miles they would be paid for that sixty miles, but if they wanted pay for the sixty miles without traveling that sixty miles, they would not have put the post-office so far off the route. They would have put it on the route, or very near to it, and pretended that it was off the route.

Gentlemen, it is infinitely absurd to suppose that Stephen W. Dorsey would have instructed that man to go out in that country and get up a false post-office. How long would a fraud like that last and live? How long could the money be drawn for that service in that country? They say no human being lived there. Who was to be postmaster? Who was to make the reports? How long, in your judgment, would it be before the department would find out that there was no such post-office, no postmaster, and no mail? No one could think of a more shallow device than that. Stephen W. Dorsey, a man who is blest with as much brain as any man it is my pleasure to know, would never dream of such an idiotic device. And yet, that is the testimony of Mr. Rerdell.

It may be that Mr. Rerdell when he got out there thought he could start a town and make money in some other way. But it will not do to say that Stephen W. Dorsey told him to get up a false and fraudulent post-office when Mr. Dorsey must have known that the mail could not have been carried to it but a few days before it would have become known that there was no such office. They would have to appoint a postmaster and he would have to live there in his loneliness a hermit of the plain, and would have to make a report like that from Agate that gave such delight to Mr. Bliss, to read. There was not a letter sent to that place; not one, nor would there be. Mr. Dorsey knew if there was a postmaster appointed he would have to report, and in three months from that time he would have to report, first, that there was no post-office; second, that there had never been any mail; and third, that he did not expect any. You see it is utterly absurd to lay such a charge at the door of Stephen W. Dorsey.

On page 3769 Dorsey swears that the statement is a falsehood—that he never did any such thing. He also denies it on page 3924.

On page 2220 Rerdell swears that he gave *Pennell* a petition for a post-office. On page 2156 Joseph Pennell swears that he never saw the petition; and on page 2171 that he never signed it, and that none was sent.

On page 2221 Rerdell swears that he was instructed by S. W. Dorsey to build stations fifteen or sixteen miles apart, and use every third station. On page 3769 S. W. Dorsey swears that no such instructions were given. On page 4092 J. W. Dorsey swears that they started to build the stations about thirty miles apart, and that after he saw General Miles and was told by that officer that there would be, and *must be* a daily mail, then he concluded to build stations between the stations that he had built going over.

That is a sensible, straight story. When he went out they built the stations some thirty-odd miles apart, and when he talked with General Miles, General Miles told him that there must be a daily service, and then he determined to build intermediate stations as he went back. What was that testimony sworn to by Rerdell for? To make you believe, gentlemen, that Stephen W. Dorsey when he sent Rerdell out knew that there was to be expedition, and knew it because he was in conspiracy with the Second Assistant Postmaster-General. The testimony of John W. Dorsey lets the light in upon that story. The sun rises, and the mist goes. What is his story? "I went there and built the stations about thirty miles apart, and when I talked with General Miles he assured me that there must be expedition and a daily mail, and then I built stations at the intermediate points as we went back." That is the story. It is consistent with itself.

Is it not wonderful that the Government did not also prove by Pennell that Rerdell gave him instructions to build the ranches, and told him that he had been so instructed by S. W. Dorsey?

On page 2233 Rerdell swears that Miner told him that Vaile was *close to Brady*. On page 4177, Miner swears that it is *not true*; that he never had any such conversation. Why did they want a man close to Brady? As I explained to you before, gentlemen, they had already, according to their testimony, as they claim, proved that Miner had conspired with Brady, and yet he was going around trying to find a man close to Brady. Being a coconspirator was not close enough. So Mr. Rerdell is corroborated there again by Mr. Miner who swears that what Rerdell swears is a lie.

On page 2224 Rerdell swears that in November, 1878, Miner asked

him to write certain words in a line on petition 40104. On page 4178, *Miner* swears that he never asked him to interline any petition.

On page 2225 *Rerdell* swears he had a conversation with *Vaile* and *Miner* on the 20th of December, 1878, at the National Hotel about his employment, and that he had a great many conversations there. On page 4020, *Vaile* swears that there never was any such conversation. On page 4021, *Vaile* also swears that he has no recollection of such a conversation then or at any time. On page 4178, *Miner* swears that the talk was between *Rerdell* and himself, and that *Vaile was not there*.

On page 2225 *Rerdell* swears that *Vaile* told him that the mail service they had ought to reach \$600,000 or \$700,000. On page 4021, *Vaile* swears that he does not think he ever said any such thing—does not think it was possible that he ever said any such thing. On page 4179 *Miner* swears that *Vaile* never made any such statement in his presence.

On page 2226 *Rerdell* swears that at the instance of *Vaile* and *Miner* he went West January 4, 1879, to put service on the Rawlins route. On 4022 *Vaile* swears that *Rerdell* did not go West at his instance; that *Miner* gave him, *Rerdell*, a subcontract for the entire pay, for the whole term, and that *Rerdell* undertook it *on his own behalf*. On 4179 *Miner* swears that he made the arrangements with *Rerdell* himself.

On page 2227 *Rerdell* says that *Vaile* and *Miner* both told him that the service would be increased right away, and to make subcontracts with that in view. On page 4180 *Miner* swears that he gave him no such directions, and that *Rerdell* did all he did on his own responsibility, and that *Vaile* did not give him any such authority. It is for you to say, gentlemen, which of these men you will believe.

On page 2228 *Rerdell* swears that in March, 1879, he had a conversation with *Vaile* about an affidavit, and received instructions from *Vaile* or *Miner*. On page 4024 *Vaile* swears that he recollects no such conversation and does not think he ever had it.

On page 2228 *Rerdell* swears that *Vaile* said in the presence of *Miner* that he could get *Brady* to accept an affidavit from a subcontractor. On page 4024 *Vaile* swears that he is very sure that he did not say so, and that he never asked *Brady* any such question. On page 4182 *Miner* swears that he never made any such statement in *Vaile's* presence.

On page 2228 *Rerdell* swears that a day or two after *Vaile* says he had seen *Brady*, and that *Brady* had agreed to accept an affidavit from a subcontractor. On page 4024 *Vaile denies* this.

On the same page, 2228, *Rerdell* swears that he was instructed by *Vaile* and *Miner* to write to *Perkins* and get him to send his affidavit. On page 4024 *Vaile* swears, "*Never!*"—that he did not know *Perkins* was a subcontractor. On page 4182 *Miner* swears that he has no recollection of it, and that he never instructed *Rerdell* to send any form of affidavit to Mr. *Perkins*.

On page 2230 *Rerdell* swears that *Miner* wrote a form of affidavit. On page 4182 *Miner* swears that he has no recollection of it, and that he never instructed *Rerdell* to send any form to *Perkins*. As a matter of fact the *Perkins* affidavit is in the handwriting of *Rerdell*. Yet he tells you that *Miner* wrote the form. It will not do.

On page 2231 *Rerdell* swears that he filled in blanks under the direction of S. W. *Dorsey*—that is, of the *Perkins* affidavit—and filed it under the direction of S. W. *Dorsey*. On page 3793 *Dorsey* swears that he never knew there was such an affidavit, and that he never gave such instructions; and more than that, *that he never* at any time or place *gave Rerdell authority to change any affidavit or any petition* that was to be filed.

On page 2233 Rerdell swears he was instructed to make the subcontract without any reference to expedition, and that he, Dorsey, would guarantee the payments if they were not filed. On page 3771 S. W. Dorsey swears that he gave him no such instructions.

On page 2234 Rerdell swears that affidavits of Peck and Dorsey were acknowledged in blank. On page 4189 Miner swears that so far as he remembers they were filled in before they were signed.

Again, it may be proper for me to say here: Why did not the Government call J. S. Taylor, the notary of New Mexico, to prove that the affidavits were in blank when they were sworn to by John M. Peck? Why did they not? The law presumes that every officer has done his duty, and when we find at the foot of an affidavit the certificate of a notary public the law presumes that the paper above it was in the precise condition at the time the certificate was placed there in which it is then. That is the presumption of law, and there is only one way to overcome that presumption. You must prove to the contrary. One of the easiest ways on earth to do that is to bring the officer. They did not bring J. S. Taylor here from New Mexico, the man before whom Peck acknowledged the affidavit in this case. It would have been easy to have him come, and to have asked him whether Peck did not swear to all these affidavits in blank. They did not call him. They had him here once and that was enough. They did not call him this time. They did not call Rufus Wainwright, of Middlebury, Vermont. He is the officer before whom John W. Dorsey swore to these affidavits. The gentlemen of the prosecution say the affidavits were in blank, and yet they dared not put upon the stand the notary before whom they were sworn to. It was not because they did not think of it. It was not because they had not the money. The Government had money by the million and agents by the thousand. You recollect how they tried to prove the destruction of those dispatches in the Western Union office. You recollect how they brought here the superintendent, how they brought here agent after agent, how they brought here the man that went around and collected the dispatches, and the man that drove the wagon and the man that owned the wagon, and the boys that received the dispatches on the street, and the man in the cellar that received them after they got there, and the man that bought them, and the book-keeper that made out the check to pay for them. They brought the man that receipted for them at the railroad, and they followed them from the railroad to Holyoke, Massachusetts, and brought the superintendent of the factory and the books of the railroad to show they had arrived. They followed those dispatches from paper to pulp and yet it never occurred to them to send to Middlebury and get Rufus Wainwright. They never thought to have J. S. Taylor subpoenaed from New Mexico. They had all the conveniences of modern civilization at their command and yet they never thought of getting Wainwright or Taylor.

On page 3771 S. W. Dorsey swears that he never instructed Rerdell to get any affidavits in blank. On pages 4126, and 4107, J. W. Dorsey swears that he made none in blank; that he has no recollection of any such thing. On page 2240, Rerdell swears that he had a conversation with S. W. Dorsey about getting blank affidavits. On page 3771 S. W. Dorsey denies it. On page 2241 Rerdell swears that S. W. Dorsey instructed him to make up the affidavit on route 41119 and gave him the per cent. of the increase of pay. What does he say there? From 150 to 200 per cent.

Mr. MERRICK. That was afterwards corrected.

Mr. INGERSOLL. I thank you for the suggestion. That happened on

Friday. We adjourned until the next Monday morning. He came in the next Monday morning, and he said that he had made a mistake, and that it ought to be from 150 to 250 per cent. I immediately went and got the affidavit on the Toquerville route, because I said the percentage must be over 200 per cent. in that affidavit or he would not have changed. I found in the affidavit that it was 255 per cent., and I found that was why he changed. I followed that out, and I found that was the same route upon which Mr. Rerdell stole nearly \$5,000, according to the testimony of S. W. Dorsey, and Rerdell did not deny it. So much for Toquerville and Adairville. We will come to it again perhaps.

Let me give the pages where all these matters are found. On page 3772 Dorsey denies the conversation about the affidavits, and also on page 3773. Rerdell's change of his evidence will be found on page 2277.

Now if the court will take a recess I will be glad.

At this point (1.05 o'clock p. m.) the court took its usual recess.

AFTER RECESS.

Mr. INGERSOLL. Allow me to say, gentlemen, before I proceed, that I admit that I have shown a little impatience at being interrupted or at having any suggestions made. I think I have been wrong, and hereafter if any page is wanted, or if the gentlemen want any information, and will ask me, I will give it to them with pleasure.

I believe when I spoke of the pencil memorandum that I stated that there was some testimony to the effect that the figures in the first part, \$10,000 to S. W. Dorsey, \$10,000 to John W. Dorsey, and \$10,000 to Mr. Peck, were Mr. Dorsey's figures. There was some evidence of that. Mr. Merrick, I think, at that time thought it was stricken out. I read from page 3704:

Q. Did you ever give any directions to M. C. Rerdell, in writing or verbally, to open any account or accounts with William Smith on any book?—A. Never in the world.

Q. Did you ever give M. C. Rerdell, in writing or verbally, any instructions to open any account in your behalf with Sam'l Jones?—A. Never.

Q. Did you ever give him any instructions to open any account for you with John H. Mitchell?—A. No, sir.

Q. Did you ever state to M. C. Rerdell or to anybody that William Smith on your books stood for Thomas J. Brady?—A. In the first place, there is no William Smith on my books; and in the next place, I did not state it.

Mr. MERRICK. I object to his stating what is on his books, and move that it be stricken out.

The WITNESS. I never did.

Mr. MERRICK. I move that the answer be stricken out.

Mr. INGERSOLL. I object to its being stricken out.

The COURT. It can stand. The evidence does not prove what is on his books, because he declares that there is no such thing on his books.

Q. When did you first hear that it was alleged by anybody that you had any account with William Smith and Samuel Jones, or with William Smith or Samuel Jones, on any books that had been kept by you or for you?

That was objected to. Then I repeated the question, and Mr. Merrick stated his objection, and then:

The COURT. [To the witness.] You can answer that.

A. It never came to my knowledge except through what Rerdell had stated to James and MacVeagh. That is the first information that I had on the subject that there were any such books ever thought of in the world. And I believe Rerdell himself told Mr. Bosler and myself about the thing at that time. I believe that is the first time I ever heard of it. I never had any knowledge of it, unless you call Rerdell's statements knowledge.

Now, on page 3775 :

Q. Will you just state what instructions you gave to Mr. Kellogg as to entering the \$10,500?—A. After I had given him the memorandum which had been made up by adding the interest on to \$9,780—I think that was the amount, but I am not certain as to the particular amount—I told him to enter on the book the exact amount of money——

Mr. MERRICK. [Interposing.] I object.

A. [Continuing.] I gave him directions——

Mr. MERRICK. [Interposing.] I submit that the directions he gave to Wilbur F. Kellogg are not competent evidence.

The COURT. They relate to that paper.

Now I will turn to page 3776, which is the next page. A discussion ensued and the court said :

Yes ; you may ask the question.

Q. Did you give any instructions to your book-keeper as to deducting the interest from the first amount?—A. I instructed Mr. Kellogg to deduct the interest, which made up the \$10,500, and left a balance, as I said, of about \$9 700, I think. I know the whole amount I gave to J. W. Dorsey, \$10,000, and the \$10,000 I paid to Peck, and the \$9,000 and something made up an aggregate of about \$29,000 or \$30,000, I don't know which ; and that entry was made on the 16th of May——

Mr. MERRICK. [Interposing.] You cannot speak of that.

The COURT. No.

Q. Ordered to be made?—A. Ordered to be made.

That is the evidence, as I understand it, upon that point.

I will now go on with the corroboration of Mr. Rerdell.

On page 2243 Rerdell swears that while he was in jail S. W. Dorsey had a key to what he called his, Rerdell's, office. On page 3735 S. W. Dorsey swears that he never had a key to Rerdell's office, and that he never was in the office but twice, both times with Rerdell, and that he never took a paper out of the office except what Rerdell gave him. It will also be remembered that when Rerdell was asked in his examination-in-chief whether anybody had a key to his office he replied that S. W. Dorsey had a key to his office. He did not at that time state that his wife had a key. Why? Because he wanted it understood that S. W. Dorsey was the only person that had a key, and that S. W. Dorsey, while Rerdell was in jail, went to that office and opened it and robbed it. On cross-examination I made him swear that his wife had a key, and we afterwards found that his wife went there. He knew she had a key. Still, in his cross-examination, when asked who had a key, he said S. W. Dorsey. What was that for, gentlemen? So that you would infer that S. W. Dorsey was the only person who had a key, and that he went there and robbed that office, as I said before. On pages 2634 and 2635 Mrs. Cushman swears that she went to Rerdell's office with Mrs. Rerdell. When? About 6 o'clock in the morning. And that they found the office open? No. They found the office locked, but found papers in a confused condition, and took away some papers. They were there about fifteen minutes. Recollect this was the third morning that Rerdell was in jail. Rerdell went to jail Monday evening. That made the visit of Mrs. Cushman and Mrs. Rerdell on Thursday morning, and they went there at 6 o'clock. Keep that in mind. Rerdell got out of jail on Friday. George A. Calvert, the janitor, visited every room frequently. His testimony is on page 2672. He swears he found the door of Rerdell's room unlocked. When? The day before Rerdell got out of jail. What time of day? In the morning. What morning was that? Thursday morning. When did Rerdell get out of jail? Friday morning. When did Mrs. Rerdell and Mrs. Cushman visit the room? Thursday morning. What time in the morning? 6 o'clock. When did Calvert find the room open? That same

morning. The women swear that when they went there the room was locked. Now the question arises, who opened it? The women. That is all there is to that.

Mrs. Rerdell, on page 2635, swears she got the key on the second day after Rerdell's incarceration, in the evening. That would be Wednesday evening. She used it the next morning, Thursday.

On page 2247 Rerdell swears that on the 20th of December, 1878, Vaile promised him a good salary. On page 4021 Vaile swears that he has no recollection of any such promise. That is what they call corroboration. On page 2348 Rerdell swears that in May, 1879, S. W. Dorsey said, "You know that John is a man of very little judgment. He does not know how to talk to these contractors." On page 3773 S. W. Dorsey swears that there never was any such conversation.

On page 2249 Rerdell swears, "As secretary and manager, I kept the books for a short time." On page 3636 W. F. Kellogg swears that he, Kellogg, had entire charge of Dorsey's books from the summer of 1872 to the fall of 1879, and that nobody else ever made a scratch of a pen in those books. On page 2270 Rerdell swears that Dorsey and Bosler were having a settlement in New York and sent for the books, and that he took the original books over and left them there, and that he went over to New York in June, 1881, and saw both books there and brought the journal over and left the ledger. On page 3955 Dorsey swears that the first settlement he had with Bosler was in December, 1879, or January, 1880. Rerdell swears that the time he got the copy made of his journal by the Gibbises, was between Christmas, 1879, and 1880. Dorsey swears there was not another settlement until November, 1882. The first settlement being in 1879, and Rerdell swearing that he took the books over for a settlement, show that he did not have them here in Washington to be copied at the time he says and at the time other people swear that they copied them.

On page 3788 S. W. Dorsey swears that he never sent for any transcript, and that he, Dorsey, referred to the route-book, and that Rerdell never sent any such book or books as he claimed. On page 2271 Rerdell swears that he gave copies of the journal to Dorsey in June, 1881. That was the time that he made the affidavit. His language by any natural interpretation means that he handed those copies over to Dorsey at the time he made the affidavit on the 20th of June, 1881. On page 3988 Dorsey swears that he did not, and on page 3785 he again swears that he never had them. On page 3784 he again swears that Rerdell never brought any book to him except the route-book. On page 2271 Rerdell swears that Dorsey, on the 13th of May, 1879, told him to make up a statement of the routes showing the profits, and that he thinks he gave it to Bosler. On page 3875 Dorsey swears that he never made up any such statement by his direction, and that he never gave Rerdell such an order. Why should he? According to Rerdell's own statement, in which there is not a particle of truth, Dorsey, on the 13th of May, 1879, that very day, had written a letter to Bosler, in which he told him about the profits, about how much it had cost him, and about how much it would cost him, and about how much the profits would be, and how much he paid to Brady. After writing such a letter to Bosler, containing all the facts, why would he want Rerdell to make up a statement that was already in the letter itself? Nobody can answer. There is not genius enough in this world to make the answer.

On page 2272 Rerdell swears that he saw 7 B, which is a petition, in 1879, and that there were three words in his own handwriting that were not there when he first saw it, the three words being "and faster time."

He also swears that he was instructed to put them in by S. W. Dorsey. I now say that Mr. Rerdell never wrote those three words. On page 783 it appears that 7 B was filed April 18, 1879. On page 3786 S. W. Dorsey swears that Rerdell's statement is false. I will now turn to the testimony of George Sears about the petition, 7 B, which Mr. Rerdell swears was altered by interlineation or the addition of three words "and faster time." The page is 829:

By Mr. BLISS:

Q. I exhibit to you the paper marked 7 B. Please look at this paper [submitting paper] and see if it bears your signature.—A. Yes, sir.

Q. You have seen it before, then?—A. Yes, sir; I have seen it before.

Q. Please look at that paper and see if the heading of it is in the same condition it was when you signed it?

Mr. Chandler then objects; Mr. Merrick makes a remark, Mr. Chandler makes another, Mr. Bliss another, Mr. Chandler another, and so it goes on. Finally:

By Mr. BLISS:

Q. [Resuming.] Can you say whether it is in the same condition now as when it was signed by you or not?—A. I think it is.

Mr. DAVIDGE. That is the end of that.

Mr. BLISS. Yes, it is. I evidently made a mistake as to the paper.

Q. [Resuming and submitting a paper to witness.] I will exhibit to you 12 B.

And so on. Now, we will go to page 831:

Q. Now, here is a petition that you say was not changed, which asks for faster time, does it not?—A. Yes, sir.

Q. And the other you say asks for quicker time?—A. Yes, sir.

Q. What is the difference between faster time and quicker time over the same route?

* * * * *

A. I do not see any difference.

* * * * *

Q. [Resuming.] You say you did sign this petition containing the words faster time?—A. I did.

Q. And you knew that that was in it when you signed it?—A. Yes, sir.

Q. Will you swear whether or not the words quicker time were in the petition when you signed that?—A. I will swear that, to the best of my knowledge, when I read the petition after it was drawn up those words were not in it.

That is another petition. Then a little further down:

Q. That is then what the people did want—faster time?—A. The people wanted the mail to come in there at a more regular time.

Q. And they wanted quicker time; answer my question?—A. They wanted it in quicker time than it did come sometimes.

Q. And that is the reason these petitions were drawn up?—A. Yes, sir.

Q. And that is the reason the words "faster time" were used in one of them?—A. Yes, sir.

Q. Now, you designed those petitions to go before the Post-Office Department to be acted upon, did you?—A. Yes, sir.

Q. You expected the Post-Office Department to be influenced by your petitions for this faster time?—A. Yes, sir.

Q. You acted in perfect good faith, did you not?—A. I did.

Q. Did the necessities of the people require this expedition and increase of service, in your opinion, at the time you signed this paper?—A. They required—

And then comes a little discussion, and finally—

The object of wanting the mail on faster time was frequently talked of by the farmers for the following reasons: The mail-carrier was in the habit of coming in sometimes from two to three or four hours later than he would at other times, and the farmers who would come there for their mail, some of them having far to go, wanted the mail to arrive at some certain time. Under the old schedule he had until 11 o'clock in the night to get there, consequently they wanted him to get there at some fixed time, giving them time to get home and do their evening work.

Q. Now the old schedule permitted him to delay the coming until it was too late for them to return home?—A. Sometimes.

Q. The old schedule permitted him to do it all the time, did it not?—A. It did permit him, but he did not do it.

Q. But the schedule permitted him to do it?—A. Yes, sir.

Q. The old schedule was sixteen hours?—A. Yes, sir.

Q. And they wanted a new schedule of eight hours so as to require him to be at this point at a time so it would be convenient for them to get their mail and go home after he arrived?—A. Yes, sir.

Q. And that was the reason that they were interested in seeking this change, was it?—A. That was it.

Q. That was what was talked over among them?—A. Yes, sir.

Q. This petition was got up by the people generally there?—A. At the request of quite a good many there; yes, sir.

Q. The people generally took an interest in it?—A. Yes, sir.

Q. You have testified in this case once before?—A. Yes, sir.

So much for that petition. Rerdell swears that he put in the words "and faster time." Here comes a witness of the Government, apparently a good and honest man, and he swears that the words "and faster time" were in that petition when he signed it. I will take his word for it. I will take his guess as against the other man's oath.

On page 2273 Rerdell swears that he altered 11 B and 12 B by instructions of S. W. Dorsey. Now, gentlemen, Stephen W. Dorsey got such a momentum of crime on him and got running at such a rate that he could not stop, and whenever a petition came in he had it altered without reading it. It did not make a bit of difference what the petition asked for. He just said to his clerk, "Look and see if there is not any line you can add something to. I want something put in it, and I want it put in now." Mr. Rerdell says he did these things without any thought. He just made the changes as he was told, without considering whether it was right or wrong. He told you here on the stand that at one time he was requested to get a petition, and he had a lot of names on hand, and so he just wrote a petition and stuck the names to it. He could not even remember the route it was on. It was a matter of so little importance that he did not charge his memory with it. He was told to get a petition in the regular way, and instead of doing that he said he took some names that he had and just wrote a petition and stuck the names on, because that was easier; and it was a matter of so little importance he really did not remember. He was like the gentleman in Texas who was tried for murder, but did not remember the name of the man he killed; he did not charge his mind with it.

Now for 11 B:

Hon. D. M. KEY, *Postmaster-General*:

We, the undersigned, citizens of the State of Colorado, residing near and getting our mail at Muddy Creek post-office, on route 38135, from Pueblo to Greenhorn, respectfully represent—

I never noticed before that the "p" is interlined in the word "represent." I have no doubt that was done by order of Dorsey—

that it is necessary that the service on said route should be increased from two trips per week to six trips per week, and a faster schedule. This section of the country is being rapidly settled by people of intelligence, and we ask the increased service for the benefit of us who have already made our homes here, and also as an inducement to others to settle. We also request that the schedule time be reduced so as to run from Pueblo to Greenhorn in eight hours, so that citizens along the route may get their mail at a seasonable hour.

I have read the petition as it was in the first place. The Government tells you that after that petition came here, and after it had been submitted to Stephen W. Dorsey, he told his clerk to add in the first part of it the words "on quicker time;" and yet if he had read the last paragraph he would have seen quicker time was there called for. Rer-

dell says Stephen W. Dorsey told him to put in those three words, and yet the petition says:

We also request that the schedule time be reduced so as to run from Pueblo to Greenhorn in eight hours.

What was finally the schedule?

Mr. CARPENTER. Seven hours.

Mr. INGERSOLL. It asked for eight. Now, do you believe that Stephen W. Dorsey ever instructed a man to put in the words "on quicker time" when the very last paragraph asked to have a schedule of eight hours? No. If Mr. Rerdell put in those words he did it just because——

The FOREMAN (Mr. Crane). [Interposing.] The original time was twelve hours, was it not?

Mr. INGERSOLL. Sixteen hours, and they asked that it be reduced to eight. Rerdell says Dorsey told him to insert the words "on quicker time," and when I read that last paragraph to him he was stuck. Then what did he say? When he got into that little corner and was looking for a mouse-hole, he said he didn't read it and didn't know it was there. Do you believe that a man like Stephen W. Dorsey would deliberately have a petition changed, would deliberately forge a petition, without knowing what was in it and without knowing whether the necessity existed for changing it or not? That falsehood has not even a fig-leaf to cover its absurdity.

Here is 12 B. It would not have taken long to have read that. Rerdell said Dorsey had him put in the words "and a faster schedule." I will read the last paragraph to that:

We also respectfully request and urge that the running time be reduced so as to run from Pueblo to Greenhorn in eight hours, so that citizens along the line may get their mails in a seasonable hour.

He says Stephen W. Dorsey, a man of sense, got that petition, read it all over, and then told this fellow to put in "and a faster schedule" when right in the next paragraph it asked for eight hours. A man who will swear that way had rather tell a lie on ninety days' credit than tell the truth for cash. Just look at it. That is what they call a corroboration. The more you look at this testimony the more absurdities you find. Every truth has an infinite number of signs. Every truth has to fit an infinite number of things. Infinite wisdom could not manufacture a falsehood that would stand the test of investigation.

On page 2272 Rerdell says, speaking of the three petitions, 7 B, 11 B, and 12 B, "We," meaning S. W. Dorsey and himself, "had examined these petitions together, and he," meaning S. W. Dorsey, "told me to put in the clause for expedition." Now, 7 B was filed April 18. That is the day he left for the West. 11 and 12 B were filed on the 8th of May. If they had them all at one time together, and if he and Dorsey had talked about them, why were they not filed at the same time? Why was one filed April 18th and the other two on the 8th of May? That testimony of Rerdell's will not do.

On page 2279 Rerdell says that he found among Dorsey's papers the tabular statement about the middle of April, 1879. In the first column was the number of the route; in the second the termini; in the third the pay; in the fourth the anticipated pay by percentages, and in the fifth the percentage to T. J. B, 33½, with the figures carried out at the end of the column. He tells you that he had that tabular statement when he first went to MacVeagh. That tabular statement was in the handwriting of S. W. Dorsey. Yet the Attorney-General was not satisfied.

He wanted that backed up by a book not in the handwriting of S. W. Dorsey. That will not do. Rerdell also tells you that at the time he went to the Attorney-General he not only had that tabular statement, but he had a letter-press copy of the original letter that Dorsey wrote to Bosler on the 13th day of May, 1879. He had that letter, the original of which was in Dorsey's handwriting, in which he admitted he had paid Brady \$20,000. He had the tabular statement in Dorsey's own handwriting in which he was to pay 33½ per cent. to Brady. Yet the Attorney-General did not think there was sufficient evidence, and said "You had better go to New York and steal a book that Dorsey never wrote a word in." Oh, no; that will not do.

On page 2280 Rerdell swears that he lost that memorandum. I guess he did. On page 3785 S. W. Dorsey swears that he never made any such memorandum. On page 2280 Rerdell swears that he employed Gibbs and wife to make a true and correct copy of the books in March, 1880; that he was directed by S. W. Dorsey to send him a true transcript of the books in order to settle with Bosler, and that Gibbs and wife copied the journal and ledger, and that he sent the copy to New York. On page 3788 Dorsey swears that he never heard of the employment of Gibbs and wife, and that he never received any such books or transcripts. On page 2644 Gibbs swears that his wife copied only the journal, not the ledger. Yet Rerdell swears that he copied the journal and the ledger. On page 2644 Gibbs again swears that Rerdell brought him one book. What color was it, red, brown, or black? Rerdell says he took him two red books. Gibbs swears he got one brown book or one black book. That is what they call corroboration. On page 2320 Rerdell swears, with regard to the paper 2 A, that the words "schedule thirteen hours" were written by Miner. If those words, "schedule thirteen hours," were not written by Rerdell, then—they were written by somebody else. [2 A handed to Mr. Ingersoll.] I guess this is the petition that was fixed up. It looks as if it had been to a hospital. Rerdell says Miner wrote the words "schedule thirteen hours." Just look at that word "thirteen," gentlemen. [Exhibiting petition to jury.]

Mr. MERRICK. Boone says so, too.

Mr. INGERSOLL. He said he was mistaken afterwards.

Mr. WILSON. He took it back subsequently.

Mr. MERRICK. He never did take it back.

Mr. INGERSOLL. I think he said it was in a disguised hand. You have no idea how it affects your imagination and brain to be indicted seven times. I have got here exactly what Boone did swear to. On page 2709 Boone swears with regard to this same paper and the same words, that there is nothing in the handwriting to indicate that it was written by Miner; that it is a back-hand; a changed handwriting. On page 4186 Miner swears that it is absolutely not true; that the words "schedule thirteen hours" are absolutely and positively not in his handwriting, and further that he never filed the petition. Gentlemen, evidence of handwriting is very unsatisfactory necessarily. Men do not always write the same. The same man does not always write the same hand. There is the difference of pen, the difference of ink, the difference of paper, the difference of position, and the difference, too, of the man's feelings. At one time he feels in splendid health and at another time he may be tired and worn out. The paper may not be in the same position. The slope of the desk may be different. Countless reasons change the handwriting of a person, and when a man swears that certain handwriting is or is not another's handwriting he must swear on the general appearance; he must swear on the impression that it first

makes upon him. I know Mr. Smith and I know Mr. Jones, but it may be that I could not describe the differences in the faces of the two men so that a stranger could afterwards tell them. Yet I know them. It is the effect of all the features upon me. I cannot say it is because of the ear of one, or his nose, or his mouth. I know the combination. I remember the grouping of the features and the form, and that is all I remember. If I am shown a paper and asked "Is that Mr. Smith's handwriting," I say it is, or I say no. Why? Because it looks like it or it does not look like it. I cannot recognize it because an "e" is made in a certain way or because a "d" is turned in a certain way, because the next day he may turn it the other way. You have got to go upon the general impression. On page 2336 Rerdell swears that the oath on route 38140, marked 5 E, was filled in by S. W. Dorsey; that the word "twelve" was written by him, Rerdell, after it was filed, and was written because Turner told him that the schedule must be twelve hours; that Turner handed him the oath and he thereupon changed the "fifteen" to "twelve." On page 3355 Turner swears that he has no knowledge of any alteration in any affidavit. On page 3793, S. W. Dorsey swears that he did not know there was any such affidavit; and he also frequently swears that he never asked Rerdell to change any affidavit that had been filed, and that he never gave any such orders. These gentlemen find one affidavit about which we did not ask Mr. Dorsey particularly and they say, "You have not contradicted that." When a man swears that he never gave an order about *any* affidavit, that covers *every* affidavit.

On page 2337 Rerdell swears that the oath marked 20 F, on route 38145, was filled in by him after it was signed, under the direction of S. W. Dorsey. On page 3793 Dorsey denies giving any such directions.

On page 2338 Rerdell swears that blanks in the oath 22 F, the second oath, were filled in by S. W. Dorsey, but will not say whether before or after execution. On page 3771 Dorsey says he does not remember doing any such thing; but certainly there is no evidence that Dorsey did this after the affidavit had been made.

On page 2339 Rerdell swears that the words "ninety-six" in the petition 14 H, were written by Miner. Boone, on page 2709, declines to say that Miner wrote them. On page 4273 Miner swears that the words are not in his handwriting, that he never wrote them. On page 2298 Rerdell swears that he signed a check "S. W. Dorsey by M. C. Rerdell," and that he had that check at home. It may be that is one of the checks for June drawn upon Middleton's bank that we could not find.

On page 2340 Rerdell says that the oath marked 8 I, on route 44140, was filled in by him in Washington after it was signed and sworn to, under the direction of S. W. Dorsey. On page 3792 S. W. Dorsey denies that he gave any such directions.

On page 2342 Rerdell swears that S. W. Dorsey signed the name of J. M. Peck to the warrant 55 G. [55 G handed to Mr. Ingersoll.] I have forgotten the day that the draft was given, but I think it was the 2d day of August. It was paid on August 25, 1880. All I have to say is that there was an abundance of time for that draft to go to New Mexico and to be signed by John M. Peck; there was thousands of time. It makes not the slightest difference who signed the name of John M. Peck to that warrant. The question is, was that money coming to John M. Peck? No. John M. Peck had sold out his interest. He was not entitled to one dollar, and it made no difference who signed his name to the check. Does it show that there was a conspiracy if Dorsey signed his name after Peck had sold out his interest in the routes? Any

draft coming to him came to him simply as the trustee and the draft was for the benefit of the person who bought him out. Suppose Mr. Dorsey had signed his name. Would that prove that there was any conspiracy? It would simply be in accordance with his right as the matter then stood. He was entitled to that draft and Peck was not entitled to that draft. Why? Because he had bought him out and paid him \$10,000 for his interest. That was all. Yet they would claim if that draft happened to be indorsed by Mr. Dorsey that it would be evidence of a conspiracy entered into in the fall of 1879.

On pages 2348 and 2361 Rerdell says that figures were inserted in all affidavits given him by S. W. Dorsey, except on route 41119, and that Dorsey told him, Rerdell, to put them in the blanks. On page 3793 S. W. Dorsey denies that.

On page 2223 Rerdell says that in August, 1878, he had a talk with Miner, who said that they could do nothing while Boone was in the combination; that Brady was hostile to Boone, and that Boone's place was to be taken by Vaile; and that Miner asked his opinion about Vaile, and asked what Rerdell thought about Dorsey's approving it, adding that Vaile was very close to Brady. On page 4177 Miner swears that he has no recollection of the conversation, and does not believe any such conversation ever occurred.

Ah, but they say that when a paper was handed to Mr. Miner, an affidavit, for instance, he could not give you the history of it; he could not tell you where he was when he wrote it; he could not tell you where he was when he filled it. I would not have believed his testimony if he could. He had to take care of some ninety-six routes. Upon those routes there were numberless papers, notices from the department, notices of fines and deductions, of remissions, and everything of that kind. On each route there were probably a hundred papers, and may be more—petitions, affidavits, and papers of all descriptions. If a man should stand up here five years afterwards and pretend that he knew the history of each paper, I would know he had not the slightest regard for truth.

Mr. Miner said when he was shown a paper, "I don't remember ever having seen that paper before; I don't remember when it was written." That was the truth. If he had wished to stain his heart with perjury he could have said, "Yes, I remember it. I know absolutely the time I wrote it. I know I sent it to New Mexico. I know it was filled up before it was sworn to; but he was honest enough and he was brave enough to face the truth and say, "I don't remember," and I respected him for it when he did it. Whenever you hear the truth, as a rule the first thought is, "May be it won't do." But if it is the truth, the longer you think about it the better it seems, while if it is a lie, the longer you think about it the worse it gets. It would have been, apparently, to Mr. Miner's interest to say, "I remember it perfectly," but the man had honor enough to tell the truth. And when you come to investigate his evidence it sounds much much better than though he had pretended to remember time and place.

I call your attention to page 2446; that is about the affidavit.

On page 2384 Rerdell speaks of the charges made to Samuel Jones and James B. Belford for \$2,000. Then Mr. Bliss in his speech, which I will come to after a while, says that Mr. Rerdell spoke about a charge to J. B. B. He never did, never. He said James B. Belford. I started the J. B. B. business. I was the first one who ever said it, and Mr. Rerdell never swore J. B. B. Then they sent out to Denver to get a fellow who had the same initials. I will come to this man after awhile.

On pages 2429 and 2430 Rerdell swears that he had two balance-sheets

of the books, made by Donnelly; that he showed them to MacVeagh and Woodward. How does it happen that Woodward was not sworn about it? Nothing would have been of more importance, if they wished to prove the existence of the two red books, than to prove by Woodward that Mr. Rerdell, in June, 1881, showed him copies of those balance sheets or the balance-sheets themselves. They did not bring Mr. Woodward on the stand. Why? Mr. Woodward, in my judgment, had he come upon the stand, would have sworn to the truth. Rerdell says, "I do not know where they are." Then he paused. Then I saw the working of his mind just as plainly as though his skull had been opened. He got himself together and swore that he gave them to Dorsey in July, 1882. He had to get them out of his hands some way.

On page 3736 S. W. Dorsey swears that he, Rerdell, did not give him any balance sheets.

On page 2434 Rerdell swears as to the papers he gave to Dorsey—the original journal, and copy of the Oregon correspondence made by Miss Nettie L. White. Miss White was not called. He gave these, he says, to Dorsey July 13, 1882. On page 2793 Dorsey swears that he did not give them to him, nor did he give a paper of any kind.

On page 2461 Rerdell is asked if he did not admit to Judge Carpenter, in January, 1882, that he had a memorandum written by himself, which he showed to James and MacVeagh, and that he made it so much like Dorsey's handwriting that he did not think anybody could tell it. What was his answer? "I may have done so." Honest man!

On page 2462, in answer to the question, "Did you not tell Carpenter that you brought no book from New York?" the honest man answered:

Very likely I said I brought no book over from New York.

On the same page, in answer to the question, "Did you not tell French that you were trying to entrap James?" he admits that it is likely he was.

On page 2463 he admits that he may have told French that he had learned to imitate the handwriting of Dorsey so well that Dorsey himself could not tell the imitation; and that he wrote that memorandum in pencil because he could the more easily deceive. Honest man!

Mr. Bliss holds S. W. Dorsey up to scorn because he endeavored to turn two men out of the Cabinet on the testimony of Rerdell; and yet he is trying to put four men into the penitentiary on the same oath. Do you not think that it is better to get a man out of the Cabinet than to put another into the penitentiary? And do you not think it is better that a man be put out of office than that he be put into the penitentiary, his family destroyed, and his home left to ruin, upon the oath of a man who swears that the oath was a lie? Dorsey was an awfully wicked man to try to get Mr. MacVeagh out of office on Rerdell's testimony. But now they turn around and want to put Mr. Vaile and Mr. Miner into the penitentiary on the same testimony. The other testimony was the best, because we did not promise him immunity. I will come to it after a while.

On page 2465 Rerdell swears that he did not have any pencil memorandum that he showed to MacVeagh, claiming that it was in the handwriting of Dorsey, and was asked, "Did you not tell Bosler that you had?" What does he say? "Possibly I did." "Did you not tell Bosler that you wrote it?" "Possibly I did."

S. W. Dorsey swears on page 3810 that Rerdell told Bosler that it was in the waste-basket, and Bosler took the pieces out and put them together. Rerdell says he had written it, and in pencil, so that it would

look more like Dorsey's handwriting. Why did you not ask Bosler about it, gentlemen, when you had him on the stand to prove your letter? Even Mr. Bliss, in his speech, asked, "Why didn't they call Bosler?" Why didn't you have the fairness to tell all the circumstances? I will tell them all when I get to that part of it. Why did you not tell them that you had looked all through Mr. Bosler's books?

Mr. BLISS. Because I had not.

Mr. INGERSOLL. You did not look in the settlement-book, did you?

Mr. BLISS. I looked at one book, or some entries.

Mr. CARPENTER. He had a glimpse.

Mr. INGERSOLL. Why did you not introduce them?

Mr. BLISS. The book was not in evidence in this case.

Mr. INGERSOLL. I will come to it, gentlemen. I was waiting for you. I do not know but I am almost too soon.

Mr. MERRICK. I will tell when I come to the closing.

Mr. INGERSOLL. Of course, I do not object to your telling.

Mr. MERRICK. I will tell.

Mr. INGERSOLL. Mr. Merrick has his reasons and I know Mr. Bliss has his.

On page 2466 Rerdell swears that he did not get that memorandum out of the waste-basket, but got a note from MacVeagh, and that Dorsey was present.

On page 3810 Dorsey swears that it was a pencil memorandum imitating his (Dorsey's) hand closely.

On page 2466 Rerdell admits that he very likely told Bosler in June, 1881, that he had no book on the train and brought none from New York. In answer to my question, he says, "Possibly I did," or "Probably I did," tell Bosler. I cannot bring other witnesses to contradict him when he admits that he did. That is enough for me.

On page 2467 he admits that he very likely told Judge Wilson about the affidavit; that if he told him anything, he told him that no such book existed, and that there was no necessity for any book except an expense-book.

On page 2469 Rerdell swears that he had a copy of the day-book and ledger in June, 1881, in Dorsey's office; that Dorsey took them that day, and that they had been there ever since they were made to be carried to Congress. Then he began to gather his ideas, and he says:

Hold on. I am mistaken. These books were all sent over to New York before that, in the summer of 1880, when I carried the originals over for the last settlement I was present at, between Dorsey and Bosler.

There was no settlement in 1880, the time he speaks of. Mr. Merrick then says:

Q. There were two sets of those copies?

That would be four copies and two originals.

A. No, sir.

On page 3955, S. W. Dorsey swears that he had the first settlement with Bosler in December, 1879, or January, 1880, and had no subsequent adjustment until November or December, 1882; no settlement between those dates. Yet Rerdell says that he took those books over in the summer of 1880 for a settlement, when there was no settlement, and at the same time carried the originals. A moment before he had sworn that the originals were there in the office in June, 1881.

On page 2470 Rerdell swears that he did not give the books to Dorsey in 1881.

On page 2447 he swears that he did not have the balance-sheet in New York; that he had it in the office in June, 1881.

On page 2479, Rerdell, in speaking of the pencil memorandum, was cornered, caught. He said, "I have kept it as a voucher." Then finally he admits that it was not his property, but was the property of Dorsey; and the last admission he made upon that subject was, "I stole it." He says that while he was in jail somebody got into the office and destroyed his papers. And yet, on page 2480, he tells you that the first time it ever occurred to him to use that pencil memorandum was after the first trial was over. Can you believe that? He was trying to steal it on the 13th of July, 1882; was trying to go over to the Government on the 5th day of July, 1882, and did not think that he had that pencil memorandum! Writing a letter on that day to Dorsey; giving him notice that he was going to desert him; saying in that very letter that he had been persuaded by Bosler to make the first affidavit; saying that he was making preparations to go to the Government, was going to set himself right, and yet did not remember the pencil memorandum! Why? Because he manufactured it afterwards. He says that within a day or two after he was out of jail he found this paper a second time. He found it before, and laid it carefully away as a voucher. Then he lost sight of it. Then he was trying to sell it to the Government, and he forgot it; trying to blackmail Bosler and Dorsey, and forgot it. When he got out of jail he found it. That will not do. How does he say it got to his house? His wife carried it from the office while he was in jail. And yet he would have us believe that Dorsey broke into that office and stole all the papers. And yet he says that was in the office, and Dorsey did not take it. It will not do. He manufactured that paper after that time.

On page 2481 Rerdell swears that he did not know that he had that paper at that time, at the time he says his wife got the papers. I say he did not; I say he made it afterwards.

On page 2490 Rerdell swears that he had those red books in the office at 1121 I street; that he never made any effort to conceal them. And yet Kellogg never saw one of those books; never saw Rerdell working upon them, and never saw them in the office.

On page 2491 Rerdell swears that he thinks Kellogg did some work on those red books; that Kellogg helped him (Rerdell) make the first entries. On page 3636 Kellogg swears not only that he did not help him to make those entries, but positively swears that he never even saw any such books.

On page 3635 Kellogg swears positively that Rerdell did not keep any books, but a private expense-book and a route book; and that he (Kellogg) never saw any other books; that he never saw a ledger or journal in red leather, kept by Rerdell. He swears that he himself kept the three books (the journal, ledger, and cash-book,) and that Rerdell never made an entry in them.

On page 2512 Rerdell swears that he never imitated Dorsey's handwriting, or tried to, in Kellogg's presence. On page 3636 Kellogg swears that he saw him do it.

On the same page (2512) Rerdell swears that he never signed Dorsey's name to show Kellogg that he could imitate it. On page 3636 Kellogg swears that he did do it.

I have just given you a few, gentlemen, of the corroborations of this man Rerdell. Recollect that you cannot believe him unless he is corroborated. If you believe him at all you have got to believe all, unless

you believe he is mistaken. Where a man comes on the stand as an informer—and I do not call him an informer—even in that capacity he has to be taken altogether or not at all.

Now, with all these contradictions upon his head, I will now come to the affidavit of July 13, 1882. You will remember that I read you the letter of July 5, in which he says that Bosler got him to make the affidavit of 1881. At page 2374 Rerdell gives an account of this affidavit. Dorsey got him in Willard's Hotel, locked the door, and had him. Now, he said to him, "Mr. Rerdell, I will tell you what I am going to do with you: I am going to have you prosecuted for perjury." Let us imagine that conversation. Rerdell replies, "What are you going to have me prosecuted for perjury for?" "For making the affidavit of June, 1881." "Why," says Rerdell, "in that affidavit I swore you were innocent." Says Dorsey, "Don't you know you swore to a lie? Do you think I would stand a lie of that kind, sir? Do you think I will allow any man willfully, maliciously, and with malice aforethought, to swear that I am an innocent man? I will have you arrested to-night, sir." "Well," says Rerdell, "my good God, aint there any way I can get out of this?" "Yes; make another affidavit just like it. Now, sir, you have perjured yourself and I will arrest you for perjury unless you do it again." "Well," says Rerdell, "when I get that done you will have two cases against me." "I can't help it," Dorsey says. "Is that the way you treat a friend? I swore to that lie from pure friendship. Don't you remember you took me by both hands and begged me, for God's sake, and for your wife's sake and your children's sake, to make that affidavit? And now are you going to be such a perfect devil as to have me arrested for perjury for making that same affidavit?" Dorsey says, "Yes, sir; that is the kind of man I am." "Well, but," says Rerdell, "Don't you know the trial is going on now? They are trying to prove, now, that you are guilty, and in that affidavit of mine I swore you are innocent, and how are you going to prove a man guilty when you swear that he is innocent?" Dorsey says, "That is my business, not yours. I am going to have you arrested." "But," says Rerdell, "you had better hold on, I tell you." "Why?" "I have got the red book that I got in New York." Dorsey says, "I don't care." Rerdell says, "I have got the pencil memorandum that you made for me to open the books upon, and charge William Smith with \$18,000. And you wrote John Smith first, and I changed it to Sam Jones, don't you recollect, as otherwise there would be two Smiths? And there is the account against J. H. Mitchell, and J. W. D., and cash, and profit and loss." Dorsey says, "I don't care about that. I am not going to allow a man to commit perjury. I am going to have you arrested." Rerdell says, "You had better not have me arrested." Dorsey says, "Why? What else have you got?" "I have got a copy of the letter that you wrote to Bosler on the 13th of May, 1879, in which you say that you paid \$20,000 to Thomas J. Brady. That copy was made by Miss Nettie L. White." "Do you believe I care anything about that? You have perjured yourself, and it is no difference to me whether it was in my favor or not. Justice must be done, and I am going to have you arrested." Rerdell says, "You had better not. I have got a tabular statement in your handwriting, Dorsey, where you had a column for the amount due and the amount received, and another column for 33½ per cent. given to Brady, and then at the top, in your handwriting, 'T. J. B., 33½.'" Dorsey says, "I don't care what you have got." Rerdell says, "That aint all I have got, Dorsey. I tore out of your copy-book a copy of the letter I wrote to Bosler on the 21st or 22d of May, 1880,

in which I told him that I had gone to Brady, and that Brady said you were a damn fool for keeping a set of books, and suggested to me to have some copies made, and I had the copies made, and I can prove the copies by Gibbs if he does not try not to remember that he made them. Now, go on with your rat-killing; go on with your perjury suit." Dorsey had him already locked up there, don't you see? But Dorsey was bent on having that man arrested for perjury because he had sworn that he (Dorsey) was innocent. Dorsey was implacable.

What else did he do? He put his hand in his pocket and said, "Do you see those letters to that woman?" Then, sir, when he saw the handwriting he was like that other gentleman that saw the handwriting on the wall, and he began to get weak in the knees, and says, "Dorsey, I hope you are not going to have me arrested for perjury. I am willing to do it again right now, on the same subject."

Now, it turns out that at that time Dorsey did not have those letters. Dorsey swears that he never got those letters until after Rerdell was put upon the stand. And after he swore that the Government had the woman to whom the letters were written subpoenaed. Why did they not place her on the stand? That is for you to answer, gentlemen. That is the affidavit of July 13. Recollect, there was a trial going on at that time in which Dorsey was insisting that he was innocent, and although Rerdell had sworn that he was, he was going to have him arrested right off.

What else did he have against Dorsey at that time? Now, says Rerdell, "Dorsey, don't you have me arrested for perjury. I have got a memorandum of that mining stock that was to be given to McGrew and Tyner and Turner and Lilley for corrupt purposes."

What else did he have? After he had agreed to make the affidavit, Dorsey wrote out what he wanted him to swear to, in pencil, and gave it to him. And when he got his liberty, when he walked out of that room a free citizen, he had all the papers I have spoken of not only, but he had in his possession a draft, in Dorsey's handwriting, of the affidavit Dorsey wanted him to make. He made the first affidavit from friendship; the second from fright. You know he never took a dollar for an affidavit. He was not that kind of a man. You might get around him by talking friendship or you might scare him, but you could not bribe him; he wasn't that kind of a man. Armed with all these papers he was frightened; so he made the affidavit of July 13.

Now, let us see. He admits that—I will not say every word, but the principal things in the affidavit of June, 1881, are false. He swore to them knowing them to be false. But he tries to get out by saying he did not write them all. Writing is not the crime. The crime is swearing that they are true when they are not true. It does not make any difference who wrote it. For instance, you swear to an affidavit, and you afterwards say, "I did not write it." "Did you know the contents?" "Yes." "Did you swear to it?" "Yes." What difference does it make who wrote it? And yet he endeavors to get behind that breastwork and say, "I did not write all that affidavit; I only wrote part of it. What I wrote was true, but what I swore to was not." That will not do.

So the affidavit of July, 1882, he now swears was a lie. But he gives a reason for writing that that you know is utterly, perfectly, completely false. You know that Dorsey never threatened to have him arrested for perjury because he had sworn in favor of Dorsey. You know it, and all the eloquence and all the genius of the world could not convince you

that at that time Rerdell was afraid that Dorsey would have him arrested for perjury. No, sir.

Now, let us take the next step. Mr. Rerdell testified, on page 2275, that this letter (32 X) was received by him in due course of mail in 1878. Upon being asked whether he did not know that S. W. Dorsey was here in Washington at that time, he replied that he knew he was not. I will read it to you, gentlemen :

Q. When did you receive that letter?—A. I received it some time in the month of April, 1878. I do not remember the date exactly.

Mr. MERRICK. [Reading:]

“Chico Springs P. O.]

“MOUNTAIN SPRING RANCH, COLFAX COUNTY, NEW MEXICO,

“April 3, 1878.

“M. C. RERDELL, 1121 I street :

“DEAR RERDELL: I wish you would get fullest information in regard to all the new post-office lettings and keep posted as to the schemes going on in the department. There are certain routes we want advertised and others we do not. I shall be in Washington as soon as the 12th unless something unexpectedly happens.

Faithfully,

DORSEY.

[The paper last read was marked by the clerk 32 X and submitted to the jury for examination.]

Q. What Dorsey was that?—A. That is S. W. Dorsey's handwriting.

Q. And signature?—A. Yes, sir.

There is where he first speaks of it. At the time that letter was introduced, or in a little time, gentlemen, they also introduced the envelope. I do not know that I should have suspected the letter if they had not introduced the envelope. Whenever there is an effort to make a thing too certain I always suspect it. When that Morey letter was gotten up, what made me suspect it was that they had the envelope, and I said to myself, “Why did they want the envelope if it was clearly in the handwriting of Garfield? What difference did it make whether it was sent to Morey or to somebody else? What difference did it make when it came from Washington? The only question was, “Did Garfield write it?” And upon that subject the envelope threw no light. When a man feels weak and thinks that other people will know what he does not want them to know, then it is that he wants to barricade and strengthen before the attack. So they got up this envelope, and when I looked at that it did not look to me like that stamp had been through the mail. I noticed the handwriting of “Chico Springs, N. M.,” and then I noticed the 3 or the B on the postage stamp, and then I knew that the man who wrote “Chico Springs” never made the letter or figure on that stamp. It is utterly impossible for the man who wrote that “Chico Springs” to make that mark on the stamp. This stamp looked awfully clean, and I said, “Well, I wouldn't wonder if that was an envelope used here in the city which has been got through the mail in some way.” They had it stamped on the back and I said, “Perhaps that was written in 1879.” No. You see, if it was not written in 1879 it did not do any harm, because in 1879 Dorsey was not a member of the Senate. Having gone out on the 4th of March, 1879, if that letter was dated in April, 1879, why then there was no harm in his writing to Mr. Rerdell and telling him to look after the mail business. But if it was written on the 3d of April, 1878, it went far to show that Dorsey was personally interested at that time in mail routes. You will notice the printed date, April 3, 1878. They introduced that letter. I noticed that that envelope was a funny looking thing, and that the writing on it did not correspond with the mark on the stamp. I noticed also that upon the back they had the stamp. I do not know how they got it. When the Post-Office

Department has possession of a paper they can put most anything on it. When I said to Mr. Rerdell on cross-examination, not knowing anything about the letter, "Was that not written in 1879?" he said, "No, sir." Said I, "Don't you know, as a matter of fact, that Dorsey was not here on the 3d of April, 1879?" He said, "As a matter of fact I know that he was here on the 3d of April, 1879." "Don't you know, as a matter of fact, that he was here on the 3d of April, 1878?" He says, "I know as a matter of fact that he was not here on the 3d of April, 1878; he was at Chico Springs." He knew as a matter of fact that he was here in 1879, and he swore that so as to preclude the possibility of his having written the letter in 1879. And he swore to the positive fact that he was not here on the 3d of April, 1878, so as to show that he wrote him that letter from Chico Springs. They wanted some letter from Dorsey in 1878, to show that he was personally interested in these routes while in the Senate. They submitted that letter to Mr. Boone, who was their witness. He looks at it and he tells you that Dorsey did not write that letter. A clear forgery. Whom else do they bring now? They leave it right there, and by that admit that Rerdell forged that letter. Mr. Boone, their witness, swears it. Nobody swears to the contrary except Rerdell. Boone threw the letter from him contemptuously, and says "That is not Dorsey's handwriting," and they dare not bring another witness. The country is filled with experts, gentlemen, who know about handwriting; the United States had plenty of men and plenty of money, and they never brought a solitary man.

Now, gentlemen, do you want to know how this fellow got caught? I will tell you. There is the letter, and they dare not put a man on the stand to swear that it is in Dorsey's handwriting. Look it all over. But I want to tell you how Rerdell got caught about Dorsey being present on the 3d of April, 1878, and I might as well tell you how I found it out. I do not want to pretend to be any more ingenious than I am. I found it out because I made the same mistake myself. I stumbled on that same root. I hit my toe of heedlessness on the same obstruction. I went up to look at the Senate journal. I opened a book to see whether Dorsey was here on the 3d of April, 1878. You see at the bottom there of the title page, Mr. Foreman—

Washington: Government Printing Office. 1877.

You know I was not looking for the book of 1877, so I shut that book up. I then took the next book and opened it, and it said at just the same place:

Washington: Government Printing Office. 1878.

I thought that was the book. So I looked over here, and I found that there was no session of the Senate in April, and I said to myself, "Is that possible that there was no session in April, 1878? Why, there must have been." But the book said "no." I looked back here, and it still said 1878. Then I happened to look back to this book that said 1877, and it said that the session commenced December 3, 1877, and consequently April 3 would be found in the book marked 1877 on the title page. So I turned right over here and looked up at the top and saw the date, April 3, 1878. He was looking for the 1878 book, and that included April, 1879, and when he got to April, 1879, there was no session of the Senate. So he came right in here and swore that Dorsey was not here in 1878, but that he was here in April, 1879. I looked in that book and I found that Mr. Dorsey, on the 3d of April, 1878, was appointed by the Vice-President on a committee of conferees, on the part of the Senate, together with Senators Windom and Beck, and I

saw exactly how Mr. Rerdell made his mistake. He opened the book, and at the bottom of the title page it said 1877. That was not what he was looking for. He was looking for 1878. And the book that said 1878 showed that in April the Senate was not in session. The book that said 1877 showed that in April the Senate was in session on April 3, 1878. That man thought he was backed by the records of the Senate, and thereupon he manufactured that letter. And that is the letter sworn by Boone not to be in the handwriting of S. W. Dorsey. Now, gentlemen, there is nothing in this world that a man would be prevented from doing, for its baseness, who would do that.

There is more evidence than this. I asked Mr. Rerdell, "When you got that letter did you understand it?" He said, "No." "Did you do anything on account of it?" "No." "Did you know what it meant?" "No." And yet he has the temerity to swear that he received that on the 3d of April, 1878.

The COURT. He did not receive it on that day.

Mr. INGERSOLL. He received it in due course of mail.

How did he come to spell the name Reddell? I will tell you. On page 2275 he had a letter to go by. That is the very page on which the Government puts in that letter. This letter is a letter of introduction. When Rerdell manufactured that letter he had this letter of introduction to go by:

Hon. J. L. ROUTT, *Denver*:

MY DEAR GOVERNOR: I wish to introduce my friend, Mr. M. C. Reddell.

It was written Reddell in that letter, and when this man wanted to manufacture one he had one in his possession that Dorsey wrote about that time (April 14, 1879), and he noticed that in that he spelled the name Reddell. So when he wanted to get up a fraud he spelled the name Reddell. That is the way. There is no pretense that Dorsey wrote that letter, and they dare not bring an expert or another man on earth acquainted with the handwriting of Dorsey and submit it to him and expect him to say that that is the handwriting of S. W. Dorsey. So much for that.

Now it is claimed that while Torrey was writing up Dorsey's books, having in his possession the check stubs, he was uncertain as to whether a charge was \$25 or 25 cents, and he thereupon sent to Rerdell to ascertain the true state of the account, so that he might open his books. Thereupon Rerdell made the calculation in the evidence marked 94 X, and Donnelly wrote under it that it was right. Donnelly made that little certificate at the bottom. Here is the important paper [submitting 94 X to the jury], another piece manufactured out of whole cloth, not whole paper. Now I asked a few questions about this. In the first place, they knew that unless this was corroborated it was good for nothing, and we find on it:

Lewis Johnson & Co., note due 28th October, \$3,000.

Was that note at Lewis Johnson & Co.'s? Why did they not bring some of the officers of that bank, if there was such a note for \$3,000 there? But no one was brought. And yet they knew that everything coming from Rerdell must be corroborated.

If Rerdell had come to Donnelly to find what the account was, how did it happen to be in Rerdell's handwriting before it got to Donnelly? Donnelly wrote this certificate at the bottom. Rerdell had written all the facts before. If he went to Donnelly to get the facts, how did Rerdell happen to write this before it got to Donnelly? It is like me wanting to get some information from a man, and writing the information before

go to him. Now, if Donnelly wrote that after Rerdell had written, where did Rerdell get the information? If Donnelly had the books, Donnelly should have given the information. If Rerdell had the books, why did he want to go to Donnelly for information? And if Donnelly had the books, how did Rerdell write the information before he went to Donnelly? Then if he wanted that information for Torrey, why did he not send it to him? How does it happen that Rerdell wrote out the information for Donnelly, then got Donnelly to certify it, because Torrey had asked it? And then how does it happen that Rerdell kept it? It seems to me that that ought to have been sent to Torrey. Torrey wrote to Rerdell for information; Rerdell wrote it all down, and then got Mr. Donnelly to say it was so. If Donnelly had the books, Donnelly should have given the information. If Rerdell had the books, he did not have to go to Donnelly for information. That is another manufactured paper. As I say, how does it happen to be in the possession of Rerdell? They claim that it was for Torrey's benefit. I believe when Torrey was on the stand they asked him if there was not some dispute about 35 cents. Now they bring that here to show that there was a dispute about 25 cents. Was there any reason for supposing that it was 25 cents? No, except that it was in the dollar column, that is all. Of what use was Donnelly's statement after Rerdell had made the calculation? Nobody on earth can tell why that was given. Why did they not bring some of the books or clerks from Lewis Johnson & Co.'s Bank to show that there was a note there in October for \$3,000.

There is another little matter, a conversation between Rerdell and Brady. Rerdell said he had a conversation with Brady in which he told him about the Congressional committee; that he was summoned to bring his books. Brady was astonished that Dorsey would be "Damn fool enough to keep books," and suggested to have them copied. If this is true, Brady at that time made a confidant of Rerdell. If it is true, Brady at that time admitted to Rerdell that he (Brady) was a conspirator; that he had conspired with Dorsey. And yet Brady says that he never had but three or four conversations, I believe, with this man, and Rerdell himself admits that he never had but four or five, and when he is pinned down on cross-examination he accounts for enough of these interviews, without any interviews on the subject of the books, to exceed all that he ever had. Do you believe that he ever had any such conversation? Do you believe that Brady would make a confidant of him? Do you believe that Brady would substantially admit in his presence that he had been bribed by Dorsey? I do not.

Now, in order that you may know what this man is, I want you to have an idea of his character. So we will come to the next point. Mr. Rerdell admits that he sat with the defendants during the early part of this trial; that he was willing to make a bargain with the Government; that he proposed to the Government that he would sit with his codefendants, and would challenge from the jury the friends of the defendants. Did any man wearing the human form ever propose a more corrupt and infamous bargain? That proposition ought to have been written on the tanned hide of a Tewksbury pauper. He went to the Government and deliberately said, "Gentlemen, I am willing to make a bargain with you. I am willing to sit with my codefendants, pretending to be their friend, and while so pretending I will challenge their friends from the jury. I will so arrange it that their enemies may be upon the panel." "And why do you say that, Mr. Rerdell?" "In order to show my good faith towards the Government." He made the first affidavit for friendship, the second for fear, and he made this propo-

sition to show his good faith. There never was a meaner proposition made by human being, under the circumstances, than that. He proposed to do it. Mr. Blackmar says that the proposition was rejected; but that does not affect Mr. Rerdell. He was willing to carry it out.

What more does he swear? He swears that he tried to carry it out. In other words, that although it had been rejected, that made no difference to him. Mr. Blackmar says they would not do it. Rerdell swears that he tried to; went right along and did his level best; and if the court had allowed him four challenges he would have challenged four friends of the defendants from the jury.

What more does he admit? That when the court decided that all of us together only had four, he endeavored to challenge one. Why? Because he believed that one to be an enemy of the defendants; because he believed that one would be in favor of the prosecution; because he believed he was a friend of the defendants; because he believed he would be against the prosecution; and he wanted to get the friends of the defendants away. Why? To the end that the defendants might be tried by an enemy. That is what he was trying to accomplish.

Let us take another step. That proposition reveals the entire man; that takes his hide off; that takes his flesh all off; that leaves his heart bare, naked; you can see what he is made of, and it shows the workings of his spirit, the motions of his mind; and you see in there a den of vipers; you see entangled, knotted adders. And yet that man is put upon the stand stamped by the seal of the Department of Justice, and that department says to twelve men, "Here is a gentleman that you can believe; that gentleman proposes to sell out his codefendants to us, but we would not buy; he is an honorable kind of gentleman, but we would not buy."

Mr. MERRICK. It should be interpolated there—if you will pardon me a moment—that the Government refused to accept Rerdell until he himself had pleaded guilty.

Mr. INGERSOLL. I understand that. I say now, Mr. Merrick, that I would not for anything in the world, on a subject of that kind, go the millionth part of an inch beyond the testimony. Although you and I have not been very cordial friends during this trial, and neither have I and Mr. Bliss, yet if I know myself I would not for anything in this world put a stain upon your reputation, or upon the reputation of either of you, by misstating a word of this testimony. I would not do it. I am incapable of it. I admit that the evidence is that the proposition was rejected, but I also insist that the Government knew the proposition had been made, otherwise it could not have been rejected. And so I say that after this man had made that proposition, infamous enough to put a blush upon the cheek of total depravity, the Government put that witness upon the stand sealed with the seal of the Department of Justice.

Now, we will go another step. He sat with us from day to day, gentlemen, as you know, went in and out with us, as one of the codefendants. In the mean time—and there is a laughable side even to this infamy—he borrowed money from Vaile. He went to him as a codefendant, as a friend, and said, "I want \$140; I want to buy bread and meat to give me strength to swear you into the penitentiary." And Vaile gave him the money. Would you believe a man like that? You cannot think of a man low enough, you cannot think of a defendant vile enough to be convicted on such testimony.

Now, we will go another step. He wanted to make that bargain with Mr. Blackmar. Mr. Blackmar swears that he told Mr. Merrick of it,

and that Mr. Merrick rejected it; would have nothing to do with it. At that time Mr. Woodward had two affidavits of Rerdell in his possession—an affidavit of Rerdell, made in September, supplemented by another affidavit, I believe, of November, that he made in the city of Hartford, covering seventy pages. When Mr. Woodward saw Mr. Rerdell sitting with the defendants, pretending to go with them, he (Woodward) had those two affidavits of Rerdell in his pocket. Did the prosecution know that Rerdell had made the two affidavits? I do not say they did, gentlemen. I only go right to the line of the evidence; there I stop.

Another thing: Mr. Blackmar swears that they had a signal to look at the clock, and that night Rerdell would meet him at 6 or 7 o'clock, I have forgotten the hour; but Mr. Blackmar could not sit in his room all the time waiting for him, and so he gave him a certain signal, so that he would know he was to wait that night. Then what happened? Then Mr. Rerdell came to Mr. Blackmar and gave to him written reports. Of what? I do not know. He sat with the defendants; he gave to Mr. Blackmar written reports. What were they? I do not know. What did Mr. Blackmar do with them? He handed them to Colonel Bliss. What did he do with them? I do not know. Did he read them? I do not know. Did he know that they were in the handwriting of Mr. Rerdell? I do not know. That is for you.

Still another point: Mr. Bliss, in his opening speech in this case, telling about the confession that Rerdell had once made, and a confession that he would prove in this very trial, says, speaking about the dispatches that Dorsey sent Rerdell, at page 296:

One of them expressed regret that they had parted in anger and begged him to come back, and the other beseeched him to pause in the course upon which he had entered as it would result in the ruin of Dorsey's family. Mr. Rerdell came back to the city with the dispatches in his possession, stating that he was determined to carry out his agreement with the Attorney-General. When he got here—

That is, in Washington—

he fell into the hands of somebody, and from that time on he lost all desire to protect himself and to clear his conscience, but passed altogether under the influence of these defendants. Their ranks were closed up and he stands before you now as one of the defendants, whose testimony against himself—

That is the confession to MacVeagh and James—

will be accepted by the court and by you as absolutely conclusive, and whose testimony will throw a lurid light upon this conspiracy and the relations of the different parties to it.

Mr. Bliss, after this jury had been impaneled, stood before them while Rerdell was sitting with us as a defendant, and said:

The ranks of the defendants are closed up, and he—

Rerdell—

stands before you now as one of the defendants, whose testimony—

Meaning the confessions made to MacVeagh and to Postmaster-General James—

will be accepted by the court and by you, &c.

The question arises, "Did Mr. Bliss know at that time that Mr. Woodward had in his pockets two affidavits made by Rerdell, one made in September and the other in November? Did he know at that time that Rerdell had given his papers over to Mr. Woodward? Did he know at that time that he had offered to challenge the friends of the defendants

from the panel? And so knowing, did he give us to understand that Rerdell had passed from the influence of the Government and was now acting as one of the codefendants? Is it possible that Mr. Bliss would furnish Rerdell with a mask behind which he could gather information from the defendants and sell it to the Government for immunity? Is it possible? Those were the circumstances. I do not say that he knew. I do not know.

Gentlemen, I do not believe that it is the duty of a Government to prosecute its citizens. I do not believe that it is the duty of a Government to spread a net for one of the people whom it should protect. I do not believe in the spy and informer system. I believe that every Government should exist for the purpose of doing justice as between man and man. The mission of a Government is to protect and preserve its citizens from violence and fraud. The real object of a Government is to enforce honest contracts, to protect the weak from the strong; not to combine against the one, not to offer rewards for treachery, not to show cold avarice in order that some citizen may have his liberty sworn away. The objects of a good Government are the sublimest of which the imagination can conceive. The means employed should be as pure as the ends are noble and sacred. The Government should represent the opinions, desires, and ideals of its greatest, its best, and its noblest citizens. Every act of the Government should be a flower springing from the very heart of honor. A Government should be incapable of deceit. The Department of Justice should blow from the scales even the dust of prejudice. Representing a supreme power, it should have the serenity and frankness of omnipotence. Subterfuge is a confession of weakness. Behind every pretense lurks cowardice. Our Government should be the incarnation of candor, of courage, and of conscience. That is my idea of a great and noble Government.

I would like it now if the court would consent to an adjournment.

The COURT. Adjourn the court.

Thereupon (at 3 o'clock and 47 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

WEDNESDAY, MAY 23, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. INGERSOLL. [Resuming.] If the court please, and gentlemen of the jury: The next point to which I call your attention is the withdrawal of the plea of not guilty by Mr. Rerdell. You probably remember the occurrence. I will read to you what he said upon that occasion. I find it on page 2202:

After mature reflection and a full consideration of the whole subject, I have determined to abandon any further defense of myself in this case, and put myself at the mercy of the court and the Government; and if desired to do so by the counsel for the Government, to testify to all my knowledge of any facts with reference to any of the defendants either against or for them, myself included. Therefore, I now in person ask leave to withdraw my plea of not guilty, heretofore interposed, and enter my plea of guilty, and in so doing put myself upon the mercy of the court. I feel this to be a duty I owe to myself, my family, and to truth. I have arrived at this fixed determination upon my own reflections and responsibilities, and without any previous consultation with my counsel, who, I believe, would not have advised me to this course, and whom I now relieve from all and any responsibility for the course I have adopted.

Now, gentlemen, is it not wonderful that if Mr. Rerdell was about to tell the truth as a witness in this case, he could not even withdraw his plea of not guilty without misstating the facts? Is it not wonderful that he felt called upon at that time to tell several falsehoods? He says that he took this step upon his own responsibility. He says that he did it without the advice of his counsel. He tells you that he believes if he had asked his counsel, his counsel would have been opposed to it. He says he is willing to be a witness for the Government if the Government desires it, leaving you to infer that at that time no arrangement had been made for him to be a witness; that it was all in the regions of uncertainty; that he had withdrawn into the recesses of his own mind, and consulting with himself and nobody else had made up his mind to throw himself upon the mercy of the Government and the court, and took that step without even allowing his counsel to know what he was about to do.

But he speaks further on the subject. I read from page 2523. I was then examining him:

Q. How did you come to do it—

That is, to go over to the Government and withdraw his plea—

if you did not make such an arrangement?—A. I finally made up my mind to what I would do. I talked it over the evening before with my counsel—

He so states under oath; and yet when he stood up before this court and withdrew his plea of not guilty, he said he acted without the knowledge of his counsel—

and I went with him to Mr. Merrick's house, went in, told him my object, and he then and there explained to me the law, and I accepted the—

Q. [Interposing.] Did you read the case in 9 Otto?—A. No, sir; I did not.

Q. Who went with you?—A. Judge Wilshire and myself.

Q. Who else?—A. Mr. Woodward.

Q. Where did they find you to take you there?—A. At my house.

Q. Did they come after you in a carriage?—A. Yes, sir; I was waiting for them there.

Q. You had made the arrangement?—A. No, sir; I had made my arrangement with Judge Wilshire that evening.

When he arose and withdrew his plea of not guilty he had the impudence to state that he took that step without having consulted with his counsel.

Q. To do what?—A. To go to Mr. Merrick and tell him what I was determined to do, and he came out and told me, and when he came out, Mr. Woodward came in a carriage with him, and we went down to Mr. Merrick's house.

On page 2524:

[Q. * * * You went to the office of Mr. Merrick?—A. I did.

Q. And now when you came away from there had you made up your mind to plead guilty and take the stand?—A. I had; and before I got there.

You will remember his testimony in answer to a question by Mr. Merrick. I want to be absolutely fair about this matter. The testimony is that Mr. Merrick said to him, "I will make you no promise. You must depend upon the mercy of the court" or of the Government, or something of that kind. "I refuse to make any promise." I read this to show you that the statement he made to the court at the time he withdrew his plea was absolutely false. What next? I will go on a little further. The same man Rerdell, after he had made up his mind to go over to the Government; after he had made up his mind to swear away, if it was within his power, the liberty of S. W. Dorsey, admits, on page 2525, that he endeavored to get \$5,000 from Mr. Dorsey.

On page 2589 Mr. Rerdell swears positively that he did not know that he was to be used as a witness for the Government until he was called in court to take the stand. Let us look at the evidence of Mr. Bliss on page 2590. I will read you what he said:

Mr. BLISS. Your honor, we propose to show, in substance, that this witness, for reasons with which we have nothing to do, connected with his own views of his own safety, from an early period was desirous of being accepted by the Government as a witness; that the counsel in the case refused to communicate with him or to have anything to do with him until, in the presence of his own counsel, he was brought to Mr. Merrick's office, and there the whole thing was explained; and that then for the first time the Government accepted his willingness to be a witness; and they did it under circumstances which held out to him no inducement and which involved no training or anything of the kind by anybody representing the prosecution.

Now, let us go to the next step. I want to be perfectly fair. On page 2591 Mr. Merrick asked Mr. Rerdell this question:

Q. When did you first learn that you would be put upon the stand after pleading guilty?—A. It was the day before my plea was made in court.

Yet when he rose to withdraw the plea he expressed his willingness to go upon the stand for the Government, leaving you to infer that no arrangement had been made, and he afterwards finally swore that he did not know that he was to be called until he was called. Here he says:

It was the day before my plea was made in court.

Let me read the question again and the answer:

Q. When did you first learn that you would be put on the stand after pleading guilty?—A. It was the day before my plea was made in court.

He knew that he was to be put upon the stand. He knew it the day before he withdrew his plea. Yet he swears he did not know that he was to be used as a witness until he was called to take the stand. These things, gentlemen, you must remember.

On page 2515 Rerdell swears that on the Sunday after he got out of jail he proposed to Mr. Lilley to have Lilley act for him, and authorized Lilley to say to the Government that if the Government would accept him he would go on the stand and rebut Vaile. He told him that he had in his possession a letter or two of Mr. Vaile's. Rerdell tells you that he made this proposition on the 16th or 17th of September, 1882, which was after he made the affidavit of June, 1881. On the same page he is asked:

Q. When did you first see Mr. Lilley on that subject?

And he answered:

The day after Mr. Vaile testified in the last trial, I think.

He said it was just after Vaile went off the stand. That is my recollection. In the last trial Vaile testified on the 4th of August, 1882. So about that time Rerdell, according to his testimony, went to Lilley and made a proposition to sell out then. When he made the affidavit of July 13, 1882, the trial was then in progress. The very next month, August, while the trial was still going on, that same man, having made the affidavit of July 13, 1882, went to his attorney, Mr. Lilley, and authorized him to say to the Government that Mr. Rerdell would take the stand to swear against Mr. Vaile. Remember another thing, gentlemen. The only thing he offered to do then to insure his own safety was to swear against Vaile. He did not offer to swear against Dorsey. He did not authorize Mr. Lilley to tell the Government about the pencil memorandum and the tabular statement and his letter to Bosler and Dorsey's letter to Bosler, and the Chico letter. Not a word. He simply

went and wanted to sell some letters he had that had been written by Vaile. Why did he make that offer? Because that was all he had.

On page 2517 he says that nothing was said about pardon, but he says that Lilley told him that he thought he could get him off. What does that mean? That means pardon. On page 2518 he swears that he saw Woodward in November in Hartford, and Woodward and he wrote out the statement, covering, I believe, about seventy pages of legal cap. Then Mr. Rerdell, on page 2519, swears that he never made an affidavit after that. Then he admits, on the same page, that the day before he came into court he met Mr. Woodward and made another affidavit. That was supplementary to the first. In the mean time he found some new papers. So we find, according to his testimony, these affidavits:

On page 2521 we find that he made an affidavit in June, 1881. Remember, gentlemen, that he swore to that affidavit three or four times.

He made another affidavit in July, 1882, and another in September and November of the same year, and another in February, 1883. And yet he swears that he was not to have immunity.

Now, gentlemen, one point more about his plea of guilty. After having withdrawn his plea of not guilty, after rising in court and solemnly saying that he was guilty, and that he was guilty as charged in the indictment, which says that Rerdell conspired with Brady and Vaile and Miner and John W. Dorsey and S. W. Dorsey and Turner, that they all conspired, and that all the false affidavits and false petitions and false everything else mentioned in the indictment were made for the common benefit of all, then on page 2570 he solemnly swears that he never entered into any conspiracy or agreement with the defendants mentioned in the indictment or any of them for the purpose of defrauding the Government. When I asked him, With whom did you conspire, when did you conspire, and what was the conspiracy? he could not tell; and yet he had stood up in court and admitted that he was guilty, and then on oath denied it. Did he not swear himself that after the division was made in the routes Stephen W. Dorsey had not the interest of a cent in any route that went to Vaile or Miner? Did he not also swear that Vaile and Miner had not the interest of one cent in any route that went to Stephen W. Dorsey? Did he not swear that they were not mutually interested, and yet did he not stand up in court, and by a plea of guilty say that they were not only mutually interested, but he was one of the interested parties himself? It seems impossible for that man to tell the truth on any subject whatever. On page 2571 he swears he never made any agreement with Vaile to defraud the United States. He stood up in court and admitted that he had. He swore that he never made any agreement with John W. Dorsey. He admitted that he had. He swore that he never made any agreement with S. W. Dorsey, and yet stood up in court and admitted that he had.

Now let us see whether he expected immunity. He swears that he was taken to Mr. Merrick's office by Mr. Woodward and his counsel. What Mr. Merrick told him we find on page 2590:

Q. And did I not say that, under the circumstances, the Government would have nothing to do with you unless you pleaded guilty?—A. You did.

Q. And that if you pleaded guilty you had nothing to trust to but the mercy of the Government and the court?—A. That is what you did, sir, exactly.

Q. Did I not say to you that you must look to the limit—

Then there was some discussion and then on page 2591:

Q. Did I not say to you that you must look to the limit of that punishment?—A. You did.

Q. And did I not say to you also that I had nothing to promise and you had nothing to hope?—A. You did.

Mr. MERRICK. I went to the extreme, your honor; I want that understood.

Q. I told you if you wanted to be used by the Government you should look only to the mercy of a just Government and court. When did you first learn that you would be put upon the stand after pleading guilty?—A. That very day; it was the day before my plea was made in court.

Now, on page 2523:

Q. Did Woodward and Wilshire bring a book with them and read to you a case?—A. They did not.

Q. Did they at any time?—A. No, sir.

Q. Did either of them?—A. Neither.

Q. Was your attention called to a case?—A. Yes, sir.

Q. What case?—A. Mr. Wilshire called my attention to a case. I think he said the whisky cases.

Q. Did he read you the case?—A. He did not.

Q. Did he tell you what it was?

The court would not allow us to prove what passed between the counsel and the gentleman.

Q. Was it not arranged that Mr. Woodward was to come to your house and then take you to one of the attorneys for the prosecution, for the purpose of arranging the terms and conditions upon which you were to take the stand?—A. It was not.

In another place he swears that it was, and that the arrangement was carried out.

The next point I wish to make, if the court please, is that whenever what is called an accomplice or an informer turns what is called State's evidence, and whenever he is permitted by the court to be sworn as a witness in a case, there is then upon the part of the Government an implied promise that if he tells the truth he shall not be punished. I read from the Whisky cases, 9 Otto, page 595. Mr. Justice Clifford delivers the opinion of the court. I read first the first paragraph:

Accomplices in guilt, not previously convicted of an infamous crime, when separately tried are competent witnesses for or against each other; and the universal usage is—

The universal usage is—

that such a party, if called and examined by the public prosecutor on the trial of his associates in guilt, will not be prosecuted for the same offense, provided it appears that he acted in good faith and that he testified fully and fairly.

Then, on page 598:

Waiving for the present the question whether the district attorney may contract with an accomplice of an accused person on trial, that if he will testify in the case his taxes shall be abated, or that he and his party shall be exempt from internal revenue taxation, the court will consider in the first place whether the district attorney, as a public prosecutor, may properly enter into an agreement with such an accomplice, that if he will testify fully and fairly in such a prosecution against his associate in guilt he shall not be prosecuted for the same offense; and, if so, whether such an agreement, if the witness performs on his part, will avail the witness as a defense to the criminal charge in case of a subsequent prosecution.

Considered in its full scope, the agreement is that in consideration of the defendants testifying against their coconspirators who were indicted for defrauding the revenue, they, the defendants, should have a full and complete discharge, not only from all criminal liability, but from all penalties and forfeitures they had incurred, and from liability for their internal-revenue taxes which they had fraudulently refused to pay, giving them full and complete indemnity, civil and criminal, for all their fraudulent and illegal acts in respect to the public revenue.

Courts of justice everywhere agree that the established usage is that an accomplice duly admitted as a witness in a criminal prosecution against his associates in guilt, if he testifies fully and fairly, will not be prosecuted for the same offense, and some of the decided cases and standard text-writers give very satisfactory explanations of the origin and scope of the usage in its ordinary application in actual practice.

The COURT. What point are you now making to the court?

Mr. INGERSOLL. I am making this point: It appears from the evi-

dence that Mr. Wilshire, the attorney of Mr. Rerdell told him at the time he was making up his mind whether he would go to the Government or not, about the whisky cases. I make the point that when an accomplice turns State's evidence the State cannot prosecute him after that if he testifies fully and fairly; that the usage is immemorial, and that there is not an exception in the records of all the cases in the books; consequently that when Mr. Merrick told him, "You must look simply to the Government and to the court and you will have just exactly what the law gives you and no more," his remarks meant that the law gave him perfect immunity, provided he went upon the stand and swore truthfully.

The COURT. You have demonstrated, as far as you have been able to, that he has not sworn truthfully.

Mr. INGERSOLL. *He has not*; HE HAS NOT; and if the Government will act fairly with him he will get no immunity.

Now, on page 602:

Other text-writers of the highest repute, besides those previously mentioned, affirm the rule that accomplices, though admitted as witnesses for the prosecution, are not of right entitled to a pardon; that they have only an equitable right to a recommendation to the executive clemency; and they all hold that prisoners under such circumstances cannot plead such right in bar of an indictment against them, nor avail themselves of it as a defense on their trial.

None of these propositions can be successfully controverted, but it is equally clear that the party, if he testifies fully and fairly, may make it the ground of a motion to put off the trial in order that he may apply to the executive for the protection which immemorial usage concedes that he is entitled to at the hands of the executive.

There he quotes 3 Russell on Crimes (9th American Edition), page 597.

When he went to the Government he understood the law to be that if he swore fully and fairly, or if he swore in such a way that they could not prove that he did not swear fully and fairly, he was to have immunity. He understood that the more he swore against the defendants the better was his chance for immunity. He knew that the Government would never complain of any lie he swore against the defendants.

Now, the next question is what is the law of accomplices, of informers? There was a remark made by Mr. Bliss in his speech, that they had plenty of evidence in this case without the testimony of Mr. Walsh or Mr. Moore or Mr. Rerdell; plenty of evidence without the testimony of Mr. Rerdell. If that had been so then the Government had no right to put Mr. Rerdell on the stand. There is but one excuse for using the testimony of a man who pleads guilty, and that is that without his testimony a conviction cannot, in all probability, be obtained. And upon that point I refer to 10 Pickering, 478, and to 9 Cowen, 711; and not only upon that point, but upon the point I made at first, that whenever you put such a man upon the stand that of itself amounts to a promise of absolute immunity:

The object of admitting the evidence of accomplices is in order to effect the discovery and punishment of crimes *which cannot be proved* against the offenders without the aid of an accomplice's testimony. In order to prevent this entire failure of justice recourse is had to the evidence of accomplices.—1 Phillips on Evidence., 107.

If, therefore, there be sufficient evidence to convict without his testimony, the court will refuse to admit him as a witness.—Roscoe's Criminal Evidence, 127.

Neither do I believe that Mr. Rerdell had a right to go upon the stand until his case was finally disposed of. Precisely the same language is used by Wharton on Criminal Evidence, 439:

The law confesses its weakness by calling in the assistance of those by whom it has been broken. It offers a premium to treachery, and destroys the last virtue which

clings to the degraded transgressor. On the other hand, it tends to prevent any extensive agreement among atrocious criminals, makes them perpetually suspicious of each other and prevents the hopelessness of mercy from rendering them desperate.—Chitty's Criminal Law, 82.

The admission of accomplices as witnesses for the Government is justified by the necessity of the case, it being often impossible to bring the principal offenders to justice without them.—Greenleaf on Evidence, 379.

Obviously, in general, the least guilty morally and least hardened of several participants should be selected as State's evidence. And it should appear probable that his testimony will secure a conviction, which, without it, cannot be presumably had.—Bishop on Criminal Procedure, 1162.

An accomplice is used by the Government because his evidence is necessary to a conviction.

That is the opinion of Mr. Justice McLean, in 4 McLean's Circuit Court Reports, 103.

An accomplice, although a competent witness against the associates and partners of his guilt, is nevertheless only admissible from reasons of judicial necessity and policy, and in furtherance of the essential ends of public justice.—People vs. Whipple, 9 Cowen's Reports, 707.

I also refer to the case of Ray vs. The State, 1 Iowa, 316, in which the court says:

The rule appears to have prevailed in England that an accomplice could not be permitted to testify without first obtaining an order from the court (Criminal Circuit Court Cases, page 51). The reason of this rule is that courts will not permit a resort to testimony so foul unless the exigencies of the case imperiously require it; and even then they will exercise discretion with great caution, unless the witness can be corroborated with other testimony. Besides an implied pardon is held out to the witness, which ought not to be done unless justice can be promoted by a punishment of the greater offender by extending a pardon to the one less tainted with guilt.

We think the safer practice is not to permit an accomplice to be brought into court as a witness without an order of the court for that purpose, and that the application ought to show: 1st, that there is no other witness by whom the offense can be proved; 2d, that the witness is not more guilty than the person on trial; and 3d, that the testimony can be substantially corroborated.

The COURT. What authority is that?

Mr. INGERSOLL. Ray vs. The People, 1 Iowa, 316.

The COURT. It is not the law of this court. According to that decision the court would have to try the other offenders and decide both the law and fact before coming to the consideration of the question whether this witness was admissible or not. It is a question addressed to the discretion of the prosecuting officer. If he thinks the witness is necessary the court will not interfere with his management of the case.

Mr. MERRICK. If not improper I may remark that all those cases refer to a condition of things prior to the trial in which the party appears as the witness.

Mr. INGERSOLL. The usual question is—and the court determines that question—whether a man shall be a witness or not.

The COURT. How can the court determine that without passing upon the evidence in the case? That is not the duty of the court; it belongs to the jury.

Mr. INGERSOLL. The prosecuting attorney has to pass upon that himself when he makes up his mind to put him upon the stand; and he only has the right to do that when he believes that no conviction can be had without that testimony.

The COURT. Then it belongs to the prosecuting attorney.

Mr. INGERSOLL. I go further than that, and say that the prosecuting attorney cannot do that without consultation with the court, and without saying to the court that he believes no conviction can be had without that testimony.

The next point I make is that the jury must take the entire testimony of the accomplice or must throw it entirely away.

Mr. MERRICK. May I be allowed to suggest a point which probably you would like to comment upon—that all these cases refer to accomplices prior to the trial. My own opinion in reference to the case was that I would not put Rerdell upon the stand until he had pleaded guilty.

The COURT. I do not see the ground for the distinction between the cases, but I am very clear that that Iowa case is not to be regarded as authority by me on this trial. Undoubtedly, when an accomplice goes over to the Government and offers his testimony, he does it always in the hope of pardon or immunity from prosecution. It needs no citation of Judge Clifford's opinion or any other decision to show that that is always the hope of the accomplice.

Mr. MERRICK. Certainly.

The COURT. He expects, of course, that he will not be prosecuted further, and the jury are to accept his testimony with that understanding.

Mr. INGERSOLL. That is all I want at present.

Mr. MERRICK. I have not denied that.

Mr. INGERSOLL. I want it understood, if the court please, that I shall argue to the jury that at the time he made up his mind to go to the Government, he understood that that meant immunity.

The COURT. Oh, well, of course it did.

Mr. INGERSOLL. The next point is that the court have to take all his story or none; and I read from the second volume of Starkie on Evidence, side-page 24:

In judging of the credit due to the testimony of an accomplice, it seems to be a necessary principle that his testimony must be wholly received as that of a credible witness or wholly rejected. His evidence on points where he is confirmed by unimpeachable evidence is useless. The question is whether he is to be believed upon points where he received no confirmation. And of this the jury are to form their opinion from the nature of the testimony, his manner of delivering it, and the confirmation which it receives derived from other evidence which is unsuspected. If his character be established as a witness of truth, he is credible in matters where he is not corroborated. If, on the other hand, notwithstanding the corroboration upon particular points, doubts and suspicions still remain as to his credit, his whole testimony becomes useless.

That is the point I want to make. If they are only to take his evidence where it is corroborated, they might as well have had the corroboration in the first place without him.

Now, gentlemen, the evidence, in my judgment, shows, and shows beyond a doubt—and I believe it is now admitted—that at the time Mr. Rerdell made up his mind to go to the Government he expected that he was to have absolute immunity. You must judge of his evidence in the light of that fact, in the light of that knowledge, in the light of what had been told him by his counsel. Now, it is for you to say. You know something of this man. You have seen him from day to day. You saw his manner upon the stand. Why, they tell you that at one time he was overcome with emotion, and that that is evidence that he was telling the truth. It may be that there is left in that man some little spark of goodness still. When he was swearing, or endeavoring to swear, away the liberty of the man who had been his friend, may be at that time the memory of the past did for a moment rush upon him. He may have remembered the thousand acts of kindness; he may have remembered the years of liberality; he may have remembered the days that he had spent beneath that hospitable roof; he may have remembered the wife and children; he may have remembered all these things,

and for just that moment he may have realized what a wretch he was. In no other way can you account for his having emotion.

But I am about through with that gentleman. I shall not take up your time in the remainder of my speech by commenting upon Mr. Rerdell. Let us finish his testimony now; let us put him out of sight; let us put him in his coffin, close the lid, nail it down:

First nail—affidavit of June 20, 1881; drive it in.

Second nail—the letter of July 5, 1882, when he says that affidavit of 1881 was made by the persuasion of Bosler; drive it in.

Third nail—affidavit of July 13, 1882, where he swears that they were all perfectly innocent.

Fourth nail—the pencil memorandum; drive that in.

Fifth nail—the tabular statement that gave 33½ per cent. to Brady; drive it in.

Sixth nail—his pretended letter to Bosler telling about the advice of Brady; drive that in.

Seventh nail—the letter he pretends that Dorsey, on the 13th of May, 1879, wrote to Bosler, the copies being made by Miss White; drive that in.

Wind his corpse up in the balance-sheets from the red books made by Donnelly.

Then you want a plate for his coffin. Let us paste right on there the Chico letter, April 3, 1878.

Now, we want grave-stones. Let us take the red books, put one at his head and one at his feet.

And let his epitaph, written upon the red book placed at his head, be—

Up to this moment I have been faithful to every trust.

My prayer to Gabriel is, “When you pass over that grave, don’t blow.” [Laughter.]

Mr. DONALDSON (the crier). Come to order, gentlemen.

The COURT. Speak to the ladies.

Mr. INGERSOLL. Let him sleep. There are, there never were, there never will be twelve honest men who will deprive any citizen of his liberty upon the evidence of a man like Mr. Rerdell. It never happened; it never will.

And now, gentlemen, it becomes my duty to answer a few points made by the gentlemen who have addressed you on behalf of the Government. The first gentleman who addressed you was Mr. Ker, and he had something to say—considerable to say—about what are known as the Clendenning bonds.

They claim, gentlemen, first, that an immense fraud was in view when these proposals—I think they are proposals—with accompanying bonds and oaths of sureties were sent to Mr. Clendenning. I wish to give you, in the first place, my explanation of this paper. See if I understand it. If you sent this paper to that officer or to that gentleman as a form to guide him in making up the bonds, you would only fill up that portion of the bond in giving him a sample which you wanted him to fill up, and you would fill it up in order to show him exactly how he was to fill it up; and you would leave out that part which was already filled up in the bond. That is exactly what was done in this case. There was not one of those bonds that had an oath of the surety or the names of the sureties, because they were unknown. The names were unknown, and the amounts that the postmaster would certify to, and so all that was left in blank in the bond sent. But this

being only a sample, it was sent to him so that he might know how to fill up the bonds that were sent. Consequently that portion which was absolutely blank in the bond sent would be filled up as a guide to him, and that portion which was filled up in the bonds sent would be left blank in the guide, because he had nothing to do with that part. Now, that is all there is to it.

What was left out, as they claim? Why, they claim that the name of the bidder was left out and the amount of the bid. It makes no difference. That is not the slightest evidence of fraud, is it?

What was the next thing? They were never used, never. No bond included in that bundle was ever accepted by the Government. No bonds were ever made, no contract ever based upon them, not a solitary cent taken from the Government by those papers. Why, then, this secrecy? Because when a man is in this business he does not want anybody else to know that he is bidding, in the first place; and, in the second place, he does not want anybody to know the amount of the bid. If the amount of the bid is put in, then the persons going security will know it, and they may tell. The postmaster who approves the security will know it, and he may tell. The object of the secrecy is not to defraud the Government, but to prevent other people finding the amount of the bid and then underbidding. That is the object, and it is the only object. And yet this little, poor, dried-up bond, soaked in the water of suspicion, swells almost to bursting in the minds of the counsel for the prosecution. There is nothing of it. It was never worthy of mention, in the first place. You will never think of it when you retire. It will never enter your minds; but if it does, remember that the object of the secrecy was simply as a precaution against other bidders, and had nothing whatever to do with the Government.

There is one other point. I believe Mr. Dorsey did say, in his examination-in-chief, that he did not talk to anybody about it, and it afterwards occurred that he did go and ask Mr. Edmunds whether what he had asked Clendenning to do was illegal or improper. To that contradiction you are welcome.

Mr. Ker gives the date of Boone's circular to postmasters asking for information, and says it was dated December 1, 1879. Thereupon Mr. Merrick corrects him, and says it was in 1878. The court does the same. As a matter of fact, these circulars were dated December, 1877. Gentlemen, I just simply speak of this to show how easy it is for people to be mistaken. Those circulars were gotten up for the purpose of getting information before bidding. All the bids were put in in February, 1878. The circulars were sent out, I believe, in November and December, 1877. And yet upon that one point Mr. Ker is mistaken two years.

On page 4512 Mr. Ker states that Miner, in April, 1878, said to Moore that it all depended upon affidavits of the contractors, and that "they were all good affidavit men." The object of this, if it had an object, was to show that this conspiracy was entered into with Moore, and that S. W. Dorsey was a part of it in April, 1878. The evidence of Moore is that the conversation took place, not in April, but in July, 1878, at the city of Denver. And yet Mr. Ker tells you that it was in April, 1878. It is not, perhaps, a very material point, but it simply serves to show you the manner in which this evidence is repeated to you by the counsel for the prosecution.

At page 4537 Mr. Ker says that before J. W. Dorsey went West he made an arrangement with his brother to sell out his interest for \$10,000; that he did this before he started West; that he did it before there was any service put on; and that these contracts were taken at such low figures;

yet John W. Dorsey had raised his interest up to \$10,000. Mr. Ker tells you that the evidence shows that before any service was put on and before John W. Dorsey went West he tried to sell out his interest for \$10,000. Now, what was the object in making this statement, unless it was pure forgetfulness? Why it was to connect Vaile with this business some time in April, 1878.

On pages 4100 and 4102 J. W. Dorsey swears that he was here in Washington in November, 1878; before that time he had gone to the Tongue River route; he had come back from Bismarck; and it was then, not in April; it was then, not before he went West; it was then, not before any service was put on, that he talked with Vaile about selling out to him for \$10,000; and it was in November that he left the instructions for his brother to sell to Vaile. It was not in April; it was not before he went West; it was not before any service was put on.

At page 4540 Mr. Ker states that—

Dorsey held thirty-three routes, and there was not one of them, I suppose, that was not expedited to the fullest extent.

What evidence is there of that? Is there any evidence that any route of Dorsey's was expedited not mentioned in this indictment? Did not Mr. Ker know whether the routes had been expedited or not? Did not I offer in this court to prove what was done with every solitary route we had? I say to the gentleman that the other routes were not expedited. I say to the gentleman that only two other routes were, and we were not interested in them. And I say also that they know the record, and they knew the record when this statement was made; but they may have forgotten it. But is it fair, gentlemen, for a prosecuting officer to state to you that he supposed all the routes of Dorsey were expedited? One of those in the indictment was not expedited; and not a route outside of the indictment belonging to Dorsey, in which he had an interest, was expedited. So much for that statement.

Mr. Ker informs you that in the latter part of April, 1878, there was a quarrel because of Vaile's coming in and filing his subcontracts. (Page 4542). Vaile did not come in in April, 1878. The contract by which he did come in was dated the 16th day of August, 1878, and executed, as a matter of fact, in the following September or October. The quarrel, gentlemen, did not occur until December, 1878. And yet Mr. Ker tells you that that quarrel was in April, 1878. This is testified to by Vaile, by Miner, by S. W. Dorsey; and the contract that was put in evidence shows that Vaile had no interest at least until the date of that contract, which was the 16th of August. You will find also, gentlemen, that it was in August that Brady telegraphed to Vaile and asked him what service he was going to put on. Now, was this said for the purpose of getting all these defendants together in April, 1878, instead of December, 1878, or April, 1879? And were you so told that they had a quarrel in April, when all the testimony shows that it was in December, simply to get these parties together eight months earlier? I think gentlemen who state evidence to the jury ought to state it as nearly correct as they possibly can. Mr. Ker may have done so, but he has been exceedingly unfortunate in his attempt.

Mr. KER. Now, if your honor please, I wish to make no personal statement, but I read the evidence to the jury, and I am not responsible for a misprint. I find that I said:

In the last part of April, 1878, there was a quarrel because of Vaile's coming in and filing the subcontracts. I read from page 4168—

And there it explicitly states December.

The COURT. I have observed throughout this whole trial that that was a habit, of Mr. Ker particularly, stating one month or one year for another in the heat or excitement of argument. He was thinking of one thing or one date and probably would mention another. We are liable to make mistakes of that kind. Although I have no doubt that Mr. Ker knew the facts, yet I understood that these slips were inadvertent.

Mr. INGERSOLL. Whether inadvertent or not——

Mr. MERRICK. [Interposing.] He read the testimony, and it is there.

Mr. INGERSOLL. Then if he read it, he indorsed it; he read it on his side; he indorsed it as true when he read it as authority.

Mr. BLISS. It says December, 1878.

Mr. KER. I have given you what I said. In the very next paragraph the correct date is given, in December. Vaile came in in August; and they made up their agreement in October; and in December there was a quarrel. I did not give it as my own version; I read the testimony taken from the record.

The COURT. It was manifestly an inadvertence.

Mr. INGERSOLL. Very well, I have the right to answer an inadvertence.

The COURT. Yes.

Mr. INGERSOLL. When they state that it is in April, and all the evidence shows that it was in December, I have the right to answer.

The COURT. The counsel, at the same time he committed the inadvertence, read the evidence which showed that it was an inadvertence.

Mr. MERRICK. The evidence is a part of his statement, a paramount part, and he merely stated his construction of it.

Mr. INGERSOLL. Very well; we will see.

At page 4546 you are told by Mr. Ker that——

Nobody ever heard of expedition on a route before.

The report of the Postmaster-General of November 18, 1882, gives a list of expedited routes commencing in 1872.

Mr. BLISS. I object to that. We tried to put in that report, and it was ruled out on their objection. I submit that they cannot refer to it now in arguing to the jury.

The COURT. There was no such evidence admitted. Since this argument began there has been some reference made to one case of expedition in 1876.

Mr. BLISS. I waived the objection.

The COURT. There was an effort to waive an objection to it, but it was not admitted in evidence. There was a report made to Congress containing a reference to that one case in 1876, and Mr. Bliss proposed that all the papers in that case be put in evidence out of time and out of place, but that was not done; so that the only thing we have on that subject is that report of that case in 1876.

Mr. WILSON. More than that, your honor——

Mr. INGERSOLL. [Interposing.] I will answer, in a word: If there was no evidence what right had Mr. Ker to make the statement that expedition was never known until that time?

Now, I will take the next step. We proved what form of contracts had been in the Post-Office Department for twenty years, and proved that in every one of them there was a clause for expedition. So much for that evidence, gentlemen.

At page 4546 Mr. Ker tells us that J. W. Dorsey testified——

That the routes were taken so low as to cut out other people, but that they knew they were to be expedited, and they knew they were to be increased.

J. W. Dorsey testified upon that subject, and his testimony will be found at page 4085:

Q. Did you have an arrangement by which you should bid an extremely small amount on the routes, with the further understanding that the service was to be increased and expedited?—A. No, sir; I never thought of such a thing.

And in his entire testimony in chief and cross, I believe there is not another question on that subject. Mr. Ker says:

John Dorsey has given the explanation that the routes were taken so low as to cut out other people, but that they knew they were to be expedited.

It may be said that does not apply to his testimony. Let me read the next line:

Now, I have given you this general outline of what has been testified to by the different people who were engaged in this conspiracy.

On page 4549, referring to the letter of John M. Peck, which was in fact written by Miner, Mr. Ker says:

Cedarville ought to have had as many mails as the other points between, according to the order, but they were going to supply it only once a week.

As a matter of fact, gentlemen, this letter was written on the 22d of October, 1878, and at the time the letter was written the mail, according to the contract, was carried only once a week on that route, and consequently Cedarville would have had exactly the same mail as any other point; that is to say, once a week.

Page 556 of the record shows that three trips a week were put upon this route to Loup City with a schedule of thirteen hours, but not until the 10th of July, 1879, nine months after this letter was written.

On page 4609 Mr. Ker, in commenting upon an affidavit on the Toquerville and Adairville route, reads from the evidence of John W. Dorsey, citing page 3945, and ends at this question and answer:

Q. It was done so entirely, was it not?—A. It ought to have been so.

Now, let me read you the balance:

Q. Was it not so done?—A. No, sir.

Q. It was not?—A. No, sir.

Q. For whose benefit was it done?—A. He—

Meaning Rerdell—

stole \$5,000 on that route, or very nearly that—\$4,900 on that very route.

Q. When did he steal that \$5,000?—A. About a year ago or a year and a half; I don't remember the time.

Q. From whom?—A. From Mr. Bosler and myself.

Q. At what time?—A. I should think in February, 1882.

The question now arises, did Mr. Rerdell take this money as charged? Read now from the record, at pages 734 and 735, and you will find in the last line of the tabular statement introduced in this case that on this very route \$4,827.83 was paid to M. C. Rerdell as subcontractor on that route. We also find that it was paid on the 4th of February, 1882. This is the money that Dorsey swears Rerdell stole, and that gentleman never took the stand to deny it.

At page 4616, Mr Ker, after going all over the evidence with regard to the affidavits as to the impossibility of the number of men and horses doing the service rendered necessary by the affidavit, comes to the following conclusion: That under the oath the proportion was as 9 to 23; that under the oath of Johnson the real proportion

should have been and was as 8 to 22. In other words, the real proportion, according to Mr. Ker's own statement, would have taken more money from the Treasury than the wrong proportion made under the fraudulent affidavit, and that was as 9 to 23. 9 into 23 goes twice and five-ninths; that is, 255 per cent. and a fraction. That is the fraudulent proportion. Mr. Ker says that the real proportion was not as 9 into 23, but as 8 to 22. 8 into 22 goes twice and six-eighths; that is to say, $2\frac{3}{4}$; that is to say, 275 per cent. The fraudulent proportion, according to his claim, only gave us 255 per cent. The real proportion, which Mr. Ker admits was right, according to the evidence of Johnson, would have given us 275 per cent. In other words, we got 20 per cent. less under the fraud than we would under the evidence of Johnson that Mr. Ker admits to be correct. Finding that it is 20 per cent. less under the fraudulent affidavit than under Johnson's estimate, he shouts fraud.

On page 4617 Mr. Ker tells us that Sanderson "had no more to do with the route than you or I had." On page 731 I find that Mr. Sanderson drew all the money on the route from Saguache to Lake City, I believe, with one exception—the third quarter of one year—1878, it may be. He drew every dollar upon that route, anyhow, up to February 17, 1882, except for one quarter. And yet Mr. Ker stood up before you and said that Sanderson "had no more to do with the route than you or I had."

Let us see if we have any more evidence. I find on page 3271 a subcontract executed on route 38150, from Saguache to Lake City, by Miner, Peck & Co. to Sanderson for the whole time until June 30, 1882. I find that subcontract is signed by John R. Miner and J. L. Sanderson. This contract was to be from the 1st of July, 1878, and was made the 15th of May, 1878, and here it is in evidence. The evidence is that the contract was made between Miner, Peck & Co. and Sanderson; the evidence also is that Sanderson drew the pay. And yet Mr. Ker stands up before you and says that Sanderson "had no more to do with the route than you or I had."

The subcontract, gentlemen, states that Sanderson is to have the entire pay, and it was before the contract term began. So much for that.

Mr. KER. When was it filed?

Mr. WILSON. That does not make any difference.

Mr. INGERSOLL. "When was it filed?" There was a trial in my town of a suit against the city, I believe, for allowing a culvert to get filled up and flood a man's cellar. They brought in evidence to prove, don't you see, that the culvert was not filled up, and one witness swore that the day before the rain he saw a dog go through there. One of the jurors got up and said that he would like to ask a question; he said, "What was the color of that dog?" [Laughter.]

On page 4631 Mr. Ker states that during the investigation by Congress—

Contractors got out printed letters and sent them to every subcontractor upon every star route in the country, asking them to write to their members of Congress urging their members of Congress to vote for this appropriation.

On page 1346 is Rerdell's letter upon this very route, in which not one word is said about the contractor doing anything one way or the other. There is no evidence that any other letter was written on that route. I call your attention to it to show how the prosecution strained every possible point, and how they endeavored to patch and piece and putty and veneer this evidence. Mr. Miner wrote a letter (page 669). I do not remember any other evidence upon this subject. And certainly it

would be impossible to write a milder letter than Mr. Miner wrote. He did not ask the people to get up petitions against reduction, or ask for more service. Here is what he says, and I will read you Mr. Miner's letter :

It will be well for the people of your section to send to the member of Congress from your district such petitions as will express their opinions on the subject of this reduction.

Truly, yours,

JNO. R. MINER, *Ag't.*

Could you write a milder letter than that, to save your life, and refer to the subject? Could you write a fairer letter than that, to save your life? He simply says :

It will be well for the people of your section to send to the member of Congress from your district such petitions as will express their opinions on the subject of this reduction.

He does not say, "Get up petitions against it." He does not say, "Send those petitions to your member of Congress and tell him to do what he can to prevent it." Not one word of that kind. He simply says to send—

Such petitions as will express their opinions on the subject of this reduction

Yet that is considered as evidence of fraud; that is considered as evidence of conspiracy.

The next point made is that Mr. Ker states, at page 4632, that Brady endeavored to bribe the members of Congress into making this appropriation by doubling every star route in the Southern and Middle States, and did so during the Congressional investigation. What are the facts? The deficiency bill passed April 7, 1880. That appropriated money only for the purpose of carrying the mails up to June 30, 1880. The regular appropriation bill was passed at the same session, and appropriated money to carry the mails from the 1st of July, 1880. Now let us see if Brady doubled the trips in these Southern and Middle States during that investigation. On page 3393 Brady says :

Practically on July 1, 1880, we doubled up the entire service for all the Southern and Middle States.

This was after the deficiency bill had passed; it was after the money appropriated by that bill had been expended; and it was paid for out of the regular appropriation for the Post-Office Department.

Yet that was a bribe. It just shows that Congress by the regular appropriation indorsed the policy of Mr. Key to have a daily mail to every place where there was a county-seat.

At page 4652, on the route from Mineral Park to Pioche, there were two petitions, marked 17 K and 18 K. It is somewhat singular that the Government brought no persons whose names are on these petitions to show that they had not authorized their names to be signed thereto, but they brought persons to show that the signatures were not genuine.

On page 1621 the witness Wright swears that the names are the same on both petitions. He is then asked if he knows the signatures of any other people, and he says "Yes." He then says that the signature of John Deland is not genuine. He swears that he knows nearly every one of the people. He is then asked whether these signatures are in the handwriting of the people, and he replies that he thinks not. Then he is asked as to the signature of Cornell, and he says :

That is not in his handwriting.

Here is his cross-examination, gentlemen :

Q. Do you know James Stevens?—A. Yes, sir.

- Q. Do you know his handwriting?—A. No, sir.
- Q. Do you know J. Logan?—A. Yes, sir.
- Q. Do you know his handwriting?—A. Yes, sir.
- Q. Is that his signature?—A. I think it is, sir.
- Q. Do you know Joseph Mercer?—A. Yes, sir.
- Q. Is that his handwriting?—A. I do not know his handwriting.
- Q. Do you know Charles N. McLean?—A. Yes, sir.
- Q. Do you think that is his signature?—A. I am not acquainted with it.
- Q. Do you know Mr. Morrow?—Yes, sir.
- Q. Is that his signature?—A. I do not know his signature.
- Q. Do you know Kimble Bros.?—A. Very well, sir.
- Q. Is that their signature?—A. I believe so.
- Q. Do you know T. B. Shipp?—A. Yes, sir.
- Q. Is that his signature?—A. I believe so.
- Q. Do you know W. A. Hartt?—A. I know him. I do not know his signature.
- Q. Do you know J. M. McArthur?—A. Yes, sir; but not his signature.
- Q. Do you know Mr. J. Kinsley?—A. I do not know his signature.
- Q. Do you know Henry Goble?—A. I do not know him.
- Q. Do you know R. McClure?—A. I know him.
- Q. Is that his signature?—A. I think so.
- Q. Do you know anybody by the name of J. W. Prendergast?—A. Yes, sir; I know him.
- Q. Is that his signature?—A. I am not acquainted with it.
- Q. Do you know C. E. Warner?—A. I am not acquainted with his signature. He has been dead a good many years.
- Q. Do you mean before 1878?—A. No, sir.
- Q. Do you know N. W. Clark?—A. I believe that to be his signature, sir.
- Q. J. R. Smith?—A. I do not know him.
- Q. John Telford?—A. I do not know him.
- Q. Ira Duncan?—A. I know him.
- Q. Is that his signature?—A. I do not think it is.
- Q. Do you know M. B. King?—A. I know him, but I do not know his signature.
- Q. On the second page, you will recollect here are eleven names which you stated you thought were in the same handwriting. Do you know in whose handwriting they are?—A. I do not, sir.
- Q. You are not acquainted with it?—A. No, sir.
- Q. The next five names appear also to be in one handwriting. Do you know Mr. Street?—A. Very well, sir.
- Q. Mr. Cornell?—A. Very well, sir.
- Q. Mr. Despain?—A. Very well.
- Q. J. Boner and John Boner?—A. I know both the Boners.
- Q. Do you know their writing?—A. Yes, sir.
- Q. And Street's?—A. Yes, sir.
- Q. And Cornell's?—A. Yes, sir.
- Q. And you say these are not their signatures?—A. I think that is the signature of Mr. Street only.
- Q. You say that is Mr. Street's signature?—A. Yes, sir.
- Mr. INGERSOLL. I will let the jury judge whether he wrote them all.
- Q. What kind of a man is Mr. Street?—A. An attorney at law.
- Q. Where does he live?—A. Tombstone, Arizona.
- Q. Where did he live in 1878?—A. At Signal.
- Q. What is that name? [Indicating.]—A. John Falvey.
- Q. Who is he?—A. He is an old gentleman; a notary public and justice of the peace.
- Q. At Signal?—A. No, at Cedar Valley mining district.
- Q. Was he a justice of the peace at that time?—A. He has been for a great many years, and I think at that time was justice of the peace.
- Q. Who is Mr. Jerome?—A. A miner, sir.
- Q. Do you know him?—A. Very well, sir.
- Q. Do you know Mr. Clark?—A. Yes, sir; he is a rancher.
- Q. What kind of a man is Mr. Clark?—A. A man of very high character, indeed, sir.
- The COURT. Do you say that is Mr. Clark's signature?
- The WITNESS. Yes, sir.
- Q. I hand you another paper marked 12 P, old number, and will ask you if you find on the face that it bears the signature of Mr. Clark?—A. Yes, sir.
- Q. Do you think that to be his genuine signature?—A. I do, sir.
- Q. You find also the name of Mr. Jerome?—A. Yes, sir.
- Q. Is that genuine?—A. I think it is, sir.
- Q. You find also that of John Falvey?—A. I think that a genuine signature.

Q. And Mr. Logan's. Is that genuine?—A. I think so, sir.

Q. Do you know Mr. Hœbel?—A. Yes, sir; I know them both.

Q. Do you know whether that is his signature or not?—A. I think not, sir. I am not well enough acquainted to say.

Q. You would not state it was not?—A. No, sir.

Q. I will ask you if the first eleven names after the first three names appear to be in the same handwriting?

Here are the two petitions, gentlemen (17 K and 18 K). You remember them. They are substantially the same, and I believe they are exactly the same, though I will not say that positively. The names are written substantially in the same order and substantially by the same hand. Now, I proved nearly all of these men whose names are written by somebody else, and the Government did not produce a solitary one of these men to show that he did not authorize his name to be written upon that petition. There they were. I asked him, "Do you know these people;" made him swear that he knew Mr. Street; that he knew the signatures of many; that he knew these people. I proved where they were living; that they are living in the country now, good, respectable, honest people. And yet the Government did not bring one man whose name had been written here to prove that he had not authorized it. Why? Because they could not. They knew by the testimony here that the petitions were absolutely and perfectly honest. And it is in that way that they seek to deprive men of their liberty. They did not call a man whose name appeared on those petitions to say that his signature was not genuine or not authorized. I proved that many of them are still living and first-rate men.

Now, gentlemen, you remember besides that, that Mr. H. S. Stevens, the Delegate from that Territory, recommended the same thing asked for by those petitions (pages 1635, 1636), where it was admitted by counsel for the Government that the letters of Stevens were genuine. It is upon that same route that General Frémont also wrote a letter (page 1636). And I will show you that the names are exactly or substantially the same on 18 K as those found at pages 1638 and 1639.

Mr. Ker and Mr. Bliss both endeavored to show that there were no petitions on this route, and that it was simply done on a letter. If you will look at page 1603 you will find the evidence of Mr. Krider, who was postmaster at Mineral Park, in which he says there were petitions.

In order to show that there was a conspiracy between these parties, or between Dorsey and Vaile, or Dorsey, Rerdell, and Vaile, Mr. Ker called the attention of the jury to two letters, one written by Rerdell to the Sixth Auditor, and one written by Vaile. Here is a letter dated the 21st of August, 1880. It is introduced, of course, to show that there was a conspiracy at that time between Mr. Vaile and Mr. Dorsey. It was written by Mr. Rerdell to the Sixth Auditor:

To the SIXTH AUDITOR:

SIR: H. M. Vaile was subcontractor on route 40104 during the first quarter of 1879.

In the first settlement for that quarter Vaile was paid for certain expedited service—it was subsequently discovered that the expedition thus paid for was never performed—the department, therefore, and very properly, too, charged back to the route the amount thus paid for expedition never performed, viz, some \$2,800.

Meanwhile Vaile, who alone was in fault, had ceased to have any connection with the route—the charging back, therefore, fell on the wrong man, the man who was in no way responsible for the non-performance of the expedition, except so far as he stood between the department and the subcontractor.

It is true that this payment was made by the regular contractor to the subcontractor, but it is equally true that it was, in a measure, a compulsory payment. By the rules of the Post-Office Department it is made obligatory on the regular contractor to pay the subcontractor before the department will settle with him—it is not, therefore, a payment as between two individuals. The receipt is on the form prescribed

by the Post-Office Department, and is witnessed by (the then) Postmaster Edmunds, as the rules prescribe. It is on file in the Post-Office Department, and I maintain that our covenants were fulfilled when we put the receipt on file. If Vaile had performed the service as he agreed he would do, and for to do which he received this money, we should have been reimbursed by a *certificate of service* from the contract office. *Now, will you permit Vaile to take advantage of his own wrong, and thus enable him to defraud another man out of his money.*

I refrain from discussing the question as to what would be the duty of the department if Vaile, who had received the money wrongfully, had ceased to have any connection with the department, because it is not pertinent to this issue; if it were, I could cite you to many authorities and precedents to the effect that even then it would be your duty to refund the money to me. But this is not necessary, because Vaile is still doing business with the department.

He is subcontractor on route 44156 for the full contract pay, which is \$22,000 per annum, hence the department will have no difficulty in reimbursing itself for what was, in simple truth, an overpayment.

I think you will agree with me when I ask that this money be refunded to the subcontractor on route 40104 and charged to route 44156, because it is simply correcting an error. You have the same authority to charge it to one as you have to charge it to the other, and you have already charged it to me.

The law-merchant would experience no difficulty in adjusting a matter of this sort. The merchant who would refuse to correct an error of this character would be justly called a lame duck, and would be scouted from "Change." Vaile was erroneously paid for the performance of a service which he never did perform. Therefore I ask that he be compelled to render unto Cæsar the things that he ceasers.

Respectfully,

M. C. RERDELL,

Acting for himself and for the regular contractor on route 40104.

That is to show also, gentlemen, that there was a conspiracy between Vaile and Rerdell. Now Mr. Vaile wrote a letter also to the same man. I will read it:

WASHINGTON, D. C., July 9, 1880.

Hon. J. M. MCGREW:

SIR: In reply to yours of July 8th, relating to the Jennings case, I would state that I did not receive the money in manner and form as stated by one M. C. Rerdell, nor was the draft of J. W. Dorsey, on said route 40104, for the quarter named, to get an advance of money for myself or for my own use.

At the time I receipted for my pay as subcontractor on said route I did not, in fact, receive any money, but did so receipt that J. W. Dorsey might negotiate his draft on said route, and for no other purpose.

Although I was subcontractor of record on said route at the time named, I was not a subcontractor in my own behalf, but as trustee for J. W. Dorsey, S. W. Dorsey, Isaac Jennings, and others, to collect said money and pay it over as said parties should direct. I further state that all money that ever came into my hands from said route I did pay over to the parties named as trustee, as by them directed.

Acting as trustee of said Jennings, and believing that he had performed the mail service on said route as by him agreed, and in accordance with the laws and regulations of the Post-Office Department, I did pay said Jennings, on the 1st day of April, 1879, the sum of \$1,257.73, the sum of money he was entitled to provided he had carried the mail three times per week on the schedule required, which I fully believed at that time he had done, and for a long time after.

I further state that I am informed that said Jennings is not responsible; that it would be utterly impossible for me to receive back the \$2,800, or any part thereof; that in fact this sum of money sought to be collected of me, if collected for said Jennings's benefit, or go into his hands in addition to the sum he now has unlawfully, doubly remunerating him for his neglect of duty.

I further state that all the money collected on said route not paid to said Jennings was paid to liquidate the debts of J. W. Dorsey, S. W. Dorsey, and others previously contracted, and not one dollar ever remained in my hands.

I further state I believe both J. W. Dorsey and S. W. Dorsey are irresponsible, and it would be impossible for me to collect any part of said money from them. As above stated, said money came into my hand only as their agent or trustee, and at once paid out as they directed; that my subcontract was put on file simply to enable J. W. Dorsey to negotiate his draft on said route, when in fact said Jennings was the real subcontractor. Said Jennings agreed to perform the service on said route strictly in accordance with the laws and regulations of the department, for the annual sum of \$12,600.00, the duplicate of which contract was delivered over to S. W. Dorsey by

myself, and which I believe is now in the hands of M. C. Rerdell, and which, or a copy thereof, I demand shall be filed with you in this case, that you may see what said Jennings agreed to do.

This is certainly a strange claim. Jennings agreed to perform mail service on said route. I believed he had done it, and paid him accordingly. It turns out long after he did not properly perform the service, but was attempting a swindle, and a deduction is ordered for not performing the service properly. Then this man, the guilty party, having got money from me, as trustee, wrongfully, as well as from the Government, and asks that the Auditor compel me to pay him the sum of \$2,800.00, when, as I am informed, he is seeking to get this same deduction remitted.

Surely if he succeeded in all this he will make a good thing out of his rascality and I a good victim without remedy. I state again I did not hypothecate said draft for myself, did not receive one cent as subcontractor, but became the payee of said draft that said J. W. Dorsey might negotiate it, and I to dispose of the proceeds as he should direct, all of which I did. Therefore I request you not to compel me to pay the sum of money asked, but if I am liable at all let the parties seek their redress at law, where all the facts can be obtained and justice rendered me. And it is also well known that I am a man of means, and any judgment rendered against me could and would be collected, dollar for dollar.

I am, very respectfully,

H. M. VAILE.

That was introduced to show that at that time Vaile was in a conspiracy with S. W. Dorsey. Why did they introduce it? Simply for one line in it in which he says he was acting as the trustee of S. W. Dorsey. *He was.* How? Dorsey had advanced money. The routes were liable, and the persons who held the routes had agreed to refund it. The subcontracts were made to Vaile, and Vaile agreed out of the proceeds of the route to pay the debt to S. W. Dorsey. To that extent he was the trustee of S. W. Dorsey. Dorsey swears it. Vaile admits it, and we all claim it to be true. And yet they introduced that letter simply because that line was there. Now, gentlemen, I have read both of those letters, and I want you to remember them if you can, and tell me whether at that time Vaile and Dorsey were in a conspiracy together to defraud this Government. And yet the Government introduced this letter just to prove that one thing, and no more.

On the Julian and Colton route there is this peculiarity: The Government failed to prove the number of men and horses necessary on the original schedule for three-times-a-week service, and consequently we are left without any standard by which to judge; without any standard by which to measure.

On page 4685 Mr. Ker calls attention to the fact that the proposal marked 6 P, originally contained an offer to carry the mail at thirty-six hours for \$7,722 additional, but he states that the thirty-six was rubbed out and twenty-six was put in its place.

That is, they offered to carry it in thirty-six hours for seven thousand and odd dollars, and then afterwards fraudulently, of course, rubbed out the thirty-six and inserted twenty-six. But they did not change the sum for which they offered to carry it. They offered to carry it in thirty-six hours for \$7,722, and afterwards they rubbed out the thirty-six and put in twenty-six, and then offered to carry it in twenty-six hours for \$7,722. The question arises, how did that hurt the Government? The question arises, was that a fraud? If it had been originally twenty-six hours and they had rubbed out those figures and put in thirty-six hours, then you might say the intention was to defraud the Government. But the proposition had to be accepted after that was done, and consequently in no event could the Government be defrauded by the change of the proposal before the Government accepted the proposal. I might say to a man, "I will let you have a house and lot for \$10,000." He does not accept the proposal. Have I not the

right on the next day to charge him \$12,000 for it? Is that a fraud? If I tell him, "You may have it for \$10,000," and he accepts, then, as an honorable man, I cannot change the proposal. But if I tell him he may have it for \$12,000 and then afterwards tell him he may have it for \$10,000, Mr. Ker calls that a fraud of \$2,000. If one of the jury should give me a contract to deliver one hundred horses for \$10,000, and I should scratch out the one hundred and put in seventy-five, certainly you would not consider yourself defrauded. Or if I agreed to carry the mail in thirty hours for the Government for \$7,722, and then afterwards changed and said I would carry it in ten hours less time for the same price, can that be tortured into a fraud—unless I might be indicted for defrauding myself?

On page 4563 Mr. Ker, referring to a letter written on the 16th of April, 1879, to Brady, and signed with the name of Miner, but really written by Rerdell, states, pretending to quote the testimony of Rerdell:

Dorsey told me to write that letter and I wrote it, but it was written before the oath was made.

I have looked for that testimony. I cannot find it. The only evidence of Rerdell's I can find on the subject I find on page 2572, and there I cannot find anything about Dorsey having directed Rerdell to write a letter; but there he says:

I was directed to see Mr. Miner and get an affidavit.

I cannot find any evidence about being directed to write a letter. It may be there, but I cannot find it.

On page 4569 Mr. Ker says that Mr. Farrish, who was the subcontractor, says:

I always carried the mail in from six to ten hours before expedition. I carried the mail from Greenhorn to Pueblo. I did not stop at Saint Charles.

On page 835 Mr. Farrish says he carried the mail for three months in 1881. That is the only time Farrish carried the mail. This route was expedited on the 26th day of June, 1879, and yet Mr. Ker says that Farrish carried the mail before it was expedited and carried it in from six to ten hours. Mr. Farrish did not carry the mail until about two years after it had been expedited.

On page 4768 Mr. Ker, speaking of the two affidavits on the route from Pueblo to Rosita, laughs at the idea that the proportion was the same in both.

Now, what is the proportion in both? One affidavit says that on the then schedule it would take eight men and horses; that is, the horses and men added together make eight, and that on the proposed schedule it would take twenty-four. Then they would be entitled to just three times the money they were receiving on the original schedule, because three times eight are twenty-four. Let me explain here what I mean by proportion. If I am carrying the mail with, say four horses and two men, making a total of six, and if then that service is increased so that it takes twelve men and horses, I get twice the original pay; if it takes eighteen men and horses, I get three times the original pay. You understand that there is always a relation between the pay and the number of men and horses used. If I am using one man and one horse and am getting a thousand dollars for the service, and if it is expedited so that I have to use two men and two horses, I would get \$2,000. In the first affidavit they had eight men and horses. If they put up the service to what they were going to, it would take twenty-four. Three

times eight are twenty-four. Then they would get three times the original amount of money. In the second affidavit he swears that it takes fifteen men and animals on the present schedule, and on the proposed schedule it would take forty-five men and animals. Three times fifteen are forty-five. Three times eight are twenty-four. You see that on both affidavits you get the same amount of money to a cent, because the proportion is absolutely and exactly the same. Yet Mr. Ker laughs at the idea of the proportion being the same. It took eight men and horses in the first affidavit on the present schedule, and twenty-four on the proposed schedule. There the contractor would be entitled to three times the original sum. In the next affidavit it took fifteen men and horses on the original schedule and forty-five men and horses on the proposed schedule. Again, he would be entitled to three times the original sum.

On page 4579 Mr. Ker says the oath was put in for three trips. By looking at page 867 we find that it was for seven trips and not three. There is nothing like accuracy.

On page 4580 Ker says that Brady had on the jacket before him the evidence that Hansom was a subcontractor at \$3,100 a year, and the contract gave the contractor a clear profit of \$5,048. That is page 4580. The fact is that Brady's order was made on July 8th, 1879. That order is on page 866. Hansom's subcontract was filed October 22, 1879, about three months after Brady's order was made. And yet Mr. Ker tells you that on that jacket when Brady made the order he had notice of Hansom's subcontract. Unless he had the gift of seeing into the future he knew nothing about it. He would have had to see into the future three months in order to have had it before him at that time.

On page 4703 Mr. Ker says that the letter of J. W. Dorsey, written April 26, 1879, referred to the Perkins affidavit as not putting the number of men and animals high enough.

Let us see. Another case of arithmetic. The letter refers to Dorsey's statement transmitted with the letter. It could not be the way stated by Mr. Ker for the following reasons: The affidavit of Perkins said three men and six animals one trip a week on the then time. That makes nine. On one trip a week with the reduction to eighty-four hours, eight men and twenty-four animals would be required. That makes thirty-two. The proportion then gives $3\frac{5}{9}$, or 355 per cent. increase of pay. That is the affidavit, he says, that Dorsey wrote out and said was not high enough, and then fixed up one that was. The affidavit that John W. Dorsey sent in the letter says that it will require for three trips a week on the then time four men and twelve animals, making sixteen; on the proposed schedule for the same number of trips eleven men and thirty-two animals, making forty-three. As 16 is to 43—that is, 269 per cent. increase of pay. Now, that letter, he says, claims that the Perkins affidavit did not put it high enough. I say that he did not refer to the Perkins affidavit. He could not say that did not put it high enough, because that put it at 355 per cent., and the affidavit he inclosed in the letter put it at 269 per cent.—nearly 100 per cent. less. According to Mr. Ker he was complaining that that affidavit was too low, and so he inclosed one 100 per cent. lower. That will not do. Besides all that the affidavit of John W. Dorsey is for forty-five hours, while the first affidavit, I believe, is for eighty-four hours. John W. Dorsey offers to carry it in forty-five hours for 269 per cent., and the other affidavit on the basis of eighty five hours calls for 355 per cent. Do you not see, gentlemen, it is utterly impossible to believe that?

On page 4738 Mr. Ker again falls into mathematics. He says that

Mr. Brady allowed on the Bismarck route for three hundred men and three hundred horses. I tell you this prosecution ought to go into the stock business. One hundred and fifty men and one hundred and fifty horses were called for by the affidavit. Now, Mr. Ker says when Brady doubled the trips he doubled the horses, and when he doubled the trips he doubled the men. That would make three hundred men and three hundred horses. If he had doubled the trips again he would have had six hundred men and six hundred horses, enough cavalry to have protected that entire frontier. Yet after all the Bismarck and Tongue River business, Mr. Vaile comes in and swears, on page 4062, that the loss on that route to Vaile and Miner was at least \$50,000; and Mr. Miner swears that the loss on the route was between forty and fifty thousand dollars. Vaile says if he had known at that time of the clause in the contract by which he could have gotten out of it he would have abandoned the route, but that he had not read a contract for ten or twelve years. Now, as a matter of fact, gentlemen, and it seems to me the prosecution ought to be perfectly fair, Brady allowed only 40 per cent. of the affidavit made in regard to the one hundred and fifty men and the one hundred and fifty horses, and yet according to Mr. Ker he allowed for three hundred men and three hundred horses; instead of allowing for 40 per cent. of one hundred and fifty men and one hundred and fifty horses, he allowed for 100 per cent. more. That would have run the pay up, I should think to, about a million dollars. Mr. Ker also says that Mr. Vaile swears that he induced Brady to give an extension to August 15, and thereupon Mr. Ker makes the remarkable statement that Vaile did not do it; that Boone did it; I am very thankful for the admission. From that it appears that Boone was more potent with Brady than Vaile was.

Mr. KER. I never used such an expression.

Mr. INGERSOLL. You will have to look at your evidence and see. Was Boone more potent than Vaile? If he was, why did they have to get somebody close to Brady? Afterwards we are told by Mr. Ker that Mr. Boone was kicked out to make a place for Vaile, so as to get a man close to Brady.

On the Vermillion and Sioux Falls route Mr. Ker attacks the affidavit made by Vaile. Let us see what there is to that affidavit.

Mr. KER. Will you tell me what page it was I spoke about Boone?

Mr. INGERSOLL. It was Mr. Bliss. It is Mr. Bliss's turn to explain now. The notes that I have were handed to me by another, and I supposed referred to Mr. Ker. Mr. Bliss said:

This, I think, can leave no doubt in the minds of any one that the extension was obtained by Mr. Boone.

Mr. Bliss says that on page 4899, and so I will relieve Mr. Ker of that charge.

Mr. KER. I am glad to be relieved of something.

Mr. INGERSOLL. I do not want to do any injustice to Mr. Ker.

Mr. MERRICK. Had we not better take a recess now?

Mr. INGERSOLL. It will take me but a few minutes to finish the subject upon which I have just commenced. I will say first, that between Mr. Bliss and Mr. Ker I am perfectly impartial.

As I said before, Mr. Ker attacks the affidavit made by Vaile on the Vermillion and Sioux Falls route. Let us get at the facts. The route was let as fifty miles long. That is the distance that was given in the advertisement by the Government. They wanted expedition on that route. The Government asked for it. Mr. Vaile asked if he could

make the affidavit, and he made it, supposing the route was fifty miles long. He never had been over it. It turned out that it was about seventy-three miles long, and consequently the affidavit provided for too fast time. The affidavit called for ten hours. That made over seven miles an hour; or, including the stoppages, I presume about ten miles an hour. The difficulty arose out of the mistake in the distance. Vaile so swears, on page 4030. He also swears that he went in the department and there saw Mr. Brewer, who was in charge of that bureau, or at least of that business, and it was Brewer who suggested to him to make the affidavit. Mr. Vaile did not ask for any expedition on that route. Mr. Brewer spoke to him about it. Mr. Vaile swears that Brewer spoke to him first. Mr. Vaile swears that he made the affidavit at the instigation of Mr. Brewer. Mr. Bliss says Brewer is an honest man, and calls him honest Brewer. Why did he not call honest Brewer to the stand and let him deny that he asked Mr. Vaile to make that affidavit?

Now, if your honor please, I will be glad to have the recess.

The COURT. Yes.

At this point (1 o'clock and 5 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. INGERSOLL. [Resuming.] If the court please, and gentlemen of the jury, on page 4645 there is the letter from Miner to Carey:

JOHN CAREY, Esq.,
Fort McDermitt, Nev.:

DEAR SIR: One S. H. Abbott, who was postmaster at Alvord, I find, by accident, is writing to the department that you do not pay your bills, and that there is no need of anything more than a weekly mail.

I wish you would see this man at once and satisfy him; pay him whatever is reasonable and report to R. C. Williamson, at The Dalles. I suppose that is what he is after. He knows nothing of the through mail, and probably a weekly is all he needs; but more likely he wants some money. He complained once before to the department that he had to make a special trip to Camp McDermitt to make his returns, and I sent him \$30, and it was all right. Now, I suppose, he wants a little more money.

Yours, &c.,

JOHN R. MINER.

That letter was introduced to show that there was a conspiracy between Miner and Brady; and yet when that man complained that the service was not put on at the time it should have been put on, and that he was postmaster, was forced to carry his returns to the nearest post-office, and consequently spent about \$30, Miner sent him the money. Why? Because he and Brady were not confederates; because they were not conspirators. For that reason he sent the man \$30. The letter says "The man that was postmaster." When this letter was written Mr. Abbott was not postmaster; he had ceased to be postmaster. Yet they have endeavored to impress upon you the idea that when this letter was written to Abbott he was then postmaster. He had written a letter, stating that a weekly mail was all that was wanted, and that Mr. Carey did not pay his bills. Mr. Miner wrote to Carey on that account, "The man is trying to make trouble. He tried to make trouble once before, and we sent him \$30. He is not postmaster now. He has no official position. Go and see him. Give him what is reasonable, and tell him to mind his own business." Why? If he had been

in a conspiracy with Brady he would not care what Mr. Abbott wrote to the department. If he was absolutely certain there he would not care anything about it. But having no arrangement with the Second Assistant, having no arrangement of the kind set forth in the indictment, he did not want Mr. Abbott to write letters; he did not want Mr. Abbott to make trouble. That letter, instead of showing that there was a conspiracy, shows absolutely that there was not, and the letter was not written to him while he was an official. The man was not then postmaster. He simply had been.

The next point made by Mr. Ker is a very powerful point, that Mr. Vaile came from Independence, where the James boys came from, and where they steal horses. Suppose I should say that Mr. Ker comes from Philadelphia, the town that Mr. Phipps lives in, the man who stole the roof off of the poor-house. Would there be any argument in that? Yet, gentlemen, you are told that you must remember that Vaile came from Independence, Missouri, the same town the James boys came from.

Mr. Ker says that J. W. Dorsey wrote in his letter that the profits would be \$100,000 a year. That was a mistake. I turn to the letter and I find that it says \$100,000 in the life of the contract, and not \$100,000 a year. Yet Mr. Ker tells you that the letter says \$100,000 a year.

Mr. BLISS. Your honor, I claim the right to call attention to the fact that Mr. Ker read the letter in full referring to the \$100,000 clear of expenses. He read it and then followed it by the statement of \$100,000 a year, which was obviously a mistake.

Mr. INGERSOLL. Does he follow it with the statement that it is \$100,000 a year?

Mr. BLISS. I say he does, and I say it is clearly a mistake on his part. But he had read the letter with the square statement of what Dorsey said first.

Mr. INGERSOLL. That only makes it worse. After he had read the letter to the jury, and while the echoes of the letter were still in the court-room, he then said \$100,000 a year, while the letter said \$100,000 within the life of the contract. Upon such statements, gentlemen, they expect to strip a citizen of his liberty. [To counsel for the Government.] You will have some work to do in a little while. It may be that Mr. Ker forgets these things. I do not say how it happened.

Mr. Ker also tells you that Miner wanted to cut out S. W. Dorsey and J. W. Dorsey and Mr. Peck. Was that because he was a coconspirator? He also tells you that Miner deserted his friend S. W. Dorsey. Was he at that time a conspirator? Mr. Ker tells you that S. W. Dorsey wanted to gratify his spite against Vaile and that the first thing he did after he got out of the Senate was to write that letter to the Second Assistant Postmaster-General against the subcontracts. Does that show they were coconspirators? Did he want to gratify his spite because he had made a bargain with them by which they were to realize hundreds of thousands of dollars?

Mr. Ker also says that Miner's letter to Tuttle shows the conspiracy. It is perfectly wonderful, gentlemen, how suspicion changes and poisons everything. Let me read you the letter from which Mr. Ker draws the inference that there was a conspiracy. It is on page 885:

WASHINGTON, D. C., August 19, 1878.

FRANK A. TUTTLE, Box 44, Pueblo, Colo.:

DEAR SIR: Yours 14th received. We accept your proposition, *provided* (so that

there shall be no conflict) that a friend of ours, who has recently gone to Colorado, has not made different arrangements before we can get him word.

The petition for expedition should be separate from the petition for increase of number of trips. We make no boast of being *solid* with anybody, but can get what is reasonable.

Yours, truly,

MINER, PECK & CO.

You are told that is evidence of a conspiracy. Suppose the letter had been this way: "We boast of being solid. We can get anything, whether reasonable or not." That probably would have been evidence of perfect innocence. He writes a letter and says:

We make no boast of being solid with anybody, but can get what is reasonable.

They say that is evidence of conspiracy. Suppose he had written the opposite, "We do boast of being solid and we can get anything, whether it is reasonable or not." According to their logic that would have been evidence of absolute innocence. Whenever you are suspicious you extract poison from the fairest and sweetest flowers. Prejudice and suspicion turn every fact against a defendant.

On page 4557 Mr. Ker tells us that Vaile never saw Peck, and yet had the impudence to write that his subcontract was signed by Peck in person. The subcontract is in evidence here. Nobody pretends that it was not signed by Peck, and yet that is brought forward as a suspicious circumstance against Mr. Vaile, because there is no evidence that Mr. Vaile ever saw Mr. Peck. Is there anything in a point like that? "My contract was signed by Mr. Peck in person." He does not mean by that that he saw him sign it. The evidence here is that it was signed by Peck, and yet the fact that he says Peck did sign it, and the fact that he had never seen Peck, Mr. Ker endeavors to torture so that you will think he wrote what he knew to be untrue.

On page 3251 Mr. Ker says that Miner does not deny writing the letter marked 63 E. This letter was dated the 10th day of May, 1879, and was on one of the Dorsey routes.

Mr. BLISS. Is not that page wrong?

Mr. INGERSOLL. I think not.

Mr. BLISS. Mr. Ker did not begin until long after that.

Mr. INGERSOLL. That is the page where you can find 63 E. It is dated May 10, 1879. Mr. Ker says that Miner does not deny writing that letter. Miner swears that he never signed a paper, never touched pen to paper on any of the Dorsey routes after the 5th day of May, 1879, and the letter referred to by Mr. Ker bears date the 10th of May, 1879. Mr. Ker says that Miner admits he wrote it. Miner swears that he never signed a paper after the 5th day of May, 1879.

Mr. BLISS. Where does Mr. Ker make that statement? You have not given us the page.

Mr. INGERSOLL. I have not the page. I will get it for you. Mr. Henkle, will you please find the page where Mr. Ker says Miner does not deny writing the letter 63 E. Miner swears he did not do it, and Miner's testimony is on page 4212.

There is also another page where he swears to the same thing. Now, gentlemen, after having made all these statements to you, and I have only taken up a few of them, these misstatements, these mistakes, Mr. Ker winds up with this final appeal:

And if by any mischance, gentlemen, or any misfortune, you were to make a mistake in your application of the law, if you decide wrongfully against these defendants, the remedy is in the hands of the court and the court can do even justice by upsetting your verdict.

He finally winds up by telling you it is the safer plan to find a verdict of guilty, because if you find them guilty wrongfully the court will upset your verdict. Gentlemen, you have sworn to try this case according to the law and the evidence. You are the supreme arbiters of this case. It is for you to decide upon this evidence, and for you alone. Yet you are told by Mr. Ker to shirk that responsibility. You are told by him to violate your oaths and find against these defendants, for the sake of certainty, and then turn them over to the mercy of the court. That is not the law. These defendants are being tried before you. They have the right to your honest judgment. If you have any doubt as to their guilt you must find them not guilty or violate your oaths. You are told it is the safer way to find them guilty and then let them appeal to the court for mercy! That doctrine is monstrous. It is deformed. Such a verdict would be the spawn of prejudice, and cowardice, and perjury. You cannot give such a verdict and retain your self-respect. You cannot give such a verdict and retain your manhood! If you have any doubt as to the guilt of these defendants you must say they are not guilty. You have no right to turn them over to the court, no matter whether the court is merciful or unmerciful. You must pass upon their guilt, and you must do it honestly. I never heard so preposterous, so cruel a sentiment uttered in a court of justice. It amounts to this, gentlemen: If you have any doubt of guilt resolve the doubt against the defendant. If the evidence is not quite sufficient, find against the defendants and turn them over to the mercy of the court. Why should we have a jury at all? Why should you sit here at all? Why should you hear this evidence, if after all you are to shirk the responsibility and turn the defendants over to the court? You never will do it, gentlemen.

Mr. Henkle has found the page for which I asked him. The point I make is that Mr. Ker says that Miner does not deny having written the letter 63 E. Mr. Henkle, will you please read what Mr. Ker says?

Mr. HENKLE. I read from page 4679:

You see his petition was to come through S. W. Dorsey. You remember that Brady, in his testimony, in speaking about the reason why he reduced the time upon this route, spoke about the strong recommendation that Mr. Chaffee had given, and I called your attention to the fact that the "strong recommendation" of Mr. Chaffee was one of a series that had been prepared by Mr. Sibbald. Now, along comes a letter, through the medium of S. W. Dorsey, dated the 10th of May. Miner wrote that letter and signed it.

Then he goes on:

These letters not having been denied by Miner when he was on the stand, he not having taken the trouble to state whether they were or not his letters, and as his name is attached to them, I suppose there can be no difficulty in assuming that they are his. If a man is charged with a matter, and does not take the trouble to deny it, we can certainly assume it. Gentlemen, here is the letter of John R. Miner, dated in 1881, although, as he says, the route was taken by Dorsey.

Mr. INGERSOLL. Miner swore that he never signed a letter after the 5th day of May, 1879.

Now, gentlemen, I wish to call your attention to a few points made by Colonel Bliss. You must remember that Colonel Bliss has been very highly complimented by his associates as a kind of peripatetic index of this case, an encyclopedia of all the papers; that he never makes a mistake; that he recollects amounts with absolute certainty, and that he is infallible. Keeping all these things in your mind, I wish to call your attention to some statements that he has made. First of all I will refer to a little of his philosophy or law, and that is that in every affidavit you should state not the number necessary on the then schedule, but the actual number, and that there could be no doubt about the num-

ber of men and horses used at the time when an affidavit was made, and that consequently anybody making an affidavit should put in the number then actually used.

Mr. BLISS. Where did I say that?

Mr. INGERSOLL. I will show you. If you are in any great trouble about it, look at page 4760. Gentlemen, he says that they have no right to go outside of the actual number. Let us see how that will work. He says the oaths are false because they do not state the actual number of men and horses employed in carrying the mail at the time they were made. He says that the person making the affidavit swore to the number actually employed, and that where that number was not employed that fact of itself shows the affidavits to be false. I say that is not the law. The law calls for the number *necessary*, not the number actually employed. Let me show how easy it would be to cheat the Government on the principle laid down by the gentleman.

Mr. MERRICK. Have you got the section of the law there?

Mr. INGERSOLL. No.

Mr. MERRICK. That is not the exact language.

Mr. INGERSOLL. I do not care about the language of the law. I am talking about Mr. Bliss's language.

Mr. BLISS. It is not mine either.

Mr. INGERSOLL. It is near enough to it, I think, my friend. You take the ground that they must give the number of men and animals then employed, and if they swear to a different number from that the affidavit is false. That is what you say, and I will show you how infinitely silly that is. Let me illustrate. Here is a route one hundred and fifty miles long, once a week. You know it is possible for one man and one horse for a little while to carry that mail and to go one hundred and fifty miles one way and one hundred and fifty miles the other, making three hundred miles in a week. You can take a magnificent horse and a good, stout, tough man, and you can do it.

The COURT. Or a boy.

Mr. INGERSOLL. Or a stout, tough boy.

The COURT. A boy would be best.

Mr. INGERSOLL. You do not need any boy. Just one man and one horse will answer. The man can ride the horse one hundred and fifty miles in three days, and then ride one hundred and fifty miles back in the next three days. All you have to swear to, according to Mr. Bliss, is the number actually used, and so you would come in and swear to two on this route. Now, when you are making an affidavit as to the number to be used on a schedule to be made, you cannot swear to the number actually in use, because they are not then in use. You have to swear to the number necessary. You have to swear to the number required.

Mr. BLISS. Colonel Ingersoll, I do not propose to submit to any misstatement. You refer me to a page, and upon that page I find this:

It means, gentlemen, simply this: that the contractor is to swear, first, to one fact, how many men and horses are necessary on the present schedule; and, secondly, to his opinion of what will be necessary upon the proposed schedule.

Mr. INGERSOLL. You said a hundred times that the number actually used was the number to be given. You said it a hundred times. There is not a statement in your speech that you did not make a hundred times. I will give you the pages before I get through. You insisted that they must swear to the number then used.

Now see. On a mail route one hundred and fifty miles long I would only want a good smart horse, and one good active man or boy. I

would not need to carry it more than one week, because I could make the affidavit for that week, and then the question would be how many men and horses would be required for a daily mail on the same route. I would put in a reasonable number, and the difference between the number then actually used and the reasonable number to use would be the standard by which to fix my pay. If you take the man and horse actually used, and then take the number that would reasonably be used, you would make a difference of a thousand per cent. And yet that is the doctrine laid down here to guide us as to these affidavits.

Let me tell you what the law is. It does not make any difference what you are really using at the time. You must swear to the number that would be reasonably necessary to carry the mail on the then schedule. You must swear to the number that would be reasonably necessary to carry the mail on the proposed schedule. In the first place, if you put a great deal of work on a man and horse, you must put the same proportion on man and horse in the second schedule. If you are easy on man and horse in the first schedule, you must be easy on man and horse in the second. The only object, gentlemen, is to keep the proportion, because you are to be paid according to the number of men and horses used.

Now, they say it would be necessary to go out there in order to tell how many men and horses would be necessary, and that the men who made these affidavits had never been on the routes. There was no need of being on the routes. I could give you the number required on any route two hundred or five hundred miles long. I could give you the number of men and horses reasonably required to carry the mail once, twice, three times, or seven times a week; and I could give you the number reasonably required to carry it at the rate of three miles an hour or five miles an hour or six miles an hour without going there. I need not go there for the purpose of the affidavit. I can take it for granted that the road is good and level, and I can keep exactly the same proportion and nobody can be defrauded. If you take the rule of Colonel Bliss it would be the easiest thing on earth to defraud the Government. That would be by taking the actual number in use and then taking the number necessary.

On page 4761 Mr. Bliss makes the point that according to law the Second Assistant Postmaster-General was not bound to allow according to the affidavits. He is right as to that. That is what Mr. Bliss says, and that is what John W. Dorsey swore he thought, and that is what Mr. Thomas J. Brady swore he did. He did not take the affidavit as a finality. Mr. Thomas J. Brady said that he took it for granted that the man when he made the affidavit thought it was true, and that the man, when he made the affidavit, swore to the best of his knowledge and belief. But Thomas J. Brady never swore that he considered himself bound by the affidavit. On the contrary, he swore that he had a standard in his own mind, and that expedition was to cost \$30 a mile, or something of that kind. He went by that standard, and he gauged the affidavits by it.

On page 4762 Mr. Bliss says that Brady admitted that he made no inquiry as to the truth of affidavits, and that he accepted them as absolutely conclusive. On page 3434, Mr. Brady swears:

I accepted their statement as conclusive so far as they knew.

Brady also swears that he had his standard in his own mind, as I said before, and that he had an opinion of his own, and that by that standard and opinion he was governed.

On page 4765 Mr. Bliss charges that Brady took the oath of Perkins on route 38113 as the basis for the expedition. Mr. Turner's calculation on file shows that that affidavit was not the basis of the calculation.

Mr. BLISS. Your honor, allow me to say that subsequently I stated to the court and to the jury distinctly that while the indorsement on the jacket recited the Perkins affidavit as being the one used, or the affidavit of the subcontractor, and while Mr. Brady transmitted to Congress that Perkins affidavit as the one upon which he acted, I still believed that the calculation showed that he used the other affidavit.

Mr. WILSON. He never made that statement until he made it during the progress of my argument when I was discussing that very point.

Mr. BLISS. You are mistaken.

Mr. MERRICK. He made it while I was here and I was not here during Mr. Wilson's argument.

Mr. INGERSOLL. If he has taken it back three times, that is enough.

Mr. MERRICK. He has not taken back anything. He is stating the fact. Brady was called upon by Congress for the affidavit upon which he made that order and he transmitted the Perkins affidavit to Congress.

The COURT. I remember that perfectly.

Mr. INGERSOLL. On page 4766 Mr. Bliss charges Brady with having two affidavits on the Pueblo and Greenhorn route, from John W. Dorsey on the same day.

Mr. BLISS. Mr. Henkle called my attention to the fact that it was not the Greenhorn route, but the Pueblo and Rosita route, and I corrected it.

Mr. INGERSOLL. You took it back.

Mr. BLISS. I said the Pueblo and Rosita route, and not the Greenhorn route.

Mr. INGERSOLL. You did not take it back?

Mr. BLISS. I said that.

Mr. INGERSOLL. Good enough. I did not know about his taking it back. I was not here at the time. The fact was, however, that only one affidavit was ever filed, and that was an affidavit, not by J. W. Dorsey, but by John R. Miner.

Mr. BLISS. There were two on the Pueblo and Rosita route by John W. Dorsey.

Mr. INGERSOLL. We will come to them. You will get tired of them before we get through with them.

On page 4767 Mr. Bliss refers to two affidavits. The first affidavit, the one not used, calls for three men and seven animals on the then schedule. That makes ten. On the proposed schedule of eighty hours it called for nine men and twenty-seven animals. That makes thirty-six. The proportion then in this affidavit is 3.6, that is, the pay would be 3.6 times the original pay. In the second affidavit five men and fifteen animals, twenty in all, are called for on the then schedule, and on the proposed schedule twelve men and forty-two animals. The proportion there is 2.7. So that the affidavits, leaving out the fractions, which are substantially the same, stand in this way: By the first the contract price would have been multiplied by three and the contractor would have had three times the original pay, and by the second he would have had twice the original pay. Substituting an affidavit at only double the pay is called a fraud, because they withdrew an affidavit for treble the pay. That is what Mr. Bliss calls a fraud. He says still that it is a fraud.

Mr. BLISS. I have not said so.

Mr. INGERSOLL. Somebody said so.

Mr. BLISS. I said to Mr. Merrick I did not say it was a fraud.

Mr. INGERSOLL. What was it if it was not a fraud? Now, then, there were two affidavits, and these two affidavits, gentlemen, Mr. Bliss well knew were filed on different schedules. The first affidavit was filed on a proposed schedule of eighty hours. The second affidavit was filed on a proposed schedule of fifty hours. The affidavit agreeing to carry the mail in fifty hours offered to do it at double the pay. The affidavit on eighty hours wanted three times the pay, or substantially that. One was 3.7 and the other was 2.6. Just think of trying to make that a fraud on the Government. Suppose they had filed a third affidavit and offered to carry it for nothing. That would have been carrying a fraud to the extreme.

Mr. BLISS. Your honor, with reference to that, I said, expressly referring to these two affidavits: It is not a question of proportion. The question is whether the mere existence of those double affidavits did not give Brady conclusive notice that the man who could make those affidavits was not a reliable man, because no matter what the time was to which it was to be increased, he stated the number necessary on the then schedule as so and so in one affidavit and in the other he stated the number differently. I referred to it solely in that connection, as the language shows on the page referred to.

Mr. INGERSOLL. For instance, a man writes, "You owe me \$500 according to my books," and writes the next day, "I have made a mistake. You don't owe me anything." Mr. Bliss insists that the second letter would show that the man was not to be relied upon. That is his idea of honesty. If in the first letter he had written that I did not owe him anything, and in the second letter I did, that might be suspicious. But when in the first he writes that I owe him and in the second that I do not, there can be no suspicion as to his honesty. In the first affidavit this man stated so much, and in the second affidavit he put it one-third less. That simply shows the man was paying attention to it and wanted to make an honest offer. And yet everything in this case is poisoned with prejudice and suspicion.

Another point: Mr. Bliss, on page 4770, says that on the Pueblo and Rosita route the number of trips was seven and that there was no increase. Upon that statement he bases an argument of fraud. The argument is that there was no increase of trips. Now, on page 866, the order shows that in the first place there was one trip a week and there were six trips added. That makes seven. The original pay was \$388. Six trips were added, and the value of the six trips, which gave \$2,328 of additional pay. Yet Mr. Bliss tells you that there was no increase of trips. As a matter of fact, six trips were added, and that was all that could be added.

Mr. BLISS. Were they added coincidently with the affidavit for expedition?

Mr. INGERSOLL. You say they were not added; I say they were.

Mr. BLISS. No, sir; I said at the time of the expedition there was no increase of trips and the affidavit was based upon the seven trips.

Mr. INGERSOLL. I say that at that time there was an increase.

Mr. BLISS. Of trips?

Mr. INGERSOLL. Yes, sir.

Mr. BLISS. At the time of the affidavit for expedition?

Mr. INGERSOLL. I say exactly what I said before and what you said, and I will read it to you again; Mr. Bliss, on page 4770, says that on

the Pueblo and Rosita route the number of trips was seven, and that there was no increase.

Mr. BLISS. If it was seven it was not increased.

Mr. INGERSOLL. How could seven be increased?

Mr. BLISS. It might be fourteen.

Mr. INGERSOLL. It could not be. There is not a solitary route in this indictment over seven trips.

Mr. BLISS. Your honor, the point is this: I think I am right in saying that the increase of trips took place after the expedition. That is my recollection about it. I have not referred to the record. I think Colonel Ingersoll will find that is so.

Mr. INGERSOLL. We will see whether you are right. At the time the affidavit was made there were just three trips, and afterward there were four trips added. Let us get it exactly right. I read from page 866:

Date, July 8, 1879. State, Colorado.

Number of route, 38134.

Termini of route, Pueblo and Rosita.

Length of route, fifty miles.

Number of trips per week, one.

Mr. BLISS. I see you are right. The trips were increased.

Mr. INGERSOLL. I am right, am I?

Mr. BLISS. Yes.

Mr. INGERSOLL. When anybody gives it up I will stop. That is fair and that is honorable.

Now, the next point. On page 4771 Mr. Bliss says that the oath on the Toquerville and Adairville route was made for seven trips, although the order only gave them six trips, of course the inference being that they got as much pay for six trips as they were entitled to for seven trips. On page 3290 the original order was for one trip. Two trips were added. Look on page 949 and you will find that more trips were added. The second order increased four trips, and that made seven in all; and yet Mr. Bliss makes the statement that there were only six. That is another mistake.

Another point. On page 4772 Mr. Bliss states that Mr. Rerdell spoke in his testimony about J. B. B. I have referred to that. I have referred before to the claim that Rerdell was sustained by the testimony of Mr. Bissell. As a matter of fact, I do not remember that Mr. Rerdell ever said one word in his testimony as to charging anything to J. B. B.

Ninth point. At page 4778 Mr. Bliss states that Dorsey admitted in his letter to Anthony Joseph that the average rate for mail service on star routes was only \$5 a mile. Mr. Dorsey says in his letter no such thing. He says the "average cost of horseback service;" he does not use the language employed by Mr. Bliss, "The average rate for mail service on star routes," but he says, "The average cost of horseback service." That is a small point, but it shows how anxious the gentlemen are to get the thing fully as big as it is.

Tenth point. At page 4783 Mr. Bliss says that Brady cut off \$49,000 of increase on the Mineral Park and Pioche route on the 22d of January, 1879, because the mail bills showed so little business. That is another mistake. The order cutting off the \$49,000 was made on the 22d of January, 1880, not 1879. I mention this simply for the sake of accuracy.

Eleventh point. At page 4785 Mr. Bliss says that the mail bills on the Silverton and Parrott City route showed that Brady ran the service up from \$745 to \$14,900, and that the \$14,900 was afterwards increased

to \$31,343.76. The record shows nothing of the kind (see pages 1894-'5). The original pay was \$1,488 (page 1854). The pay under the order of June 12, 1879, was \$6,512.28 (page 1855). No other increase was ever made. On page 1855 is the increase and expedition, being in all \$14,808.63. The original pay was \$1,488. A little change was made in the route that brought it up to \$1,703.65. That, together with the expedition, makes a total of \$16,512.28. And yet Mr. Bliss told you that it was \$31,343.76. So that this encyclopedia of the papers made a mistake, in one year, of \$14,831.48. For the whole contract time it would be a mistake of \$45,000. And yet, strange as it may appear, that mistake was made against the defendants. Well, let us go on.

Twelfth point. On page 4800, bottom line, Mr. Bliss says:

They got so much in the way of offering petitions that Mr. Rerdell being told by Stephen W. Dorsey, upon this route from Pueblo to Greenhorn, to go to work and alter the petitions, inserted the words "and faster time."

As to this petition, 7 B, in which are the words "and faster time," George Sears swears, at pages 829 and 830, that it is in the same condition now as when it was signed by him, he thinks. Thereupon Mr. Bliss told you that he was mistaken in the paper. You must recollect these things.

Mr. BLISS. Are there not two petitions there altered?

Mr. INGERSOLL. That is on another route. There were 7 B, 11 B, and 12 B.

Mr. BLISS. Exactly.

Mr. INGERSOLL. 7 B was the written paper, and you introduced 11 B and 12 B. One said "quicker time," and one said "on faster schedule," and yet in the very next paragraph they asked to have it run in eight hours. Mr. Rerdell had to admit that he put in the words without knowing what the petition called for, and that Dorsey instructed him to put them in.

Mr. BLISS. Your honor, in the very same paragraph, the very line, where I said "faster schedule," I called attention to the fact that the words were unnecessary.

Mr. INGERSOLL. That is not the only point. The point is, who wrote "faster time?"

Mr. BLISS. That is not what I said.

Mr. INGERSOLL. I have given the words; I have not misrepresented you at all.

Mr. BLISS. You have not given the whole sentence.

Mr. INGERSOLL. You cannot expect me to read your whole seven days' speech. That would be too much. This is what you said:

They got so much in the way of altering petitions that Mr. Rerdell being told by Stephen W. Dorsey, upon this route from Pueblo to Greenhorn, to go to work and alter the petitions, inserted the words "and faster time."

That is it exactly.

Mr. BLISS. Then follows this:

He inserted "and faster schedule," "on quicker time," though there was not any necessity for doing that, because if they had gone further down, after some argument in the petition, to the request for expedition, they would have seen that there was no necessity for that little forgery up there.

Mr. INGERSOLL. That is a magnificent admission, "There was no necessity for" putting that in. I am glad he admits that. He would ask you to believe that S. W. Dorsey, a man of intelligence and brains, would ask to have a petition forged, altered, interlined, without knowing what was in that petition. It will not do, gentlemen.

Thirteenth point. At page 4810, Mr. Bliss says that McBean told Moore, in reference to route No. 44140, Eugene City to Bridge Creek, "that he could carry all the mail in his pocket."

Now, as a matter of fact, Mr. McBean does not state any conversation with Moore covering this route. That was another mistake. No matter.

Fourteenth point. At page 4814, Mr. Bliss, in speaking of the Ojo Caliente route, says the service in fact never was performed in fifty hours; that the evidence of that is conclusive. Now let us see. Here is a jacket on page 3008, and that jacket shows that out of seventy-eight half trips, expedition was lost on twenty-three and made on fifty-five. Yet Mr. Bliss tells you it never was made. The jacket on page 3040 shows that expedition was lost on twelve half trips and made on sixty-six. And yet Mr. Bliss says it was never made. The jacket on page 3056 shows that at the time they were carrying seven trips a week, nineteen expeditions were lost out of one hundred and ninety-two half trips. And yet Mr. Bliss says the fifty-hour schedule never was made. Another mistake.

Mr. BLISS. That is long after the time I was referring to. As to the other point, I simply repeat it.

Mr. INGERSOLL. It will not help it to repeat it. For every expedition lost on this route or any other the Government did not pay. When the expedition was lost the pay was deducted; when the expedition was made the pay was given, and not otherwise. You see, gentlemen, how they have endeavored to get the facts before you; what a struggle it has been over all these obstacles—lack of memory, the immensity of this record—how they have climbed the Himalayas of difficulty; how they have gone over the Andes and Rocky Mountains of trouble to get at the facts!

Fifteenth point. On page 4820 Mr. Bliss states that there could not have been legally allowed, on the evidence on the Dalles route, on expedition over \$4,144. As a matter of fact, the evidence does not cover the whole route as to the number of men and horses used. The Government never proved the number of men and horses necessary to carry the mail over the whole route, but only a part. Mr. Ker admits that the evidence is defective in that regard. When you have no standard, gentlemen, you cannot measure.

Sixteenth point. On page 4820 Mr. Bliss, in speaking of the route from Eugene City to Bridge Creek, says that, taking the undisputed facts as they were, before and after the expedition, Brady could not legally have allowed more than \$2,991.23. The evidence is (page 1343) that Wyckoff was the subcontractor from July, 1878, to 1880. Powers first carried the mail in 1880. The route was increased and expedited in June, 1879. Mr. Powers never carried it from the expedition. Mr. Wyckoff was the only man who did that, and Mr. Wyckoff was not called. Consequently there was no evidence as to the number of men and horses used on either schedule. That left the gentleman without a standard and without a measure.

Seventeenth point. On page 4820, Mr. Bliss says that on the Silverton and Parrott City route the oath was made for seven trips a week on the present schedule, when it ought to have been two trips on the old schedule and seven trips for the new schedule. As there is no evidence as to the number of men and horses used on the old schedule, of course there is no evidence in this record to impeach that oath; you cannot find it.

Eighteenth point. On page 4822 Mr. Bliss states that after the pas-

sage of the act of April 7, 1880, there were two increases upon the White River route. The fact is there was just one after the passage of that law. Of course a little mistake like that does not make much difference in a case of this magnitude.

Nineteenth point. On page 4824 Mr. Bliss states that Raton was put on the Trinidad route April 24, 1879 (page 1031). The office was embraced on the route July 1, 1878. The first order in reference to it was made June 6th, 1878. It was put on the route from July 1, 1878, increasing the distance twenty-three miles. Yet Mr. Bliss tells you that it was put on the route April 24, 1879.

Mr. BLISS. Is not that the date of the order?

Mr. INGERSOLL. It may have been the date of your order.

Mr. BLISS. Is not that the date of the order in the case?

Mr. INGERSOLL. I do not know anything about that. I give you the exact facts. The office was embraced on the route July 1, 1878. The first order in reference to it was June 6, 1878. It was put on the route from July 1, 1878, increasing the distance twenty-three miles. That was enough.

Twentieth point. On page 4825, Mr. Bliss, in speaking of the Ojo Caliente route, charges that by the order increasing the trips on this route in February, 1881, there was paid from the Treasury illegally \$2,011.46. As a matter of fact, had we been paid for that entire quarter it would have amounted to \$7,139.41. The pay was not adjusted until April 22, 1881 (page 731). The amount that was then paid was not \$7,139.41, but it was \$3,727.22. It was not for the entire quarter, but simply for the actual service rendered. The quarterly pay for the preceding quarter, before the expedition, was \$3,358.26; showing that we received only for that quarter an excess, on account of expedition, of \$368.96. But he told you that we got illegally \$2,011.46. That is a small matter.

Twenty-first point. On page 4897, Mr. Bliss says in effect that Dorsey undertook to state that he kept no books; that he was doing a business amounting, I think he says, to \$6,000,000 a year, and yet he kept no books. On the contrary, Dorsey swore that he did keep books; on the contrary, he swore that Kellogg was his book-keeper. Kellogg swore that he did keep the books. Torrey swore that he was his book-keeper, and kept the books. And yet Mr. Bliss stood up before this jury and said to you that Mr. Dorsey wanted you to believe, or stated that he kept no books of that immense business. It will not do. No books but the red books, I suppose, were kept.

And right here, gentlemen, I want now to say a word about Rerdell. I want to give him his epitaph, and I want the reporter to put it back there at the place so that it will come in right. Mr. A. B. Williams, who is with me in this case, suggested this epitaph to be put on the red book at the head of his grave:

Up to this moment I have been faithful to every trust.

Twenty-second point. At page 4883, Mr. Bliss says that in regard to one of Vaile and Miner's routes (Canyon City to Fort McDermitt) there were large profits, amounting to \$20,000 a year. Then he says \$80,000 during the four years. And yet Mr. Bliss knew at that time that that expedition lasted only eleven months. Trying to fool the jury about \$62,000.

Twenty-third point. On page 4815, Mr. Bliss states that the fines on the Bismarck and Tongue River route, during Brady's administration, were only \$13,000. If you will look at page 727 of this record, where the table is put in evidence as to the fines, you will find that he deducted

from the pay \$29,224. Mr. Bliss made a mistake of \$16,224. But in a case like this that is not important. Gentlemen, you know you cannot always be accurate.

Mr. BLISS. I desire to say that my statement there is correct.

Mr. INGERSOLL. Yes; well, I desire to say that it is the other way.

Mr. BLISS. The fines Colonel Ingersoll is referring to were for the period during Brady's administration imposed afterwards.

Mr. INGERSOLL. No. I do not bring them in. Before Brady went out there was \$13,000 made up upon that route not yet passed upon by Brady, and Mr. Elmer, I believe, also imposed these fines. But outside of that, and before Mr. Elmer went out, Mr. Brady had imposed \$29,224.

Mr. BLISS. I think not, sir.

Mr. INGERSOLL. Well, let us look at page 727. If I am wrong, as much as I hate to admit it, I will. Calculating the amount down to January 25, 1881—and there was no more allowed until May 2, 1881, (and Brady went out between January 25, 1881, and May 2, 1881)—and the amount down to that point makes \$29,224.

Mr. BLISS. Of which \$17,831 was remitted.

Mr. INGERSOLL. Yes; but what do you say? Mr. Bliss states that the fines on the Bismarck and Tongue River route during Brady's administration were only \$13,000. As a matter of fact, they were \$29,224. I have got the gentleman penned up there.

Mr. BLISS. Not very much.

Mr. INGERSOLL. Yes; very much.

Mr. CARPENTER. Only a little more than \$13,000 remitted.

Mr. BLISS. Seventeen thousand eight hundred and thirty-one dollars and odd cents was remitted.

Mr. INGERSOLL. I made a mistake of \$4,000, and you made a mistake of \$16,224. Mr. Bliss is an accurate man, as a rule. He has been called the index of this business for the Government.

Twenty-fourth point. On page 4987 Mr. Bliss says:

The one fact of the evidence of the payment of money by Dorsey to Brady remains the same whether the books were put out of the way by Dorsey or by Rerdell. That is the great central point, so far as the books were concerned; and as to that the testimony is absolutely uncontradicted.

Mr. Brady swears that Dorsey never gave him a dollar. Dorsey swears that he never had a money transaction with Brady amounting to one cent. Mr. Rerdell does not pretend to swear that he knows of Mr. Dorsey having paid a dollar to Mr. Brady. He does not pretend to swear that he knows of any one of these defendants having paid one dollar to Mr. Brady. And yet Mr. Bliss will tell you that the fact that Dorsey paid Brady money is uncontradicted.

Mr. BLISS. I did not intend that, Colonel Ingersoll. I do not think it is capable of that interpretation.

Mr. INGERSOLL. What did you mean?

Mr. BLISS. As to the statement being in the books it is uncontradicted.

Mr. INGERSOLL. Let me see. He now turns and says he did not mean the money, he meant the books. The evidence is overwhelming on our side that the books did not exist. When you deny the existence of the book I take it you deny the existence of any item in it. It is a question whether any such books ever existed, gentlemen. Rerdell swore in the affidavit of June 20, 1881, and he swore to that affidavit three times hand-running, that no such books existed. He swore substantially the same thing on the 13th of July, 1882. He told Mr. French that no such

books ever existed. He told Judge Carpenter that no such books ever existed. He stated to Bosler that no such books ever existed. And now this gentleman says the evidence is uncontradicted that Brady was charged in those books. That is a good deal worse than the other. Let us go on.

Twenty-fifth point. At page 4962 Mr. Bliss says that Mr. Dorsey, according to his own statement—

Had brought Rerdell up and led him to infamy.

Did Dorsey make any such statement? Did Mr. Dorsey, gentlemen, in your presence, swear that he had brought Rerdell up? Did he, in your presence, swear that he had led him to infamy? Did he, in your presence, swear that he had done anything of the kind? I have got the exact words.

Mr. BLISS. What are they?

Mr. INGERSOLL. "Had brought Rerdell up; had led him to infamy." Look about the third or fourth line from the bottom, and you will find it.

Who, according to his own statement, he, Dorsey, had brought up, had led to infamy, and who, according to his own statement, had stated that MacVeagh had told a lie.

A curious use of the English language. I believe it is in that connection, though, that he speaks about Mr. Dorsey having the impudence to go to the President of the United States. That is not a very impudent proceeding. In this country a President is not so far above the citizen. In this country we have not gotten to the sublimity of snobbery that a citizen cannot give his opinion to the President; especially a citizen who did all he could to make him President; especially a citizen in whom he had confidence. Not much impudence in that. I do not think that during the campaign General Garfield would have regarded it impudent on the part of Mr. Dorsey to speak to him. I do not believe in a man, the moment he is elected President, feeding upon meat that makes him so great that the man who helped put him there cannot approach him, and every man who voted for him helped to put him there. I am a believer in the doctrine that the President is a servant of the people. I have not yet reached that other refinement of snobbery.

Mr. BLISS. In point of fact, Colonel Ingersoll, I made no such statement.

Mr. INGERSOLL. I will see whether you did or not.

Mr. BLISS. Not as you put it.

Mr. INGERSOLL. The idea was that he was impudent in going to Garfield.

Mr. BLISS. No.

Mr. INGERSOLL. The idea was, too, that he had defamed Garfield.

Mr. BLISS. Now let me read the passage on the very page you refer to.

Mr. INGERSOLL. It is somewhere around there.

Mr. BLISS. [Reading:]

Patched up the affidavit of Mr. Rerdell, addressed it to the President, admittedly went to the President with it, and then had the impudence to come here and malign the character of General Garfield by saying that upon that affidavit of an accused man, instead of seeking a trial, he would have removed two members of his Cabinet.

I meant nothing about the impudence of going to the President.

Mr. INGERSOLL. He had the impudence then to come here and malign Garfield by saying that upon that statement he would have turned out two members of his Cabinet. That is Mr. Bliss's idea of impudence;

and yet, upon the testimony of the same man, he wants to put five men in the penitentiary.

Mr. BLISS. Not upon the sole testimony, I suppose.

Mr. INGERSOLL. Not upon the soulless testimony. Now, I think that Mr. Dorsey had a right to go and see Mr. Garfield. I think he had a right to take that affidavit with him. General Garfield was told what this man had said concerning Mr. Dorsey. He had the right to take that affidavit of that man with him so that General Garfield, or the then Attorney-General rather, might know how much confidence to put in the statement of that man. He had a right to do that. If he found in this way that his Attorney-General and his Postmaster-General were seeking to have a man convicted by means not entirely honorable, then it was not only his privilege, but it was his duty to discharge them from his Cabinet. But I am not saying anything in regard to them now, because they are not here to defend themselves.

Mr. BLISS. I want to correct myself. Further down on that page I see I did refer to the impudence of this man going to Garfield.

Mr. INGERSOLL. Well, as Mr. Bliss has been fair enough to state it, I will not follow up my advantage.

Mr. BLISS. I said the impudence of going to him with that affidavit.

Mr. INGERSOLL. On another page Mr. Bliss says that the idea that Mr. Vaile did what he did for Miner out of any sympathy is "too thin." Mr. Bliss cannot believe that Vaile became Miner's friend so suddenly, but he thinks it highly probable that they conspired instantly. That is his view of human nature. Friendship is of slow growth; conspiracy is a hot-house plant. Gentlemen, is that your view of human nature, that a man cannot become the friend of another suddenly? Whenever he does become his friend the friendship has to be formed suddenly, does it not? There is a first time to everything. A moment before it did not exist; a moment afterwards it is dead very suddenly.

There was a boy came to town one morning and met an old friend. The old friend asked the boy, "How is your father?" He says, "Pretty well, for him." "How is your mother?" "Pretty well, for her." "Well, how is your grandmother?" "She is dead." "Well," says the old man, "she must have died suddenly." "Well," said the boy, "pretty sudden, for her." [Laughter.]

Whenever one man becomes the friend of another, a moment before that he was not, and a moment after he is. It must be sudden. But I imagine that there was a friendship sprang up between Vaile and Miner, and I will tell you why. They have been partners ever since. You, gentlemen, have had the same experience a thousand times. It is not necessary to conspire with a man in order to like him. Neither is it necessary to like him to conspire with him. Men have conspired without friendship a thousand times more, probably, than they have formed friendships without conspiracy.

Mr. Bliss says that because Miner failed to produce the power of attorney that Moore swore was given to him when he went West, the jury have a right to infer that instructions to get up false petitions were in writing and were included in that power of attorney. Mr. Moore did not swear to the contents of that power of attorney. Do you think that it is within the realm of probability that a man ever gave a power of attorney to another and inserted in it: "You are hereby authorized to get up false petitions; you are further authorized to have them so written that you can tear them off and paste others on?"

"N. B. You will make such contracts with all contractors.

"P. S. Don't tell anybody." [Laughter.]

There was another witness in this case, Mr. Grimes (page 808). Not the one that wore the coat—

All buttoned down before—

but Mr. Grimes, postmaster at Kearney. He came all the way here to swear that he stopped using mail bills on the route from Kearney to Kent because he was so ordered by a letter from the Post-Office Department. Then it was discovered that he did not have the letter with him; he went home to get the letter, but he never came back any more.

We introduced Spangler (page 341) from the inspection division of the Post-Office Department; I think he was in charge of that division. He swore, as a matter of fact, that there never were any mail bills on that route at all.

Mr. CARPENTER. He was in charge of the mail bills on that route.

Mr. INGERSOLL. The mail bills on that particular route. That man Grimes was brought clear here to prove that he stopped using mail bills, and then we proved that there never were any mail bills used on that route for him to stop using. I do not suppose that that man was dishonest. These people just got around him and talked to him until he "remembered" it. They just planted the seed in his mind, and then came the dew and the rain and the lightning until it began to sprout and in time blossomed and bore fruit—mail bills. When we come to find out that there never were any mail bills used, away went Mr. Grimes.

On page 4969 Mr. Bliss says:

They have not, up to this moment, dared to state under oath, I think, that those books are not in their possession.

On page 3784 Dorsey swears that he never received any such books. Never saw any such books. He swore again and again that he never heard of any such books.

Mr. BLISS. I stated distinctly that the defendants had not stated that in the form required to excuse them from the production. I stated that distinctly.

Mr. INGERSOLL. All right; away goes that.

On page 4983 Mr. Bliss says:

Is it not an absurdity to suppose that Dorsey would leave Rerdell in charge of his business from July, 1879, to August, 1880, and then on from that time until the close of the contract term in August, 1882; leave all the business in that way, and then through Bosler settle the accounts with Mr. Rerdell and have no knowledge in any way, not only of the entries contained in the books which Rerdell kept, but have no knowledge that he kept any books whatever? Is it not absurd to suppose any such thing? These ten routes represented an income of two hundred and fifty-odd thousand dollars a year, or a total business, including income and outgo, of \$500,000 a year, for three years, going no further than that. These ten routes alone represented transactions amounting to half a million dollars a year. There were one hundred and thirty routes and Mr. Dorsey took one-third in value if not in number. If the value was the same, Mr. Dorsey took not less than forty routes. As ten routes involved a business of \$1,500,000 in that period, the forty routes involved in that proportion transactions amounting to \$6,000,000.

You made a calculation on the supposition that all the routes were expedited the same as those in the indictment, and when you made that calculation you knew they were not expedited.

Mr. BLISS. I object, your honor, to his making any such statement as that. In the first place, it is not evidence; and in the second place, which is of more importance, it is not true. I did not know any such thing, and I do not know any such thing.

Mr. INGERSOLL. Do you say now that the other routes of his, to the number you talked of, were expedited?

Mr. BLISS. I do not know anything about it.

Mr. INGERSOLL. Do you say now that you do not know whether they were or not?

Mr. BLISS. I am not on the stand to be cross-examined now. But I do say to your honor that there is no evidence of that in this case. And then I go beyond that, and say that I did not know those things then and I do not know them now.

Mr. INGERSOLL. Very well; he made the argument on the supposition that all the routes were expedited.

Mr. BLISS. Yes.

Mr. INGERSOLL. I say that not one of them was expedited in which Mr. Dorsey had an interest.

Mr. BLISS. There is no evidence on that subject.

Mr. INGERSOLL. Is there any evidence of what you say?

Mr. BLISS. I put a supposititious case; you have stated a fact.

Mr. INGERSOLL. I will put another supposititious case, and mine is that the other routes were not expedited.

The COURT. That is the right way to meet it.

Mr. BLISS. Yes.

The COURT. Counsel ought not to turn to counsel on the other side and make an appeal to his knowledge in regard to matters not in evidence.

Mr. INGERSOLL. I know, but he said he did not know it. Then I asked him, as a matter of fact, if he did not know——

The COURT. [Interposing.] He stated his supposition, and you met that supposition——

Mr. INGERSOLL. [Interposing.] I am always glad to get information.

Now, then, I will go to another point, and that is the \$7,500 check. Mr. Bliss speaks of that check at page 4997, and he says:

There is a question raised as to whether it was drawn in Mr. Rerdell's presence.

I do not think there was. How could such a question be raised, gentlemen? The check was made payable to M. C. Rerdell, or his order. On the back of the check is Mr. Rerdell's name, put there by himself. He is the only indorser. And yet Mr. Bliss tells you that there is a question raised as to whether the money was drawn in Mr. Rerdell's presence or not. The check shows, and the evidence is absolutely perfect, that the money was paid to Rerdell in person. The question is this: Whether it was drawn in Mr. Rerdell's presence. If it was paid to him in person, I imagine that he was in that neighborhood at that time. The check was written by him, everything except the signature of Dorsey. It was drawn to Mr. Rerdell, or order, and indorsed by Rerdell himself. There was no other indorser. So that it is absolutely certain that he drew the money in question. And yet Mr. Bliss says the question is whether it was drawn in Rerdell's presence or not.

Mr. Bliss continues and states that the money went to S. W. Dorsey. Did it? Mr. Dorsey, on page 3965, states the circumstances. He was packing to go away. He had not the time to go to the bank himself. He had the check written payable to Mr. Rerdell, or order, and he signed it. Rerdell went to the bank, got the money, brought it back and put it in his carpet-sack. That is the testimony.

Now, Mr. Bliss says:

No evidence was given as to what Stephen W. Dorsey was wanting just at that time with \$7,500 in bills.

According to Mr. Rerdell, he wanted that money to give to Mr. Brady.

That is what Mr. Rerdell intended to swear. But when he found that that check was made payable to him, and indorsed by him, then they had to take another tack. They dare not say then, "That is the check." They dare not say then, "That is the money." Rerdell had forgotten at the time he swore that that check was payable to his order. When he told his \$7,000 story to MacVeagh he forgot about that check. When he told it to the Postmaster-General, if he did—I have forgotten whether he did or not—he forgot about that.

Now, gentlemen, I will call your attention to the part to which I really wish to direct your attention. It is an admission by the Government, an admission by Colonel Bliss; it is in these words, on page 4997, speaking of this very thing:

However that may be, they themselves put in a check here for \$7,500, drawn about the time Mr. Rerdell spoke of, the money upon which admittedly went to Stephen W. Dorsey, though there is a question raised as to whether it was drawn in Mr. Rerdell's presence or whether it was not drawn by him. But the money went to Stephen W. Dorsey, and there was a promise made to show you what was done with that \$7,500. But, like many another promise in this case, it remains unfulfilled to-day. No evidence was given as to what Stephen W. Dorsey was wanting just at that time with \$7,500 in bills.

Mr. Dorsey offered to tell you what he did with it, and you said you did not want it; you did not want to know when he was on the stand. He offered to tell you what he did with the money, and you would not take his statement. Hear what he says:

Mr. Dorsey was not taking \$7,500 in bills to the West.

How do you know? Who ever told Mr. Bliss that he was not taking \$7,500 to the West? He must have got that from Mr. Rerdell. Maybe that is the reason they would not allow Dorsey to tell, because before that time they had been informed that he would swear that he took the \$7,500 to the West. How else did Mr. Bliss find this out? It is not in the evidence, not a line. Somebody must have told him. Who could have told him? Nobody, I think, except Mr. Rerdell. Is it possible, then, that Mr. Bliss was afraid that Mr. Dorsey would swear that he took it West? And was he afraid also that you would believe it? I do not know. He did not want him to state. Now here is what I want to call your attention to:

Of course all that transaction might have occurred precisely as Mr. Rerdell testified, and there might have involved no corruption on Mr. Brady's part.

There is an admission. After all the talk about that evidence, all the talk about the \$7,000, all the talk about the \$7,500 check, Mr. Bliss at least admits to this jury:

Of course all that transaction might have occurred precisely as Mr. Rerdell testified, and there might have involved no corruption on Mr. Brady's part.

If, then, it may have occurred exactly as Rerdell swore, and involved no corruption, certainly it might have occurred as Mr. S. W. Dorsey swore and involved no corruption. I will go on now with a little more from Mr. Bliss:

The drawing of the money and going to Mr. Brady's room might have been a mere accident, as a call there to attend to some other business.

Of course, that is reasonable. I might go to the bank and draw \$5,000, and then I might stop in the Treasury Department, but that is no evidence that I am bribing the Secretary of the Treasury. I might step over to see the President; that would be no reason to believe that I bribed the Executive.

Of course that is not conclusive. It is only a little straw in this case, as showing a transaction of that kind involved in connection with all the evidence you have in this case—

“*A little straw*”—

evidence of Mr. Brady's acts, and particularly as at the time when that occurs evidence in connection with the large increases which Mr. Brady was then ordering; evidence in connection with the books, and the evidence they bear; evidence in connection with the declarations of Brady to Walsh—evidence all consistent.

And then he adds this piece of gratuitous information :

Mr. Dorsey was not taking \$7,500 in bills to the West.

How does he know? How did he find that out? And has it come to this? Has all the testimony upon that point—has the confession of Rerdell to MacVeagh and James shrunk to this little measure—that it is “only a straw?” Has it shrunk to this measure that Mr. Bliss admits that the whole thing might have been exactly as Rerdell swears, and yet have been perfectly innocent? Has it shrunk to this little measure? The Government would not tell us—I presume the Government will not tell us, what check it was the proceeds of which were taken by Mr. Dorsey to Mr. Brady. Neither will they say whether that sum was made up in one check or by adding together a number of checks; and, if so, what number?

At page 295 Mr. Bliss told you, in his opening speech, that Rerdell had on one occasion gone with Mr. Stephen W. Dorsey to the bank, and that \$7,000 had been drawn; that he had gone with Dorsey to the door of the Post-Office Department, or to Brady's room, at the time—he would not undertake to say which—Mr. Dorsey stating to him that he intended to pay that money to Mr. Brady, and that he (Mr. Dorsey) then went in. But when they come to put this man on the stand he will not swear that Dorsey ever told him that he intended to pay the money to Brady. Probably that part of the statement, that Dorsey told him that he was going to pay that money to Brady, can be found in the affidavit made before Mr. Woodward, in September, and repeated in the affidavit made at Hartford in November. But it is not in the evidence here.

Now, we brought all the checks that we had given on Middleton's bank, with the exception of two, I believe, that amounted to some hundred and odd dollars. We gave the Government counsel notice that there were two others.

Mr. MERRICK. Is there any evidence as to the amount of the checks?

Mr. INGERSOLL. I am giving you the evidence of my own statement.

Mr. MERRICK. I object to that.

Mr. INGERSOLL. I stated it at that time, and I have a right to state what I stated at that time.

Mr. MERRICK. It is that to which I object. He is not stating the evidence. He says it is his own statement, and that is not evidence.

Mr. S. W. DORSEY. I stated the amount, colonel.

Mr. INGERSOLL. I stated properly at that time the number of the checks and what they amounted to, and my client, S. W. Dorsey, swore on the stand what they amounted to.

Mr. MERRICK. If your honor please, pardon me for interrupting the counsel, but my recollection is that there were two of these checks that were not brought in.

Mr. INGERSOLL. Yes; that is right.

Mr. MERRICK. And when the counsel introduced those in evidence that he did introduce, he made some statements and promises in reference to those that he did not, to the effect that the court was to have

them all. I may be in error in my recollection, but that is my recollection without refreshing it by the record. So it is questionable now, under the ruling of your honor at the time, whether, in the absence of those two checks, those actually brought in are in evidence. When we refer to the record I think you will find that your honor so intimated—that is, to the effect that the whole must be here in order that a part might be admitted. But as to those not brought in, unquestionably the counsel has no right to say one word to the jury, except that there were two not brought in, unknown in quantity and unknown as to the payee.

Mr. INGERSOLL. I think the court decided that those that were already in should stay. That very question was raised. But before I get through I will show from the record exactly what happened, and I will show further that my client swore at that time what the other two checks were and what they came to.

Mr. BLISS. No, sir; that would have been proving the contents of written papers.

The COURT. My recollection of the occurrence is something like this: That the defendants offered certain checks drawn upon Middleton & Co. during that month. The court was of opinion that those checks of themselves were not competent evidence. Something was said, and the court was of opinion at the time that all the checks, for that matter, if offered in evidence by the defendants, would be received; and a day or two afterwards the checks were produced, with the exception of two, and it was stated that those two were of small amounts severally, and would afterwards be produced.

Mr. MERRICK. Yes, sir.

The COURT. I think they never were produced afterwards.

Mr. INGERSOLL. No, sir; I could not find them.

Mr. MERRICK. And the admission of the others, your honor ruled, was to depend upon the performance of the promise of the introduction of all.

The COURT. No, there was no condition about it.

Mr. MERRICK. Not expressed to the court, but your honor said they were admissible if all were produced, and the response to that qualification was, "They will be produced."

Mr. INGERSOLL. You are a little in error about that, Mr. Merrick.

Mr. MERRICK. Find the record. Leave that for the present and refer to it in the morning.

Mr. INGERSOLL. I will refer to it in the morning and show just what was said.

What I say is, gentlemen of the jury, that at that time when we introduced those checks the evidence was that there were two others. I think it was stated to whom one of them was made payable; but without going into any particulars, it was stated, I believe, that they amounted to a hundred and odd dollars.

Mr. MERRICK. I object to that statement.

Mr. INGERSOLL. It is part of the evidence.

Mr. MERRICK. No, sir; it is not.

The COURT. No; it was not.

Mr. INGERSOLL. It was so sworn, in my judgment.

Mr. MERRICK. The court said it is not in the record.

Mr. INGERSOLL. Very well; wait then until I find it. So we will say nothing about those two vagrant checks now. Let them go. I did introduce a certain number of checks; I do not know how many, but a good many. Among those checks was this one for \$7,500. There were

many others. I asked the gentlemen to pick out their check; they would not do it. I asked the gentlemen to pick out the checks; they did not do it. And now if we had failed to produce checks that were important in this case, the Government could have produced the books and clerks of Middleton & Co., and shown exactly the checks we drew upon that bank that month. They did not do it. As a matter of fact, I offered all the checks on all the banks I could think of that we had any business with in any way, except one, and that turned out to be the German-American Savings Bank, and it turned out that that went into bankruptcy eight months before this business; so there is no trouble about that. Why did they not pick out the checks upon which they claimed that the money was drawn that was paid to Brady?

Mr. Rerdell, on page 2254, in speaking of the money, swore that money was charged to Brady on the stub. He says that Dorsey told him, "You will find the amount on the stub of the check-book." The jury will notice that he speaks of the "amount," the "stub," and the "book," all in the singular. That was followed, I believe, by about six pages of discussion, and everybody who took part in that discussion, the court included, spoke of the sum of money as an "amount," upon a "stub," in a "check-book." And on page 2258 the court says:

The COURT. In consequence of that. It is proposed to prove that Dorsey directed the witness to enter a credit to William Smith upon the account *book* for an amount which he would find entered upon the *stub* of Dorsey's check-*book*. Now, it is proposed to prove further, that the witness did look at that *stub* of the check-*book*, and did enter a certain credit. The question now is whether the rule excluding oral testimony where better testimony, written testimony, can be obtained, applies to such a case as that. The *book* is not here. It is proposed to prove what the witness did in that *book*, what credit he entered in that *book*; it is not proposed to prove, as I understand it, what the *stub* exhibited, but what the witness did after looking at that *stub* in pursuance of the request made by Dorsey.

Mr. MERRICK. I propose to prove that he, being referred to the stub-*book*, ascertained something from it in reference to the *amount*, confirmatory of what Dorsey had said generally about the *amount*. He said, "So much has been paid, but you will find it on the stub-*book*. Go there and make the charge on the *book* against William Smith, of whatever amount it was.

Then, at the bottom of the page:

Mr. MERRICK. I desire, your honor, before reaching the second point and before framing the offer, in a shape which makes it plainly admissible beyond all doubt, to claim the right to introduce it upon the ground of the notice. That notice will become quite important in the course of the further examination of this and other witnesses. If we had the stub-*book* here the witness could pick out the particular *check*.

Now, what I insist is, that all along they were talking about one check, one charge on one stub, one stub in one stub-*book*, and one amount on one stub. Then there is a little bit of departure:

Those checks—

Plural for the first time—

were not drawn to the favor of William Smith, but were drawn payable to Dorsey himself.

Mr. MERRICK. What page do you read from?

Mr. CARPENTER. 2259.

Mr. INGERSOLL. I also call attention to 2254-'55-'56-'57-'58-'59. On all those pages it is spoken of as a stub of a check-*book*, or amount on a stub in a check-*book*. After the discussion was closed, then the witness began to talk about "books," "checks," "stubs," and "amounts." Why did he do that? His object was to get the evidence broad enough—checks and check-*books* enough—to fit their notice, to the end that

they might get possession of all the check-books, and of all the amounts on all the stubs.

What more? The discussion convinced Mr. Rerdell that it would be far safer to say "stubs" than "stub;" that it would be far better to say "check-books" than "check-book," and far better to say "amounts" than "amount;" because he would have a better chance in adding these up so as to make \$6,500, or \$7,000, or \$6,000, than to be brought down to one check, one amount, and one stub-book. So he went off into the region of safety, into the domain of the plural.

Now, the last point—at least for this evening—so far as Mr. Bliss is concerned, I believe, is about the red books. Mr. Bliss tells you that Mrs. Cushman was telegraphed to from the far West. There was a little anxiety, I believe, on the part of Rerdell about the book, and he telegraphed her. She found it there in the wood-shed, you know, hanging up, I think, in the old family carpet-sack—I have forgotten where she found it—and she put it away. Now, there is a question I want to ask here, and I know that Mr. Merrick when he closes will answer it to his entire satisfaction, I do not know whether he will to yours or to mine: How does it happen that Mrs. Rerdell never saw that red book? How does it happen that Mrs. Rerdell, when she was put on the stand, never mentioned that red book? How does it happen that she never heard of it when her husband went to New York to get it; when everything he had in the world, according to his idea, was depending upon it; when it was his sheet-anchor; when it was the corner-stone of his safety? And yet his wife never heard of it, never saw it, did not know it was in the wood shed, slept in that house night after night and did not even dream that her husband's safety depended on any book in a carpet-sack hanging in the wood shed. She never said a word about it on the stand, not a word. Gentlemen, nobody can answer that question except by admitting that the book was not there and did not exist.

But perhaps I have said enough about the speeches of Mr. Ker and Mr. Bliss. Of course, their business is to do what they can to convict. I do not know that I ought to take up much more time with them. I feel a good deal as that man did in Pennsylvania who was offered one-quarter of a field of wheat if he would harvest it. He went out and looked at it. "Well," he says, "I don't believe I will do it." The owner says, "Why?" "Well," he says, "there is a good deal of straw, and I don't think there is wheat enough to make a quarter." [Laughter.]

So now, gentlemen, if the court will permit, I would like to adjourn till to-morrow morning.

The COURT. Adjourn the court.

Thereupon (at 3 o'clock and 53 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

THURSDAY, MAY 24, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. INGERSOLL. If the court please, and gentlemen: The first thing to do this morning is to clear up a little matter that arose last evening. On page 5400 I was going on to say that Mr. Bliss had made a mistake as to the amount of fines that had been imposed by General Brady on

the contractors on the Bismarck and Tongue River route. I stated that the amount was \$29,224. I also stated that there was between thirteen and fourteen thousand dollars remitted. At that point Mr. Bliss interrupted me, and said:

Of which \$17,831 was remitted.

To which I replied:

Yes; but what do you say? Mr. Bliss states that the fines on the Bismarck and Tongue River route during Brady's administration were only \$13,000. As a matter of fact, they were \$29,224. I have got the gentleman penned up there.

Mr. BLISS. Not very much.

Mr. INGERSOLL. Yes; very much.

Mr. CARPENTER. Only a little more than \$13,000 remitted.

Mr. BLISS. Seventeen thousand eight hundred and thirty-one dollars and odd cents was remitted.

He made that statement while he was looking at the table, and consequently I admitted it. I then said:

I made a mistake of \$4,000, and you made a mistake of \$16,224. Mr. Bliss is an accurate man, as a rule. He has been called the index of this business for the Government.

Now, I did not suppose, of course, that Mr. Bliss could be mistaken when he was looking at the table, but thinking that may be he might make a mistake, and also thinking that if he did, it would be one against the defendants, I looked, and I found on page 727 of the record that the amount of fines was exactly as I stated, except it was 9 cents more—just \$29,224.09. While Mr. Bliss was looking at the table of remissions on the Tongue River route he said the remissions were \$17,831. On page 727 I find that the remissions were \$13,303.74, and no more.

Mr. BLISS. Please look at the two items—starred—\$4,503.89 and \$13,328.56, and then look below and see what it says:

Remission of parts of the deduction imposed in the fourth quarter of 1879 and the first quarter of 1880.

Mr. INGERSOLL. Yes. It says there remissions \$13,303.74. The others never were remitted. I turn right back to page 725, and on the third line I find:

Bismarck and Tongue River route. Pay accrued, \$157,487.83. Fines and deductions, \$46,299.89. Remissions, \$13,303.74.

There it is, gentlemen.

Mr. BLISS. And yet the \$4,503.89, and the other amount are starred as afterwards remitted.

Mr. INGERSOLL. It is a mistake.

Mr. BLISS. It may be. It is in the table. I have not looked to see whether it is a mistake or not.

Mr. INGERSOLL. I want the gentleman's character as an index destroyed. I want you, gentlemen, to know that one of two things is true: Either that he does not know the contents of these papers or that he does not state them. So much for that point.

I have another little difficulty to settle with the same gentleman. I stated on yesterday that the idea Mr. Bliss had and that he has endeavored to enforce again and again was that in making the affidavit you should state in that affidavit the number of men and horses then actually in use; not the number required—not the number necessary, but the number actually in use. Mr. Bliss denied that, and said I was mistaken. I did not know but that I was, and so I went and looked at the record. I first looked at page 239 to see if he had ever said anything of that kind. On page 239, found this language used by Mr. Bliss:

You have to find out how many are employed at the moment under the original contract, and then how many will probably be employed under the increased speed. One is a question of fact, the other a matter of opinion.

In other words, he lays down the doctrine that the affidavit should state the actual number then employed. I demonstrated to you that the actual number then employed might not be a reasonable number. On the same page I find this :

You see, gentlemen, the importance of getting at that fact, and getting at it accurately: "How many men and horses are now used."

Then I turn to page 240:

If Mr. Brady takes and states correctly the number of horses actually employed.

On the same page:

He understated the number of men and horses actually employed then.

On the same page:

Now, what did Mr. Brady do in ascertaining these most important numbers? Did he do as any honest man would do, as any fair official would do? Did he make any effort to find out what those numbers were? Did he send to the locality and find out how many men and horses were then actually being used?

On the same page:

He went to the man who was to be benefited by the allowance, who was to get the money from the Treasury, and he received from him a brief affidavit not larger than that [exhibiting a folded paper], in which the man said that the number of stock and carriers now employed—

Were so many. On the same page:

We have searched in vain to find a case where Mr. Brady prior to making an order for increase of speed inquired of any human being how many men and horses were then being used.

On the next page:

That the contractor who is to be benefited should be required to give his own statement, and to give it under oath, of the number of men and horses he is then using.

On the same page:

We probably would try to state correctly the number of men and horses we are now using.

On the same page:

But Mr. Brady, under that regulation, took from the contractor, or claimed to take from the contractor, his affidavit of the number actually used.

On the next page:

What is the result of allowing such affidavits, so made by these parties, to be accepted? Why the result was, and we shall place before you the witnesses who will show it, that the statements were almost uniformly false of the number of men and horses then actually in use.

Yet he says that is not his doctrine. On page 243:

I believe that is the absolutely conclusive statement of the number of men and animals that are now in use upon that route.

Then I go to page 245:

The affidavit which stated the number of men and horses then actually in use.

On the same page:

The only error was that he forgot when he made the second affidavit what he had stated in the first affidavit as to the number of men and horses actually in use.

Now we come to page 4761. Let us see if he still kept up his doctrine in his last speech:

He orders expedition and increase, being governed by the proportion between the number of men and horses actually used and the number of men and horses that are thought to be needed on the proposed schedule.

Then I come to page 4762:

Take, for instance, a case where the amount allowed is \$2,000 a year, and where they are actually using five men and ten horses.

Now, on page 4793, to show that he still kept up his doctrine:

In other words, the statute looks to the fact, what were the number of men and horses actually used when the oath was made.

That is enough. I can give, I think, twenty-seven other cases where he used that expression. I stated yesterday that he laid down to you the doctrine that the first question was to know the number of men and horses actually in use at the time the affidavit was made. I have demonstrated to you that that is an unsafe rule.

Mr. BLISS. Will you allow me to say a word?

Mr. INGERSOLL. I will.

Mr. BLISS. I began by saying that the statute said the number necessarily employed; and that in getting at the number necessarily employed the most important element in the calculation was to find out how many were then being used. I started out in my remarks in both cases by saying that the statute said "necessarily employed," and that it must be those that were employed, and it must be those that were necessarily employed. I said it might be that there were not enough necessarily employed.

The COURT. You speak of a statute. There is no statute.

Mr. BLISS. There is a statute:

The additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

The COURT. I understand that. But in regard to the regulations——

Mr. BLISS. [Interposing.] I fitted the affidavit to the regulation. I assumed that the regulation was intended to comply with the statute. The statute says, "The number necessarily employed." I started out in that way, and then said that the best evidence of what were necessarily employed, or evidence that ought to be obtained, was as to the number actually in use. That is my view now.

Mr. INGERSOLL. That explanation (as you said of the friendship of Vaile and Miner, as I recollect it) is too thin. Gentlemen, what he did insist upon before this jury, and what I have shown to you he insisted upon, is that the thing to find out is not the number necessary, but the number actually in use, and that would show the number necessary. I demonstrated to you that a man could carry a mail one hundred and fifty miles and back once a week with one horse, and he need not do it more than one week in order to make an affidavit that that was the number actually employed. I showed you that by his rule the Government could have been defrauded out of millions of dollars. You see his rule will not work. The rule is this, gentlemen: The number reasonably employed; the reasonable number to do the work on the existing schedule, and the reasonable number to be employed to do the work on the expedited or increased schedule. That is the law, because that is common sense. There can be no question about that.

Now, if the court please, I come to the next point. Mr. Merrick, I wish to call your attention to pages 3964 and 3965. This is with regard to the Middleton checks:

Mr. MERRICK. In regard to the checks that were offered the other day, your honor,

are they considered in evidence? There was some proposition about doing something, and I did not know whether they were in generally or provisionally.

Mr. INGERSOLL. They are in evidence, as I understand it. I read them all and stated at the time that there was another one.

The COURT. The checks on Middleton & Co. are in evidence.

Mr. INGERSOLL. Oh, yes, so I understood.

Mr. MERRICK. There were two checks on Middleton & Co. missing, I believe.

The COURT. One for a small amount—a \$10 check.

Mr. BLISS. There is no evidence as to what that check was.

Mr. MERRICK. It is a missing check.

Mr. CARPENTER. For a small sum of money.

Mr. BLISS. We do not know that.

Mr. INGERSOLL. I will show exactly. I stated at the time that I could not prove it by that witness, but I would introduce another, which I will do.

Mr. MERRICK. The stub-books will show it.

Mr. INGERSOLL. You will have as much as you can do, gentlemen, to run one side of this case.

Mr. MERRICK. There are two checks missing.

The WITNESS. That is my recollection, that there are two missing; one, I think, for \$60 or \$70 and one for one hundred and—

Mr. MERRICK. [Interposing.] No matter; I did not ask about that.

Mr. INGERSOLL. No matter; we will prove it.

Mr. MERRICK. Supposing that that will be proved, shall I proceed with the examination about these checks?

The COURT. Certainly; you may regard those checks in evidence; they were admitted.

Mr. MERRICK. They were admitted, as I understood, in the event that all the checks were put in.

The COURT. No; they were admitted at any rate.

Mr. MERRICK. But I mean all the checks on Middleton & Co. for that month.

The COURT. It was understood at the time, however, that those missing checks would be accounted for.

Mr. INGERSOLL. Certainly.

Now, on page 3737, I find some more remarks on the same subject:

Mr. INGERSOLL. If the court please, I offer in evidence every check given on Middleton & Co. in the month of June, 1879.

The COURT. How many of them are there?

Mr. INGERSOLL. [After counting checks.] There are twenty-seven, and there is one check for \$170 to Reeside, making twenty-eight. Those are all I know of.

Now, on page 3738, very near the bottom:

The COURT. Do you propose to follow this evidence by proving that these are all the checks?

Mr. INGERSOLL. Yes, sir; either that they are all, or produce the other one; the other one is all I know, in the month of June, 1879.

Thereupon objection was made by the prosecution and overruled by the court. I then introduced, I believe, twenty-seven checks, stating at the same time that there was another one. The other one I never could find and never did find. Mr. Dorsey in his evidence said that he believed there were two checks, one I think for sixty or seventy dollars, and one for a hundred and something. I find on page 2298, in the testimony of Rerdell, something on the subject. The affidavit of June, 1881, was under consideration:

Q. Another paragraph:

"I desire to say here, that from long association and connection with Mr. Dorsey as his stenographer and business agent, I have learned to imitate his handwriting, and can sign his name so near like he does that he himself cannot tell it, and I have signed checks that passed the bank."

A. That is not so, except that I did on one occasion sign a check at his request. Sitting at the desk opposite him I had written a check, and he said, "Sign it," and I signed it without any effort, as I now remember. And on another occasion I signed a check "S. W. Dorsey, by M. C. R.," which got the money. I have got that check at home now, I think.

The only point that I make is that I consider those checks in evidence

Mr. MERRICK. There is one other page upon the subject. I think page 3739, if I am not mistaken, but it is not material to read it. Suffice it to say, before Mr. Ingersoll proceeds, as he has addressed his remark to me, that there was never as far as I recollect any evidence introduced in reference to those two checks. It was all speculative and there was no proof that these were all the checks.

The COURT. Rerdell accounts for one of them.

Mr. MERRICK. No, sir; not on that bank; not necessarily does he account for one of them. There is no proof that these forty and odd checks, I think Mr. Ingersoll said, are all the checks.

Mr. INGERSOLL. I think there were twenty-eight in all and I introduced twenty-seven which were all I had at the time. Afterward I think Mr. Dorsey stated that there was still another check to Reeside of \$170 or \$70, and I found that check.

The COURT. What evidence is there in the case that these twenty-eight checks as you say were all the checks for that month?

Mr. INGERSOLL. Mr. Dorsey swears to it.

Mr. MERRICK. I think not. I may be mistaken. I was going on to remark in that connection that there is in the numbering of the checks which follow in tolerably consecutive order, at one point a break of some fifty checks. The checks are consecutively numbered.

Mr. INGERSOLL. A break of just fifty checks.

Mr. CARPENTER. A break of three hundred on account of the change of check books.

Mr. MERRICK. I think not so large a break as that. I am very confident of it. The checks follow consecutively and then there is a break. The first suggestion I make to the court is that there is no proof that these are all the checks and consequently by the break in the number there is indirect proof that they are not.

Mr. CARPENTER. There is a break of three hundred and sixty.

Mr. MERRICK. I will show you that that is a mistake.

Mr. CARPENTER. Mr. Bliss commented upon it in his speech.

Mr. MERRICK. That he may have done. That I do not deny. I simply make this suggestion, and that is all I have a right to do now.

Mr. INGERSOLL. Then I do not care to say any more on the subject, except to the jury. I stopped commenting further last evening on account of there being a dispute as to the evidence. The condition of the evidence as I understand it is simply this: That we introduced some twenty-seven or twenty eight checks. I have not counted them lately. I stated at the time they were introduced that they were all, with the exception of one to Reside. It afterwards turned out, I believe, that there were two not here. We commenced with the date of June 9.

Mr. MERRICK. What is the page?

Mr. INGERSOLL. Page 3739. There is a break from 143 to 501. The banks furnish check-books to their customers. Some of these books had a hundred checks in, some five hundred, I believe, and some as low as fifty. The check-books of the same bank are not always alike. They change from time to time. You will notice these checks that I introduced are some of them large. [Exhibiting checks.] These were furnished by the bank, and you will find that they are numbered in the five hundreds.

Mr. MERRICK. May I ask if there is any proof that they are furnished by the bank? My impression is that there is some proof that Dorsey had his own checks printed; but I am not sure about that.

Mr. INGERSOLL. The bank furnishes the checks, and if you want your name printed upon them the bank will have it done. It does not make

any difference about that. Now, gentlemen, in drawing checks sometimes a man will use one book and sometimes another, and so of course the numbers will be different; besides all that, it is owing to where he happens to be. All the large ones are in the five hundreds. Sometimes a man writes a check on one book and sometimes on another; sometimes on an ordinary piece of paper, and sometimes on the back of the bill that is brought to him to be paid. There are a thousand ways. We introduced these checks and we said, these are all, with the exception of two. One is for a certain amount and the other is, I believe, for a hundred and odd dollars.

Mr. MERRICK. I object to that statement.

Mr. INGERSOLL. That is what the witness said.

Mr. MERRICK. If your honor will allow me——

Mr. INGERSOLL. [Interposing.] I read from page 3964:

The WITNESS. That is my recollection, that there are two missing: one, I think, for sixty or seventy dollars and one for one hundred and ——

And the answer was not finished.

Mr. MERRICK. In the course of a discussion between the counsel and the court, whilst the witness was on the stand, in response to no question whatever, the witness, as he did when Bissell was on the stand, just blurted out this statement. It is not evidence in the case, your honor. He could not prove the contents of a paper. It was an expression coming from the witness without inquiry and was a breach of order. It was immediately followed by my remark:

Mr. MERRICK. [Interposing.] No matter. I did not ask about that.

Mr. CARPENTER. You cannot find it stricken out anywhere.

Mr. MERRICK. It makes no difference whether it is stricken out or not. I say it is not in the case, for he was not then testifying, properly speaking, any more than he was when he told Bissell on the stand, from his seat, that there was no J. B. B. check.

Mr. INGERSOLL. That would not have been evidence if Bissell had not agreed with him.

Mr. MERRICK. He did not agree with him.

Mr. INGERSOLL. Oh, yes; he said he could not say whether it was that or a draft on Tankersley.

The COURT. I think that would hardly be evidence.

Mr. INGERSOLL. No matter whether it was or not; I do not care.

Here are the German-American National Bank checks, and there seem to be two kinds of checks. Some of these Middleton checks seem to have the numbers printed. I introduced the checks, stating that they were all there except two.

Mr. MERRICK. I object to that.

Mr. INGERSOLL. I have the right to make that statement.

Mr. MERRICK. I do not think counsel has a right to make that statement.

Mr. INGERSOLL. Then we will discuss that.

Mr. MERRICK. I must insist that the counsel confine himself to the evidence, where I am prepared to meet him; but I cannot cope with him in statements of that kind.

The COURT. Undoubtedly these checks were admitted with the understanding that counsel for the defense would produce the missing checks.

Mr. MERRICK. Produce the missing checks and prove that he had produced and accounted for all.

The COURT. And with that understanding the others were admitted. But having come in in that way, the court subsequently refused to take

them out, and endeavored to hold counsel to their pledge. Whether they have fulfilled that pledge or not——

Mr. MERRICK. [Interposing.] Is a matter for the court.

The COURT. [Continuing.]—is a matter for the court.

Mr. MERRICK. There were other obligations which I have no doubt they would have fulfilled if they could.

Mr. INGERSOLL. The court says they are in absolutely.

Mr. MERRICK. Yes; they are in. But the counsel first stated that two were all that were needed to complete the number drawn in the month of June, but there was no proof of that fact, as far as I know.

The COURT. No proof further than Colonel Ingersoll's statement.

Mr. MERRICK. That is all, and I should be sorry to take that as proof, and I am sure that Colonel Ingersoll would not want to take the statement of counsel as proof in a case.

Mr. INGERSOLL. That is not what I am talking about.

Mr. MERRICK. What the counsel said was said to the court, and is a pledge remaining unredeemed, because you could not find them.

Mr. INGERSOLL. Yes; it was unredeemed, because I stated here in court that we could not find the checks.

Mr. MERRICK. I say because you could not find them.

The COURT. Then the case stands in that way, and the jury may draw its inference one way or the other from that omission.

Mr. INGERSOLL. That is right.

The COURT. [To Mr. Merrick.] Then the matter is open for you to comment upon.

Mr. MERRICK. That unaccounted-for check is not the only thing, but the promise of the proof that those were all the checks was not fulfilled.

The COURT. That is open for your remark.

Mr. MERRICK. I object. I do not think the court understands me.

Mr. INGERSOLL. At the time that I offered these checks I notified the other side that we claimed that those were all, with two exceptions; I think I said one at first, and I think afterwards the witness said two. I simply want it understood that at the time I introduced these checks I gave full, perfect, and complete notice that we claimed that those were all with those two exceptions—that I stated at that time—and that I would bring them in if we could find them.

The COURT. Yes; there was no proof afterwards on your part that they were all.

Mr. INGERSOLL. No, sir.

The COURT. And there was no proof on the other side that they were not all.

Mr. MERRICK. And yet there was a distinct promise that there would be proof that they were all.

Mr. INGERSOLL. Now, gentlemen, all I want to say is that after I had given them such notice, and the proof was not forthcoming, they could have gone to the bank of Middleton & Co., and have shown by its books and clerks that these were not all, and that there were other checks for large amounts drawn by Dorsey to his own order in the month of June, the proceeds of which might have been paid to Mr. Brady. The prosecution is absolutely welcome to all they can make out of that. Here is the bank right down here. Everybody knows Middleton & Co. If these were not all the checks, if other checks had been drawn for large amounts, it would have been very easy to bring Mr. Middleton here, and perfectly easy to bring his clerks and books here in court.

Mr. MERRICK. Why did you not bring them?

Mr. INGERSOLL. After I had introduced the checks and made the

search for the others I absolutely forgot the question ; it passed out of my mind utterly. That is the absolute truth. Else I would have proved by Mr. Dorsey that he made the search and that they could not be found. But I will now give the gentlemen the opportunity, if they make any claim on that, to bring in Mr. Middleton and his clerks and books. No need of having any trouble on a little thing like that.

Now, gentlemen, the next witness to whose testimony I will invite your attention is Mr. Boone. Mr. Boone was relied upon by the Government to show that this conspiracy was born in the brain of Mr. Dorsey ; that these other men were simply tools and instrumentalities directed by him ; that he was the man who devised this scheme to defraud the Government, and that it was Dorsey who suggested the fraudulent subcontracts. They brought Mr. Boone upon the stand for that purpose, and I do not think it is improper for me to say that Mr. Boone was swearing under great pressure. It is disclosed by his own testimony that he had, I believe, eight hundred or nine hundred routes.

Mr. DAVIDGE. Eleven hundred.

Mr. INGERSOLL. Eleven hundred routes, and that he had been declared a failing contractor by the department ; and it also appeared in evidence that he had been indicted some seven or eight times. Gentlemen, that man was swearing under great pressure. I told you once before that the hand of the Government had him clutched by the throat, and the Government relied upon his testimony to show how this conspiracy originated. Now I propose to call your attention to the evidence of Mr. Boone upon this subject. I may make some mistake in the page. It is hard to keep perfectly accurate with regard to the page. Sometimes I read just at the bottom of the page on the last line, and then over on the next page. But if I make any mistake of that kind I will gladly correct it, of course.

On page 1352 Mr. Boone swears substantially that on his first meeting with Stephen W. Dorsey—that is, after they met at the house—he said to Dorsey that he (Boone) would be satisfied with a one-third interest. Now, the testimony of Boone is that Mr. Dorsey then and there agreed that he might have the one-third interest.

Mr. Dorsey says it is not that way ; that he told him that when the others came they would probably give him that interest, or something to that effect.

Mr. Boone further swears that when J. W. Dorsey did come there was a contract—or articles of agreement you may call them—handed to him by J. R. Miner, purporting to be articles of partnership between John W. Dorsey and himself, and that he signed these articles ; that that, I believe, was on the 15th of January, 1878, and that it was by virtue of that agreement that he had one third. It was not by virtue of any talk he had with S. W. Dorsey that he got an interest, and you will see how perfectly that harmonizes with the statement of Stephen W. Dorsey.

Mr. Dorsey's statement is: "I cannot make the bargain with you, but when John W. Dorsey comes I think he will, or they will." It turned out that when John W. Dorsey did come in January he did enter into articles of partnership with A. E. Boone, and did give him the one-third interest. So the fact stands out that he got the one-third interest from John W. Dorsey and not from Stephen W. Dorsey. If the paper had been written and signed by Stephen W. Dorsey that would uphold the testimony of Boone. If Boone had said, "I made the bargain with Stephen W. Dorsey," and the articles of copartnership were signed by him, I submit that that would have been a perfect corroboration of Boone. Stephen W. Dorsey swears that the bargain was

made with John W. Dorsey, and you find that the agreement was signed by John W. Dorsey, and not by Stephen W. Dorsey. I submit, therefore, that that is a perfect corroboration of the testimony of Stephen W. Dorsey.

At page 1544 Mr. Boone says that, as a matter of fact, all contractors endeavored to keep what they were doing secret from all other contractors. Think of the talk we have heard about secrecy. If the bidders upon any of these routes did not want the whole world to know the amount they had bid, that secrecy was tortured into evidence of a criminal conspiracy. If John W. Dorsey did not want the world to know what he was doing, if Mr. Boone wanted to keep a secret, these gentlemen say it is because they were engaged in a conspiracy to defraud the Government, and crime loves the darkness. What does Mr. Boone say? As a matter of fact, that all contractors endeavored to keep what they were doing secret from all other contractors where they feared rivalry. Of course that is human nature.

Mr. Boone further says that he never knew of one contractor admitting even that he was going to bid. He always pretended, don't you see, that he was not going to bid. He wanted to throw the other contractors off their guard. He did not want them to imagine that he was figuring upon that same route, because if they thought he was, they might put in a much lower bid. He wanted them to feel secure, so that they would put in a good high bid, and then if he put in a tolerably low bid he would get the route. That is simply human nature.

Boone further says that always when a letting came on he had his bids in; that contractors keep their bids secret from rival contractors, not for the purpose of defrauding the Government, but for the purpose of taking care of their business. Now, gentlemen, when men make these proposals and keep their business secret—as it turns out that in these cases they were keeping their business secret—the fact that they are so doing is not evidence going to show that they are keeping that business secret because they have conspired. Have you not the right to draw the inference, and is it not the law that you must draw the inference, that they kept their business secret for the same reason that all honest men keep their business secret?

At page 1545, Mr. Boone, swearing again about his talk with Mr. Dorsey that night after the arrangement was concluded, says that—

He—

Dorsey—

told me to be careful of Elkins, because Elkins was representing Roots & Kerens, large contractors, * * * the largest in the department, at that time, in the Southwest.

And yet that evidence has been alluded to as having in it the touch and taint of crime, because S. W. Dorsey said to Boone to say nothing to Elkins. Who was Elkins? He, at that time, as appears from the evidence, was the attorney of Roots & Kerens; and who were they? Among the largest, if not the largest contractors in the department; that is, the largest in the Southwest.

Mr. Boone stated that the letter of Peck to S. W. Dorsey requested him to get some man who knew the business to look after the bids or proposals. Now, I want to ask you, gentlemen, and I want you to answer it like sensible men, if Stephen W. Dorsey got up a conspiracy himself, why was it that Peck wrote to him asking him to get some competent man to collect the information about the bids—that is, about the country, about the routes, about the cost of living, about

wages, the condition of the roads, and the topography of the country? If it was hatched in the brain of Stephen W. Dorsey, how is it possible, gentlemen, that a letter was written to him by Peck asking him to get a competent man to gather that information? Mr. Boone swears that he had such a letter. Mr. Boone swears that Dorsey showed the letter to him. Mr. Boone swears that, in consequence of that letter, he went to work to gather this information. Did Mr. Dorsey do anything about gathering information? Nothing. Did he give any advice? None. Did he ask any questions? Not one. Did he interfere with Mr. Boone in the business? Never.

You know there was a very suspicious circumstance. I believe there was a direction given that letters be sent to James H. Kepner. That was another suspicious circumstance. Mr. Boone swears that he was also in the mail business; that he did not want the letters to go some place; that he had to give at the department an address; that thereupon he chose the name of James H. Kepner, his step-son, so that all the mail in regard to this particular business would go in one box, and not be mingled with the mail in reference to his individual business or the business represented by the firm to which he belonged. What more does he swear? That neither Dorsey nor any one of these defendants ever suggested that name, or ever suggested that any such change be made; that it was made only as a matter of convenience; that it was not intended to and could not in any way defraud the Government.

Now, Mr. Boone has cleared up a little of this. He has cleared up the letter; he has cleared up the charge of secrecy; he has cleared up the charge that we had the letters addressed to James H. Kepner & Co.; he has shown that everything done so far was perfectly natural, perfectly innocent, and in accordance with the habits of men engaged in that business.

Now I come to the next thing (page 1550). The next great circumstance in this case, the great, suspicious circumstance, was that the amount of the bid was left blank in the proposals. The moment they saw those blanks in the bids they knew then that the Government was to be defrauded, and they brought Mr. Boone here for the purpose of showing that that was done to lay the foundation for a fraud. What does Boone swear? He swears that he always left that part of the proposal blank; always had done so; had been engaged in the mail business for years, and never filled that blank up in his life, in which the amount of the bid should be inserted. It was not left blank to defraud the Government, but to prevent the postmasters and sureties, or any other persons, finding out the amount of the bid. Away goes that suspicious circumstance.

After the bids had been properly executed and came back into the hands of the contractors, from the time the figures were put into those routes, what does he say they did?

We slept with them until we could get them to the department.

He says they never allowed anybody to see them after the amount of the bid had been inserted; that they would not allow anybody to see the amount of the bids; that it was left out, however, only for self-protection, and for no other reason. That is the Government's own witness. He is the man they brought to show that this blank in the bid was a suspicious circumstance. He is the man they brought here to show that because Stephen W. Dorsey had told him to say nothing to Elkins, that injunction of secrecy was evidence of a conspiracy.

At page 1552, Mr. Boone, in speaking of these same things, says that however they were made, whether the name of the bidder or the route was put in, or whatever he did—that is, Boone—he did not do it for the purpose of defrauding the Government. They say to him, “Don’t you know that you left out not only the amount of the bid, but the name of the bidder?” He says, “Whatever I did, whether I left out the amount of the bid or the name of the bidder, I did not do it for the purpose of defrauding the Government; I had no such idea, no idea of defrauding the Government by leaving any blank or any blanks.” He did the work. Stephen W. Dorsey left no blank; A. E. Boone left every blank; and yet they brought him forward to prove that that was the result of a conspiracy; and after he comes upon the stand he swears, “I left those blanks myself; I always left them in proposals exactly in that way; and whether I left out the amount of the bid or the name of the bidder, I did not do it to defraud the Government; I did it simply to protect myself, as I had the right to do.” So much for that. That is gone.

So, speaking of these other proposals (the Clendenning proposals) what does Mr. Boone say—the witness for the Government, the very man who got up those proposals, the man who wrote them, the man who wrapped them up, and sealed them? What does he say? “Those proposals were not gotten up for the purpose of defrauding the Government; I did not send them to Clendenning for that purpose.” That is the end of that. No conspiracy there. The object, don’t you see, gentlemen, was to show by Boone that he acted under the direction of Dorsey; that Dorsey was responsible for everything that Boone did; and that although Boone was guilty of no crime in leaving the bid blank, still, if he did it by authority of Dorsey, Dorsey had an ulterior motive of which Boone was ignorant. Let us see.

At page 1555, Mr. Boone swears that Dorsey never told him at any time or any place that he wanted any blanks left. And yet they were endeavoring by that witness to saddle that upon S. W. Dorsey. But that witness swears that Dorsey never even told him that he wanted any blanks left in any paper, proposal, bid, or bond. He says that Dorsey never at any time or place told him (Boone) that he (Dorsey) wanted any blanks left, or any proposals of any particular form printed, to the end that a fraud might be perpetrated upon the Government—not a word.

And, gentlemen, I am now in that space of time where they say this conspiracy was born. At page 1567, before Miner got here, Mr. Boone swears that Dorsey told him that he would advance money for the other defendants, and Mr. Boone swears that after he got here he never asked Dorsey for a dollar except through Miner; that Dorsey never gave a dollar except through Miner.

What more? This is the witness that is going to establish the guilt of Stephen W. Dorsey. Stephen W. Dorsey never told Boone at any time that he had any interest whatever in those mail routes. Boone never heard of it. Dorsey never told him to print a proposal with a blank; never told him to leave a blank after it was printed; never told him to do anything for the purpose of defrauding the Government in any way at any time. This is extremely good reading, gentlemen, when you take into consideration that this is the witness of the Government, their main prop until the paragon of virtue made his appearance upon the stand.

Page 1558. Another great point: That in preparing the subcontracts, Dorsey having it in his mind to conspire against the Government, or really having conspired, according to their story, wanted a provision in

a subcontract for increase and expedition. Why, it strikes me, gentlemen, that that is evidence of honesty rather than dishonesty. If these subcontracts were to hold good during the contract term, and if in the contract given to the contractor by the Government there was a clause for increase and expedition, why should not the subcontract provide for the same contingencies that the contract provided for with the Government? That looks honest, don't it? And I believe, as a matter of fact—I do not know whether I have the right to state it or not—that an order has been issued now by the Post-Office Department——

Mr. BLISS. [Interposing.] I object.

Mr. MERRICK. Is it in evidence?

Mr. INGERSOLL. No, sir.

Mr. MERRICK. Then you cannot state it.

Mr. INGERSOLL. I did not know but that these orders, being of a general nature, we could all take notice of them.

Mr. BLISS. We will not take your statement of it.

Mr. INGERSOLL. I certainly will not fake yours.

The COURT. You are not trying the case; neither are the counsel on the other side trying it. We are trying it on the evidence.

Mr. INGERSOLL. That is right. Now, gentlemen, I say that it was evidence of honesty to put that clause in the subcontract. It was advertising the subcontractor that the moment he signed his subcontract the trips were liable to be increased and the time was liable to be shortened, and that if the time was shortened or the trips increased the pay was to be correspondingly increased. But I will go on with the testimony.

Page 1558: In preparing the subcontract Mr. Dorsey instructed Boone to provide for an expedition clause. That was a suspicious circumstance. What for? To conform to the expedition clause in the contract with the Government. If making it like the Government contract is evidence of conspiracy, the fact that the Government contracts have that clause is evidence that the Government conspired with somebody. It is just as good one way as the other. The Government made a contract with the contractor, the contractor made one with the subcontractor, and the contractor so far forgot his duties, so far forgot his moral obligations, that he made it just the same as his contract with the Government. Gentlemen, is there any depth of depravity below that? Absolutely copying the contract that the Government was going to make with him, and treating the subcontractor, so far as the contract was concerned, as the Government had treated him, he (Boone) prepared a clause which he thought filled the bill, and which he still thinks, I believe, would have been better to use than the other. When he showed that to Stephen W. Dorsey Dorsey suggested another form. It was the same thing exactly, but in different words. There was the testimony I have read to you, and now here is what Mr. Bliss states about it at page 4865:

But Stephen W. Dorsey, away back there, knew sufficient about expedition to appreciate the importance of keeping for the contractors 35 per cent. and giving to the men who were performing the service only 65 per cent.

Why not? Is that a crime? Suppose I agreed to carry the mail four years for \$10,000 a year and I subcontract with another man. Have I not the right to get it carried as cheaply as I can? I just ask you that as a business proposition. Or has every man to treat this Government as though it was in its dotage? Must you do business with the Government as though you were contracting with an infant or an idiot? Must you look at both sides of the contract? That is the question. The Government,

for instance, advertises for so much granite, and I put in a bid which is accepted; at the same time I know that I could furnish that granite for 25 per cent. less. Is it my duty under such circumstances to go and advertise the Government that I have cheated it, and that I would like to have it put the contract down? There may be heights of morality that would see the propriety of such action, but it is not for every-day wear and tear. Very few people have it; it scarcely ever comes into play in trading horses. Must we treat the Government as though it were imbecile? I say it was a simple business transaction. The Government advertises for proposals to carry the mail; I make my bid for \$10,000, and we will say that my bid is accepted. Now, I admit that I could carry it and make money for \$5,000.

Am I criminal if I go on and perform the contract as I agreed and draw the money? Or suppose the people along the route do not want it expedited and increased, and so I talk to them about it; I go to Mr. Brown and say, "Mr. Brown you are living in this smart, thriving town, and you need a daily mail." I go to the next village and I say, "Why, gentlemen, you will never have a town here until you have a daily mail; I am the fellow now carrying the mail." And I keep talking about it, you know, and finally get a fellow to get up a petition, or I write one myself, and send it around, and say to them, "Gentlemen, what you want is more mail, faster mail; the mail is the pioneer of civilization, gentlemen; have a daily mail, and along the line at once towns and villages and cities will spring up, and all the hillsides will be covered with farms, and school-houses will be here, and wealth will be universal." Any crime about that? Every railroad has been built just that way. Every park has been laid out in every city by just such means. Nearly every street that has been improved has been improved in that way, by men who had some interest in the property, by men who were to be benefited by it themselves, and who ought to be benefited. Should the men that get the public attention in that direction be benefited, or the men who do nothing? I say that the men who give attention to the business have a right to be benefited by it. And yet here is the crime, gentlemen. And then we only gave these fellows 65 per cent. and took 35 ourselves, because we were bound to the Government to fulfill the contract, as was explained to you so admirably, so perfectly by Judge Wilson. The contract was to run for four years, and I believe in a certain contingency for six months thereafter. We had to carry out the contract, whether the subcontractor carried out his contract with us or not.

Now, this is what Mr. Bliss says:

So, after a large mass of subcontracts had been struck from the press, which gave to the subcontractors all the increase—

There never was a subcontract that gave to the subcontractors all the increase; there is no evidence that there ever was such a subcontract. And yet Mr. Bliss states to you:

So, after a large mass of subcontracts had been struck from the press, which gave to the subcontractors all the increase—

That is a mistake—

he—

That is, Stephen W. Dorsey—

directed them to be put back on the press.

I should think he would. If he found any subcontracts were printed that gave to the subcontractor all the increase, I do not wonder that he

had them destroyed. Here you get, we will say, a contract for \$10,000 for one trip, with the agreement that if there are two trips the compensation shall be \$20,000. Thereupon you make a contract with a subcontractor, and you agree in that subcontract that he shall have all the increase. Of course, you want that made over again; of course, you would not make that kind of a subcontract.

He directed them to be put back on the press, and this provision giving the subcontractor his money struck out and this other clause put in.

Gentlemen, that is an entire and absolute mistake. There is no such evidence, there never was in this case, and I take it there never will be. The evidence was—and you remember it; and you remember it; and you remember it; and you [addressing different jurors]—that Stephen W. Dorsey allowed to the subcontractor 65 per cent. of the expedition, and that same subcontract provided what he should have for one trip, and what he should have for two trips; that is to say, what he should have for increase; and it provided at the same time for 65 per cent. on expedition. Mr. Boone swears it; others swear it. Not only that, but it is printed in the record again and again and again. Why did Stephen W. Dorsey do that? I can tell you why: He did not. Why did Stephen W. Dorsey do that, if it was not because his fertile imagination had already conceived the plan of defrauding the United States, and he was making an arrangement by which that fraud could be consummated? How would that help him consummate a fraud? Suppose he struck out all the per cent. to the subcontractors; suppose he had not had any subcontract printed; suppose the subcontract was printed, and printed on purpose to deceive and defraud the subcontractors; how does that show that he was trying to defraud the United States? Why, if it proves anything it proves the other, that he had not entered into a conspiracy by which he could get the money from the United States, but had endeavored to get it from the subcontractors. If it proves anything it proves that. But the reason it does not prove anything is because the statement is not correct.

Now, just see how a conspiracy can be built of that material. A man that can do that can make a cover for Barnum's Circus with one postage-stamp; he can make a suit of clothes out of a rabbit-skin; he can make a grain of mustard seed cover the whole air without growing. Just think of that. Here is the evidence of that conspiracy:

So, after a large mass of subcontracts had been struck from the press, which gave to the subcontractors all the increase, he directed them to be put back on the press, and this provision giving the subcontractor his money struck out and this other clause put in.

That is given as an evidence that Dorsey had conspired. There is not a thing on the earth that he could have done that would not prove conspiracy just as well as that—just exactly—no other act. Humph! That is the way they build a conspiracy.

Why not take another step? Why not have a little bit of ordinary good hard sense? On the 17th day of May, I believe, 1878, the act was passed allowing the subcontractor to put his subcontract on file. Now, that contract ought to provide for all the contingencies of the service, so that if the trips were increased the Government would know how much to pay that subcontractor; so that if the time was expedited the Government would know how much to pay the subcontractor. The subcontract ought to have been made in that way, and it would be perfectly proper to make it in that way.

I once went to see a friend of mine who had the erysipelas and who

was a little crazy. I sat down by his bedside, and he says, "Ingersoll, I have made a discovery; I just tell you I am going to be a millionaire." Said I, "What is it?" He says, "I have found out that if four persons take hold of hands after they have had a hole made in the ground and put a piece of stove-pipe in it, and then run around it as hard as they can from left to right, a ball of butter will come out of the pipe." [Laughter.] Now, I think that is about as reasonable as the way conspiracies are made, according to Mr. Bliss.

Now, we come to Mr. Boone (page 1560). He says that the action he had taken was upon his own responsibility, and that at no time had any papers been gotten up with any view of defrauding the Government. That was good. I am like the Democrat who said, after hearing the returns from Berks County, "That sounds good." The action he had taken had been on his own responsibility, and at no time had papers been gotten up with any view of defrauding the Government. Then, here is a question asked him:

Q. I understood you to say that the contract was made between you and somebody, fixing your interest in all this business?—A. Yes, sir.

Q. Do you recollect about the date of that?—A. I think it is on the day John W. Dorsey got here in Washington.

On page 1561 he swears that at the time Boone made that contract with John W. Dorsey he and Dorsey had not conspired to defraud the Government in any way, nor did they ever do so after that contract was made. When was that contract made? It was made on the 15th day of January, 1878. Who made it? John W. Dorsey of the one part, and Albert E. Boone of the other. And they tell exactly what that contract was for. Here is the contract, on page 1561, and this shows that the statement of Stephen W. Dorsey that the matter was deferred until John W. Dorsey should come is absolutely correct:

This memoranda of agreement made and concluded this 15th day of January, A. D. 1878, by and between John W. Dorsey and Albert E. Boone, witnesseth:

That, first. It is agreed that a copartnership is hereby entered into by and between John W. Dorsey, of Middlebury, Vt., and Albert E. Boone, of Washington, D. C., under the firm-name of J. W. Dorsey & Co.

Second. That the parties to this agreement shall share in all the profits, gains, and losses as follows: John W. Dorsey shall have two-thirds and Albert E. Boone share, one-third.

Now it goes on about where the routes are to be, in the States of Arkansas, Louisiana, Texas, and so on.

Sixth. The partnership hereby formed shall continue until August 1, A. D. 1882, unless sooner dissolved by mutual consent.

JOHN W. DORSEY. [SEAL.]
A. E. BOONE. [SEAL.]

Then I asked him:

Q. Was that firm dissolved?—A. Yes, sir.

Q. Was there any written agreement of dissolution?—A. Yes, sir.

Q. Have you got that?—A. I turned over to the prosecution all the papers connected with that matter.

Now, gentlemen, there was the original partnership agreement. Let us see if that was ever dissolved:

Whereas, on the 12th day of September, 1878—

I think there is a mistake. May be I had better call for the original paper. This original contract, gentlemen, was on the 15th of January, 1878. The next contract was made on the 12th of September, 1878, and at the top it says:

Whereas, on the 12th day of September, 1878—

That evidently refers to the contract of January 15, 1878. Whether 22 X shows it or not, I do not know, but as a matter of fact, it must refer to the one of January 15, 1878.

Whereas on the 12th day of September, 1878, a contract was made by and between John W. Dorsey and Albert E. Boone, whereby said Dorsey was to have two-thirds and said Boone one-third interest in certain mail routes in the States of Kansas, Nebraska, Arkansas, Louisiana, and Texas, and the Territories of Indian and Dakota: Now, therefore, in consideration of \$1 in hand paid, the receipt whereof is hereby acknowledged, I hereby, sell assign, and transfer to Albert E. Boone all my said two-thirds interest in the routes in the name of said Boone in the States of Texas, Louisiana, Arkansas, Kansas, and Nebraska, and in the name of said Dorsey in the States of Texas, Louisiana, and Arkansas.

He gives everything to Boone in consideration of one dollar.

In witness whereof I have hereunto set my hand this 12th day of September, 1878.
JOHN W. DORSEY. [SEAL.]

The reason he did that was because Mr. Miner had made a contract with Boone to that effect; and probably I had better read that now so that you will have it exactly and know what we are doing. I read from page 1569:

WASHINGTON, D. C., August 7, 1878.

Whereas A. E. Boone has this day, for the purpose of saving a failure in the routes in the name of John R. Miner, John M. Peck, and John W. Dorsey—

“For the purpose of saving a failure,” recollect. Although Stephen W. Dorsey, according to the prosecution, was a conspirator, and although John W. Dorsey was another, and Peck was another, yet, on the 7th day of August, 1878, “for the purpose of saving a failure,” they made this:

Whereas A. E. Boone has this day, for the purpose of saving a failure in the routes in the name of John R. Miner, John M. Peck, and John W. Dorsey, assigned to John R. Miner his one-third interest in the routes in their names, now, therefore, I, John R. Miner, agree that John W. Dorsey shall assign his interest in routes in the name of A. E. Boone in Kansas and Nebraska, Texas and Louisiana, and Arkansas; in the name of John W. Dorsey, in Texas, Louisiana, and Kansas. The latter clause not guaranteed.

JOHN R. MINER.

Now he said to Mr. Boone, “I have got to have another man come in; we haven’t got the money to run these routes; I have got to get somebody with us; if you will go out, I will agree that John W. Dorsey will assign to you his two-thirds interest in all the routes in Kansas, Nebraska, Texas, Louisiana, and Arkansas. I will agree that John W. Dorsey, although he has a two-thirds interest in all these routes, shall assign them to you, A. E. Boone, and they shall thereupon become your property.” That agreement was made on the 7th of August, 1878; and then, as I read you before, on the 12th day of September Miner made that promise good, and John W. Dorsey did assign to Boone his two-thirds interest in all the routes that Miner said he would. Then Boone was out of it. He had no more to do with Miner, Peck & Co., and no more to do with John W. Dorsey; he went his road and they went theirs. He went out in consideration that John W. Dorsey would give him (Boone) two-thirds of all the routes that he before that time had one-third in. Then Miner took in Mr. Vaile, because he had the money to go on with the business.

(Page 1562, still talking about Mr. Boone.) There is another very suspicious circumstance that was brought up by the prosecution. These bids were put in in different names, and that was looked at as a very suspicious circumstance! What does Boone say about

that? He says that the object in bidding in separate names was not to defraud the Government, but was to have the service divided up and not to bid against each other. That was reasonable. The arrangement was simply to keep from injuring themselves; it was not made to defraud the Government, but it was made so that they might not by accident injure each other. It was a common thing for members of a firm to bid in that way, and it is a common thing for persons to organize themselves for the purpose of bidding and running contracts, and when they thus bid they always bid in their individual names. The fact that we bid in our individual names was taken as a circumstance going to show that we had conspired to defraud the Government, and a witness they bring forward to prove that fact swears that it has been the custom for all firms to bid in their individual names. Away goes that suspicion. The coat-tail of that point horizontalizes in the dim distance. [Laughter.]

(Page 1563.) The point was made, gentlemen, that we bid on long routes with slow time, knowing—understand, *knowing*—that the service would be increased and that the time would be shortened. The only word I object to there is the word “knowing.” That we bid on long routes with slow time *thinking* that the service would be increased and the time shortened was undoubtedly true. That we bid *expecting* that the service might be increased and the time shortened is undoubtedly true. That when we bid we took into consideration the *probability* of the service being increased and the time shortened is undoubtedly true. The only difference is the difference between thinking and knowing; between taking into account probabilities and making the bid because we had made a bargain with the Second Assistant Postmaster-General. That is the difference. Let us see what Boone says about it. I read from page 1563:

On all service of three times a week and under there is a chance for improvement in getting it up to six or seven times a week.

Everybody who has ordinary common sense knows that! If I bid on service for once a week there is a great deal better chance for getting an increase of trips than if there were seven when I started. Everybody knows that. There is about six times as good a chance.

All contractors consider that—

That chance—

in their bids, and bid lower on one, two, and three times a week service than on a daily service—

Why?—

because the chances are the route will be increased.

Boone swears on the same page that he always did that himself; that he always had done it. Yet that is lugged in here as evidence of a conspiracy.

There is a great deal better chance for expedition when a route is let at two or three miles an hour than when it is let at six or seven.

Of course there is. The slower it is let the better chance of getting it expedited. The faster it is let the less chance of getting it expedited. There is no need of bringing a man here to show that. You know that. If you thought there was more money in expedition and increase than on the original schedule, you would, as I insist, bid on such routes as the advertisement showed the time was to be slow and the service infrequent upon. Now, gentlemen, to take advantage of such a perfectly

apparent thing as that will not do. You have heard a good deal about star routes, gentlemen. Every one of you by this time ought to make a pretty good Postmaster-General; every one of you. If you do not know all about this subject, you never will.

The FOREMAN (Mr. Crane). We ought to be good lawyers, too.

Mr. INGERSOLL. You also ought to be good lawyers, at least on this subject! I do not know that you have got all the testimony in your minds, as there have been so many misstatements made, but if you ever are to know anything on this subject you know something now; and if you, Mr. Foreman, or you, Mr. Renshaw, were to-morrow to go to work to bid on some star routes you would bid on the longest routes, on the slowest time, and with the most infrequent trips. You would do that. Then would you say, "That is evidence that we have conspired?" Has a man got to be so stupid that he will not take advantage of a perfectly plain thing in order to escape the charge of conspiracy? If you were to put your money in land in the Western country you would not go where the country was settled up and give \$100 an acre for land. You would go where you could get land for two, or three, or four, or five dollars an acre, and say, "There is a chance for land to rise." That is not conspiracy. So if you were going to bid on mail service you would bid where the time is slow, or the route long, and the service once a week. Then you would say that the country might grow, that railroads might be built and that they might get the service up to seven trips a week; and instead of going on two miles an hour may be they would want to make it seven miles an hour. That is the service to make money on. Is it a crime to make money? Is it a crime to make a good bargain with the Government? I suppose these gentlemen of the prosecution made the best bargain they could with the Government themselves. Is it a crime? I say no. Is a man to be regarded as a conspirator because some outsider thinks he got too good a bargain? That will not do. Boone says he always did that. Of course he did. He says another thing. These gentlemen say that we did not go above three trips, and that is another evidence of fraud. They say we did not bid on any route with more than three trips a week. Mr. Boone tells you, on page 1565, that the department never advertised for four trips a week. That is the reason I think they did not bid on any of these. He also swears that they never advertised for five trips. That is a good reason for our not taking any routes with five trips, is it not? There were not any advertised. The Government did not offer to let us have any. That is a good reason for not taking any of them. The Government had not any of that kind. After you get beyond three trips Boone swears that the next number is six or seven; never four, never five. Don't you see? And yet it is a very suspicious circumstance that we did not bid on any four-trip routes, or any five-trip routes; that we stopped at three. Why did we stop at three? Because if we had not stopped at three we would have had to go to six. Why did we not go to six? Because at six trips a week we would have been obliged to put up too much money, and to put up too many certified checks. It required too many men to go on the bonds. That is the reason. Gentlemen, if there had been a conspiracy it would have been just about as well for us to bid on six or seven trips to get the expedition of time. If there had been a conspiracy to make money, and it had been understood by the Second Assistant Postmaster-General, he could have just as well given us routes with seven trips a week, and put the service up to seven, eight, nine, or ten miles an hour, and he could have done that in the thickly-populated parts of the country,

if it had been the result of a conspiracy. Let me read more from what Mr. Boone says on page 1565:

The department never advertised for four or five trips a week. After three times a week it is always six or seven, or more than that. The proposals that I destroyed were upon routes of at least six times per week.

How did he come to destroy them? Another suspicious circumstance against Dorsey! Boone said when he went into the business he just took the bidding-book and commenced at A, and was going right straight through to X, Y, and Z, and make a bid, I believe, on every route that was in the book. I think that is his testimony. Boone says:

I was going on without instructions. I was going on without authority from anybody, working on the bids.

He thinks it was the same day that Miner got here, or the day afterwards, and he—I suppose meaning Dorsey—came up to the room and saw what the witness was doing. He was making up bids for every route in the advertisement, going right along with big and little, when Dorsey said there was a mistake. No proposals were to be made for over three times a week or for routes under fifty miles. When Miner came into the room witness asked what was the reason of that. I say upon this point that Stephen W. Dorsey never said a word about it, and that Boone is mistaken. But he says he asked Miner the reason. What did Miner say? Did he say to him, "It is because we have got a conspiracy? We have got it fixed with the Second Assistant Postmaster-General?" No. He said this, he said for fear of failure in getting bonds; that they could not get the bonds for all the service and could not get certified checks for all the service. Boone was going clear through the book from preface to the finis. They could not get bonds for all the service and could not get certified checks for all the service. You remember that for all the service over \$5,000 they had to put up five per cent., I think, in certified checks. Now, there was an immense volume, of I suppose 10,000 routes. I believe that is about the number, is it not?

Mr. CARPENTER. No. That was the advertisement for that section of country.

Mr. INGERSOLL. About how many were there?

Mr. CARPENTER. About three or four thousand.

Mr. INGERSOLL. Very well; three or four thousand routes and he was going to put in a bid on every one of them. That is what Boone was going to do. He did not understand the conspiracy at that time. Miner explained to him, "We cannot get the certified checks. We cannot get the bondsmen." He did not tell him, "Good Lord, my friend, you don't understand the terms of the conspiracy. We are taking no such service as that. We are taking none over three times a week, because, don't you see, we want the chance for increase. We want the lowest. If we can find any service where the horses agree to stand still, that is the service to take. You must look over the terms of the conspiracy and have some sense about it."

Boone says he was starting in, taking the advertisements, going right through the territory, all over that country, and bidding on every route, not missing one. He never saw Stephen W. Dorsey do any work on the bids. The proposals sent down to the postmasters in Arkansas, including those to Clendenning, he (Boone) fixed himself and sealed them. Gentlemen, there is no evidence that Mr. Dorsey, as I understand it, ever saw one of those papers, but simply the form that was written out by Boone that was sent to Clendenning with instructions

what to do with the proposals. That I understand to be the evidence. They proved by Boone that Dorsey never saw them; never wrote them; never ordered them to be written; never ordered a blank to be left unfilled. And yet, gentlemen, he was the man whom they say had brooded over this conspiracy; the man that gave to it life and form. He is the man that used Boone and John W. Dorsey and Peck and Miner as instrumentalities and tools.

What more? Did Boone take those bonds up to Dorsey and show them to him? He says that he did not open them; that he did not show them to Dorsey. That is what Mr. Boone swears. Surely Mr. Boone is an honorable man, stamped with the seal of the Department of Justice. He did not even show them to Dorsey. Dorsey never saw anything except the form after Boone had made it out. I showed you that form on yesterday, I think, marked 16 X. That is the only thing that Dorsey saw. He did not know what blanks were left in the bonds, or whether any were left. He never gave any orders about them, and never saw them. Yet the prosecution want you to hold him responsible as a conspirator for those bonds.

What more, gentlemen? Those bonds were never used. Nobody was ever defrauded. Not a proposal was put in the Post-Office Department. They never came to life. Dead! No contract, says Mr. Boone, was ever awarded on those proposals, even the proposals sent back, unless it was a contract to him, Boone. That is what he swears. And yet Dorsey is to be held responsible.

Let us hurry along, gentlemen. See how Dorsey came to do this. How did that arch-conspirator, as they claim him to be, happen to write that letter to Clendenning? On page 1567 Boone says that he suggested to Dorsey that he had better send a note with the proposals to Clendenning. Boone suggested it. He was not a conspirator, but he suggested it. Dorsey was the conspirator, but never dreamed of it. How fortunate for a conspirator to have an innocent man think of the means of carrying out a conspiracy; never thinking of crime, but having it all suggested by perfect innocence and then crime taking advantage of it. That is the position! He suggested that Dorsey had better send a note with the proposals to Clendenning. I will read from page 1568:

Q. Was there not danger that he would be declared a failing contractor?—A. Well, there was no danger of him being declared a failing contractor, but I can tell you what the result would have been.

Q. Well, tell it.—A. If there had been a failure in our name it would have suspended his pay in the department, and of course business cannot be conducted without money. The result is his service would have had to fail, and as he was on other contractor's bonds it would have pulled down other contractors; in fact pulled down all the contracts I was interested in at that time, some nine hundred.

Q. Outside?—A. Yes, sir.

Q. Was it at that time the practice of the department if a man, for instance, had fifty contracts and failed on one to declare him a failing contractor on all?—A. No, sir; but they would declare him a failing contractor on that one route and suspend his pay until he paid up the loss to the Government—just my case now, exactly.

Q. That was one of the reasons that you had. Now, you were informed at that time that they had not the money to carry this on. When, as a matter of fact did you go out of the concern?—A. The 8th day of August, 1878.

Q. Was S. W. Dorsey then in Washington?—A. No, sir; he was not.

Q. As a matter of fact, had he not been gone for several weeks?—A. No, sir, he had not been gone several weeks; he had been gone ten or twelve days.

Q. So that you had your last conversation in regard to going out with Mr. Miner?—A. Yes, sir. There is a paper here that will show the date I went out.

Now, then, we come to August 7, 1878, the time that Mr. Boone went out. Mr. Boone swears that he went out. He put it in writing. He

did it for the purpose of saving a failure on the routes in the names of Miner, Peck, Dorsey, and himself. That is what he went out for, and that is his only reason. On page 1570 Mr. Boone swears that so far as he knows neither John W. Dorsey, John R. Miner, John M. Peck, nor Stephen W. Dorsey had any arrangement with the Second Assistant Postmaster-General to increase the service; none whatever:

S. W. Dorsey told me on his arrival when he got back that he was not aware that I was out of the concern until I told him so.

Boone went out on the 7th day of August, 1878. S. W. Dorsey was in New Mexico. He did not return here until about the time Congress assembled in December. Boone swears that he then learned from S. W. Dorsey that he, Dorsey, did not know that Boone was out of the concern; did not know that he had left on the 7th day of August, 1878. Now, gentlemen, if Stephen W. Dorsey was the main conspirator, if he was doing this entire business, is it possible that A. E. Boone went out on the 7th day of August, that John W. Dorsey assigned his interest in all the routes mentioned in the agreement, and John R. Miner took in Vaile, and the service was put on those routes by the money furnished by Vaile, that all that was done and yet Stephen W. Dorsey never heard of it and did not even know that Boone was out, did not even know that Vaile was in? Besides that, gentlemen, as I told you, Dorsey was not here. He was in New Mexico. He was in utter ignorance of this entire business, and yet they claim that he was the directing spirit.

At this point (1 o'clock and 3 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. INGERSOLL. [Resuming.] If the court please and gentlemen, Mr. Boone further testifies, on page 1571, that Brady showed him a telegram from the postmistress at The Dalles, saying that the service was down. When I read that I thought may be that was where Moore got his hint to swear that he telegraphed to find out what was done with that service. Boone further swears that Brady said that it must be put on; that he said it could not be put on at the contract price, and that Brady told him, "I advise you to telegraph and put it on at any price," and that unless all the service was on by the 15th day of August he would declare the contractor a failing contractor on every route the service was down upon. That is what Brady told him. Stephen W. Dorsey was not here. According to the testimony of Moore he knew when he went away that the service in Oregon was not put on, but he abandoned it, and paid no attention to it. He happened to meet Miner at Saint Louis, and told him, I believe, "There are my notes for \$8,500. That is all I will do. I am through! I have already advanced thirteen or fourteen thousand dollars. I will not advance another dollar." Why did not Miner tell him, "If you are not going on with this conspiracy I am going home?" Why didn't Miner tell him then, "What did you get up a conspiracy like this for, just to abandon it?" Why did not Miner say to him, "This is your child. I became a criminal at your suggestion. I entered into this conspiracy because you urged me to, and now after we have got the routes, you are going to abandon it?" Why did he not say to him, "Dorsey, if you are not going on with this conspiracy I am

going back to Sandusky?" Did Dorsey at Saint Louis treat it as his bantling? or did he say to Miner, "This is all I will do?" Did he mean for himself? No. "All I will do for you." Certainly he would not have made the threat to Miner that he would not do anything more for himself. He then said to Miner, "I am through!" Miner knew at that time that Stephen W. Dorsey had not the interest of one solitary dollar except the money he had advanced. Stephen W. Dorsey, according to the testimony of this prosecution, knew when he left this city that the routes were not in operation in Eastern Oregon. He went away knowing that J. W. Dorsey and John R. Miner and John M. Peck were in danger of being declared failing contractors. Yet he never even called on Brady to see about it. He never asked to have the time extended a minute. He never took the least interest in the business. He started for New Mexico, and went by way of Oberlin, Ohio. He happened to meet Miner in Saint Louis, and for Miner's sake, for Peck's sake, for John W. Dorsey's sake, and not for his own sake, he gave them some notes to the extent of \$8,500 that they could have discounted, and said to Miner then and there, "That is the last dollar. That is the last cent." What more did he do? He abandoned the whole business. He went to New Mexico. He never wrote about it; he never spoke about it; he never received a dispatch concerning it until the following December, when he came back to Washington, and then for the first time found that Boone had gone out and that Vaile had come in. What more? Although he was interested to the extent of thirteen or fourteen thousand dollars, he did not know until he came back in December that his security had been rendered worthless. He found that out then for the first time. That is a fine model of a conspirator. Reading again from Boone's testimony, on page 1371 :

Fully a month and a half of the time had been taken up by the Congressional investigation, and we—

That is to say, Miner, Peck, Boone, and the rest—

did not know what to do with the service. We dared not to move. We expected that the contracts would be taken from us.

Do you tell me that under such circumstances, if Stephen W. Dorsey had conceived this thing, he would have gone off and left it? Do you tell me, with the entire business trembling in the balance, without the money to put the service on, at the mercy of Thomas J. Brady, that if Stephen W. Dorsey had gotten up that conspiracy, and also put in thirteen or fourteen thousand dollars, he would have gone away and left it, and told Miner and the others, "I will have no more to do with it," and leave it so effectually and so perfectly that he did not even know that Boone had gone out and Vaile had come in until the following December, when he came here to take his seat in the Senate?

On page 1580, again quoting from Mr. Boone :

The fact—

Here is something that rises like the Rock of Gibraltar. It is one of those indications of truth that rascality never had ingenuity enough to invent :

The fact that Dorsey refused to advance any more money on account of this business was taken into consideration by me when I made up my mind to go out.

Do you want any better testimony than that that Dorsey did refuse to advance any more money? This witness, called by the Government, says :

The fact that Dorsey did refuse to advance it is the very reason that I went out of the business myself.

Don't you see how everything fits together when you get at the facts? How naturally they all blend and harmonize when you get at the facts. Now, here is some more from Mr. Boone:

If I had not gone out the service would have undoubtedly failed, unless they got the money to put it on. When Mr. Dorsey declined to furnish any more money or to indorse any more notes, there was nothing else to do but for me to go out and let somebody else come in who had the money.

That is a witness for the Government, and yet at the time that happened they say there was a great conspiracy; that the Second Assistant Postmaster-General was in it; that a Senator of the United States was in it; and that these other men were simply tools. It will not do, gentlemen. If that had been the case Stephen W. Dorsey would have remained here. He would have gone to Mr. Brady and said, "I must have time," and Mr. Brady would have given him all the time he desired, because, according to this prosecution, it was their partnership business. Brady had ten times as great an interest as Stephen W. Dorsey. According to the testimony of Mr. Rerdell Brady had an interest of $33\frac{1}{3}$ per cent., and according to the testimony of Rerdell and Boone Dorsey only had an interest of seven-eighths of 1 per cent.

The FOREMAN (Mr. Crane). Does that mean net profits or gross receipts?

Mr. INGERSOLL. That means, as I understand it, according to their testimony, $33\frac{1}{3}$ per cent. of the gross expedition; not profits, but of the gross expedition. That is what they swear. When he gave on a route an expedition of, say, \$6,000, \$2,000 would go to Brady each year. In other words, $33\frac{1}{3}$ per cent. of the money paid for expedition went to Brady.

The COURT. The subcontractors had to be paid first.

Mr. INGERSOLL. No, sir; it does not say so. Oh, no.

Mr. WILSON. No, sir.

Mr. INGERSOLL. No, sir.

Mr. CARPENTER. Walsh's testimony is just the reverse.

Mr. INGERSOLL. Mr. Walsh testified and gave the exact figures, and called the amount, if the court will recollect, \$60,000, and 20 per cent. he said of that is \$12,000. That had to run, he says, for three years, and that made \$36,000. That is the testimony in this case, gentlemen. If you should have a row of men as long as the row of kings that Banquo saw, stretching out "to the crack of doom," and they should swear to it, I should still die an unbeliever; but that is their testimony. Dorsey ran away and left his conspiracy and Brady would not attend to his own business. Now, I read again from Boone:

With regard to the preparation of circulars, the sending of them to postmasters, the printing of proposals, the printing of bonds and subcontracts, there was nothing done differently from what I had always done before.

Recollect that. He is a Government witness. Dorsey in a conspiracy got Boone to help him, and in helping him Boone did nothing different from what he had always done before. There is not much left of this case, gentlemen, but I will keep going on just the same. Mr. Boone swears that he followed the regular custom and practice of doing business.

Then, there is another suspicious circumstance. At the bottom of the contracts published by the Government, for the purpose of informing contractors as to how the bonds or contracts are to be signed, and exactly what is to be done by each person, there are a lot of instructions.

Mr. CARPENTER. On the proposals.

Mr. INGERSOLL. On the proposals. When they got up the proposals of their own, they, understanding the business, left off all those directions that the Government put upon its forms. Why? Those directions were put there for the benefit of men who did not understand the business. These men did understand the business, and consequently it was nonsense for them if they had to have the printing done, to put on the bottom of the contracts two or three paragraphs of directions to themselves. They understood exactly how to do it without the directions. When the original form was made, of course, the people who were to make the contracts were ignorant as to what the department required. There were instructions that the sureties must sign their full names and other instructions. Now, when they got up the forms themselves, they did not need to put on those directions, because they knew what to do without having directions printed, and they therefore saved the expense of printing. That is all there is to that. Boone says:

At the bottom of the proposals sent out by the Government there was a lot of instructions to bidders.

Who left them off? Stephen W. Dorsey? No. John W. Dorsey? No. He had nothing to do with it. Miner? No. He had nothing to do with it. Who left them off? Boone says he did. Was he instructed to do it? No. Did it take a conspiracy to leave them off? No. He left them off for two reasons, and good ones, too. One was to save the expense of printing. That was a good reason. There was no conspiracy needed for that. The other was that, knowing how to perfect the proposals and understanding all those instructions, there was no need of having them printed for their benefit. Those instructions were only intended for persons who knew nothing about the business. They understood the business, and consequently did not need them.

Next, on page 1582. What instructions as a matter of fact did Mr. Boone receive from Mr. Dorsey, if he received any? The question arises, upon what subject? In reference to what particular point? Boone says on this page that he received no instructions from Dorsey in reference to the business except in regard to the subcontract blanks. That is the one subject on which he received any instructions from S. W. Dorsey. I have shown you that those instructions were in the interests of honesty and fair dealing. Those were the only instructions he received. On every other subject there is not a word. Why? Here Boone gives the reason. "I did not require any." Why? Because he understood the business himself. What else? "I was to go ahead and do whatever was necessary to be done." He did it without consulting anybody. He did it in his own way. He did it as he thought best for all concerned. Now, gentlemen, there will be an effort made to convince you that Stephen W. Dorsey did everything during all that period. If you are told that, when you are told it remember what I tell you now: that Mr. Boone swears that he did it himself; that he attended to the entire business, and that he was instructed by Dorsey in no particular except as to that one blank, and that I have clearly demonstrated was in the interests of honesty and in the interests of the subcontractor, so that the subcontract might agree with or be similar to the contract made with the Government. That is all.

Now we come to another point. You must recollect that Mr. Boone got out the circulars. Mr. Boone sent to all the postmasters to know about the roads and the price of grain and the price of labor, about the snow in winter and the rain in the spring. He got all that up. He went through the bidding-book originally and made the bids. He it

was who prepared most of these proposals. He did all the work until Miner came. S. W. Dorsey did not do any of it. Boone never saw him working upon or touching the proposals. What S. W. Dorsey did he did at Boone's request. What he did he did at Miner's request. What he did he did simply because he was a friend. Boone attended to it all. Now, what does Boone say on page 1584? He swears that so far as he knew there never was any conspiracy on the part of these defendants with him, with each other, or anybody else, in reference to these routes, or any route bid for and awarded to them during that time. There was no conspiracy to defraud the Government in any way. That is what the Government witness swears to—a man brought here to stain the reputation of Stephen W. Dorsey. That is what a Government witness swears; swearing, too, under pressure; swearing, too, under circumstances where the Post-Office Department could strip him of everything he had on earth; swearing under circumstances where if he did not please the Government they could pursue him as they have pursued us. And yet under those circumstances, caught in the net of power, that man stands here and swears that during all that time he attended to the business, and there never was any conspiracy, there never was any agreement to defraud the Government in any manner whatever. Perhaps I had better read what he says. I read from page 1583 of my examination :

Q. At the time the contracts were finally let and the bonds given and everything of that kind done you were pretty well acquainted with John W. Dorsey and Mr. Miner? The WITNESS. When what bonds were given?

Mr. INGERSOLL. At the time the service was accepted and part of it put on, bonds had been given and the contracts awarded. At that time you were very well acquainted with John W. Dorsey and John R. Miner?—A. Certainly; I was with them every day.

Q. Now, had you knowledge of any conspiracy to defraud the Government by getting up false petitions for the increase of service?—A. No petitions were gotten up when I was in the concern.

Q. But did you ever hear of such a conspiracy. Were you ever in such a conspiracy?—A. No, sir; I was not.

Q. Was there any conspiracy, so far as you know, to decrease the time or expedite it, as it is called, by virtue of any false petitions or any false letters?—A. Up to the time that I went out of the concern I never knew that there were any petitions one way or the other gotten up or to be gotten up.

Q. Or to give any false or fictitious names, or anything of that kind?—A. No, sir.

Q. Or was there, so far as you know, any arrangement, or did you have any talk with Miner, Peck, or John W. Dorsey, or any of these defendants about any arrangement or understanding with any official of the Post-Office Department not to have fines assessed when there was a failure to perform the service?

Then there was some little discussion, and then I asked him again :

Now, then, so far as you know, Mr. Boone, was there any conspiracy on the part of any of these defendants with you, or with anybody else, to your knowledge, in respect of these routes mentioned in the indictment or of any routes bid for and awarded to them during that time—any conspiracy to defraud the Government in any way?

And he answered :

No, sir.

That was a Government witness, acquainted with all the transactions during that time. He was swearing under the shadow of power, with the sword hanging over his head, and yet he swears he never knew or heard of any such thing.

Let us go on. On page 1589 he swears that Mr. Dorsey told him to fix the blanks and make them up and to write what he wanted done in Arkansas, and that while he, Boone, was engaged in so doing he said to Dorsey, "Had you not better write a note so that I can attach it to the blanks?" And Dorsey did so. Dorsey told him to fill up what he

wanted in Arkansas, and what was necessary to be executed there, and he did so. Boone indicated exactly what he wanted put in. I showed you the Clendenning bonds yesterday and showed you just what Boone did. He filled up the blanks that he wanted to have filled down there. Of course, the blanks that were already filled in he did not want interfered with. That is what he says. There is another part of his testimony. I want to call the attention of the gentlemen to it. "I hand you," said they, "32 X." Mr. Bliss did the handing. What was that? That was the Chico letter. What did they want to introduce that for? To show that S. W. Dorsey was interested personally in these routes in 1878. That was a magnificent piece of testimony for them to show that Dorsey in 1878 was writing to Rerdell to watch the advertisement of these routes. So they introduced that letter.

The COURT. Will you allow me to see that letter and the envelope with it at this point? I did not see it very carefully before. [Letter and envelope submitted to court.]

Mr. INGERSOLL. Mr. Boone looked at it. He was a Government witness. The noose was around his neck and the other end of the rope was in the hands of Mr. Bliss. What did Mr. Boone say? "Mr. Dorsey never wrote that letter." Then said Mr. Bliss to him, "That is not Mr. Dorsey's writing?" And Mr. Boone said "No, sir." And at the same time threw the forged scrap away contemptuously. What else? On April 3, 1878, Mr. Dorsey was here. Then the court asked him a question:

Q. Do you know in whose handwriting that Chico Springs letter is?—A. I hate to say. It is not Stephen W. Dorsey's though.

Mr. MERRICK. Was Mr. Dorsey here at that time?

The WITNESS. He was here, sir; and I was in communication with him on that very day.

That is the evidence of a Government witness; a man who was depended upon to show that not only my client, but that Mr. Miner entered into a conspiracy in the fall of 1877 to defraud this Government. I want you to remember one thing which I was about to forget. Mr. Ker I believe spoke six or seven days and I do not remember of his having mentioned the Chico letter. He acted as if it had a contagious disease. He was followed by Mr. Bliss in another week, but he did not mention the Chico letter; at least I have never happened to read it in his speech. Both of them are as dumb as oysters after a clap of thunder. Not a word. They did not, either of them, have the courage to refer to it. They did not have the nerve to ask you to believe it. I tell you one thing, gentlemen, I would either admit that it was a forgery, or I would swear that it was genuine. I would do something with it. I would not allow that paper, blown by the wind, to scare me from the highway of the argument! I would do one thing or the other. I would either admit that Mr. Rerdell forged it, or I would insist that it was the handwriting of Stephen W. Dorsey. Why was it left where it was, gentlemen? They could not get anybody to swear that it was Dorsey's handwriting. That is all.

Now we will take the next step. They had so much confidence in that witness that they concluded they would prove the pencil memorandum by him. They had such a clutch on him. So they stuck that up to him. Recollecting the position he was in, recollecting the danger, recollecting all that might probably follow speaking the truth, here is what he says:

Everything above "profit and loss" in that memorandum favors the handwriting of S. W. Dorsey.

What else?

And everything below favors the handwriting of M. C. Rerdell.

Fit conclusion for a Government witness, brought here to show that Stephen W. Dorsey was the arch-conspirator. And they ended the witness; dismissed him from the stand, after he had shown that Dorsey did not conspire; after he had shown that he himself fixed the sub-contracts, with the exception of only one; after he had shown that he himself filled out the blanks to send to Clendenning; after he had shown that he did everything without being advised by S. W. Dorsey, and then he swore that their principal witness was a forger. Then they dismissed him. That was the end of the Government witness who was to brand the word "conspirator" upon the forehead of Stephen W. Dorsey's reputation. But instead of putting "conspirator" there, he put the word "forger" upon the principal witness for the Government. Magnificent exchange! Now, gentlemen, you know as well as I do that Mr. Boone knew all that was happening during that entire time. You know as well as I do that he did not swear anything for the defense that he could help swearing.

What else? Mr. Bliss, on page 303, says that:

Parties conspiring make an informal verbal agreement.

When did we make that agreement? When does the testimony show that we made an informal verbal agreement? Who were present at the time? Where were we? Do you recollect the number of the house? Do you recollect the day of the month? Has any one of you ever had in his mind which side of the street that was on? What town was it in? Could you locate it if you had a good map?

Parties conspiring make an informal verbal agreement.

I do not care whether it is informal or formal. Did we make one? In order to make a verbal agreement you have to use some words. Is there any evidence as to the words we used? Not a word that I have heard, not a word.

What else? He says that this is necessarily secret and intended to be secret. The first thing done was that Dorsey told it to Moore. Then, for fear it would get out, J. W. Dorsey told it to Pennell and to thirty fellows around the camp-fire out in Dakota. And then there was a suspicion in Brady's mind that somebody might hear of it, and so he told Rerdell. He says, "Get the books copied; *this is a secret thing.*" Then Dorsey wrote it to Bosler, and he was so awfully afraid that it would get out that he kept a copy of the letter. You see, Mr. Bliss says the object was to keep it secret. Then Miner and Vaile told it to Rerdell for fear he would not believe it when Brady told him. They were bound the thing should not get out. Yes, sir. And then Rerdell, just bursting with the importance of keeping that secret, told it to Perkins and Taylor; went away out there for that purpose. And then Moore, he gave it away to Major and McBean for the purpose of *keeping it secret.* Then Miner told Moore. From whom did they keep it secret? Nobody in God's world but Boone. He is the only fellow that nobody told. Boone went through it all, saw all the plan and heard all the whispering, and he is the only man in the country, I think, that did not suspect it. And on the 7th day of August he left the concern because there was not a conspiracy, and admits to you that if he had had even a suspicion of it he would have staid—staid or died.

Now, was there ever a conspiracy published so widely, that one end of the country kept so secret from the other? Was there ever a con-

spiracy like that, the news of which ran through the West like wild-fire, while the fellows at the East never heard of it? Everybody knew it out on the plains. All you had to do was to subpoena a fellow that wanted to come to Washington, and he would remember it. And yet that is the evidence that the prosecution desires you to believe. I do not believe it. I do not think I ever shall. But then they promised so much at the beginning, and they have done so little in many respects.

Something had to be said, and so Mr. Bliss, on page 265, in a little burst of confidence to the jury, says :

At least one United States Senator was the paid agent of these defendants.

Who was the Senator?

Mr. BLISS. Did I say that, sir?

Mr. INGERSOLL. Look at page 265 and see whether you did.

Mr. BLISS. Read all that I said there.

Mr. INGERSOLL. I will do that.

But we shall show to you that at least one United States Senator, urging such increase, was the paid agent of these defendants. [Page 265.]

Mr. BLISS. I then went on and said we should show it if you put him on the stand.

Mr. INGERSOLL. Yes, if we furnished you the evidence.

Mr. BLISS. No, sir; that is not what I said.

Mr. INGERSOLL. Why didn't you produce the Senator?

Mr. BLISS. Why didn't you put him on the stand?

Mr. INGERSOLL. How did I know what Senator you meant?

Mr. BLISS. Did you have two?

Mr. INGERSOLL. No, sir; and we did not have the one. If you could have proved it, it was your duty, as the attorney of the United States, to do it, and if you did not do it, you did not do your duty in this case.

Mr. BLISS. Whose name is expressed in the memorandum?

Mr. INGERSOLL. Why did you not say that to the jury? You dared not do it. That is like what was said here the other day before this jury, and taken out of the record. We will come to it. These are the gentlemen who did not wish to stain the names of citizens. These are the gentlemen who did not wish to bring anybody into this case that had not been indicted. And yet Mr. Bliss, in his opening, says that he would show you at least one Senator who was the paid agent of these defendants; and now, having failed to do it, he stands here before you and asks whose name was on the pencil memorandum, meaning that J. H. Mitchell was the paid agent of these defendants.

Ah, gentlemen, I would not, for the sake of convicting any man on this earth, stain the reputation of another in a place and in a way where that other could not defend himself. I would not do it. I do not think there is any wrong beyond that. It is as bad to stab the reputation as it is to stab the flesh; it is as bad to kill the honor of the man as to put a dagger into his heart.

There are so many things in these papers that I would never get through, if I commented upon them all, if I talked forty years. I now refer to page 4509. I have to swap off from one of these lawyers to the other. Now, on this subject of subcontracts, showing how we are endeavoring to cheat and defraud the Government, Mr. Ker says, at page 4509 :

Acting upon Stephen W. Dorsey's advice he put in this clause giving the subcontractors 65 per cent. of the increase. I want you to remember the 65 per cent., because I will show you some subcontracts with that amount in, but I do not want you to think for one moment that the subcontractors ever got a dollar out of it.

Gentlemen, the evidence is that the subcontractors were paid the amount mentioned in their subcontracts. I believe all of them are on file in this case, and on all that were filed in the department the money was paid directly to the subcontractor. And yet Mr. Ker tells you that he does not want you to think for a moment that the subcontractors ever got one dollar out of it. Is it possible, gentlemen, that there is any necessity for resorting to such statements? Can you conceive of any reason for doing it, except that they are actually mistaken, except for the fact that they know they have not the evidence to convict these defendants?

We are not begging of you. We are not upon our knees before you. But we do want to be tried according to the evidence and according to the law. We do not want your mind, nor yours, nor yours [addressing different jurors] poisoned with a misstatement. We want to be tried, and we want the verdict rendered by you when every fact is as luminous in your mind as the sun at mid-day. We want every fact to stand out like stars in a perfect night, without a cloud of doubt between you and the fact. That is the kind of a verdict we want. We want a verdict that comes from a clear head and a brave heart. We do not want a verdict simply from sympathy. We want a verdict according to the evidence and according to the law. And when the verdict is given we want every one of you to say, "That is my verdict; I found it upon the evidence and upon the law; dig beneath it and you will not find used as the corner-stone a misstatement, or a mistake, or a falsehood; it stands upon the rock of fact, upon the foundation of absolute truth."

Do you know that if I were prosecuting a man, trying to take from him his liberty, trying to take from him his home, trying to rob his fire-side and make it desolate, and if I should succeed and afterwards know that I had made a misstatement of the evidence to the jury, I could not sleep until I had done what was in my power to release that man; and after he was released, or even if he were not released, I would go to him when he was wearing the prison garb, and I would get down on my knees and beg him to forgive me. I would rather be sent to the penitentiary myself, I would rather wear the stripes of eternal degradation, than to send another man there by a misstatement or a mistake that I had made. That is my feeling. I may be wrong.

It may be that I am guilty, according to Colonel Bliss, of sneering at everything that people hold sacred. But I do not sneer at justice. I believe that over all justice sits the eternal queen, holding in her hand the scales in which are weighed the deeds of men. I believe that it is my duty to make the world a little better, because I have lived in it. I believe in helping my fellow-men. I do not sneer at charity; I do not sneer at justice, and I do not sneer at liberty. And why did he make that remark to you, gentlemen? Is it possible that for a moment he dreamed that he might prejudice your minds against the case of my client, because I, his attorney, am not what is called a believer? Is it possible that he has so mean an opinion of a Christian that a Christian would violate his oath when upon the jury, simply to get even with a lawyer who happened to be an infidel? Is that his idea of Christianity? It is not mine; it is not mine. I stand before you to-day, gentlemen, as a man having the rights you have, and no more; and I am willing to work and toil and suffer to give you every right that I enjoy. And I know that not one of you will allow himself to be prejudiced against my client because you and I happen to disagree upon subjects about which none of us know anything for certain. I do not believe you will. And yet, that remark was made, gentlemen—I will not say that it was made, but may be it was—hoping that it would lodge the seed of prejudice in

your minds, hoping that it might bring to life that little adder of hatred that sleeps unknown to us in nearly all of our bosoms. I have too much confidence in you, too much confidence in human nature to believe that can affect my client.

Now, gentlemen, there is no pretense, there is no evidence that every subcontractor did not get the per cent. mentioned in his subcontract, except one, and that was Mr. French, on the route from Kearney to Kent; and the evidence there is that Miner settled with him, I believe, and gave him a certain amount of money in lieu of expedition. That is the solitary exception.

Now, gentlemen, I come to a most interesting part of this discussion, and I hope we will live through it. In the first place, what is a conspiracy? Well, in this case, they must establish that it was an agreement entered into between the persons mentioned in this indictment, or two of them, to defraud the Government. How? By the means pointed out and described in the indictment. While it may not be absolutely necessary to describe the means, I hold that if they do describe them, tell how the conspiracy was to be accomplished, they are bound by their description; they must prove such a conspiracy as they describe. If a man is indicted for stealing a horse and the color of the horse is given, it will not do to prove a horse of another color. If they describe the offense they are bound by the description.

Now, this is a conspiracy entered into, as they claim, by the persons mentioned in the indictment, to do a certain thing. What is the object of the conspiracy? To defraud the Government. And, gentlemen, I believe the court will instruct you that the conspiring is the crime. The object of the conspiracy is to defraud the United States. What are the means? According to this indictment, false petitions, false oaths, false letters, false orders. What I insist is that the means cannot take the place of the object; that the means cannot take the place of the conspiracy described. When you describe a conspiracy by certain means to defraud the Government, and set out the means so that the Second Assistant Postmaster-General is a necessity, then you cannot turn and shift your ground, and say that it was not the conspiracy set out in the indictment, but that it was a conspiracy to do some of the things recited as means in the indictment; you cannot say that it was not a conspiracy entered into with the Second Assistant Postmaster-General, but was a conspiracy entered into with some others to make a false petition or a false affidavit. The ostrich of this prosecution will not be allowed to hide its head under the leaf of an affidavit. They must prove, in my judgment, the conspiracy that they describe in the indictment, and none other.

Now, what else? You must be prepared, gentlemen, when you make up a verdict, if you say that there was a conspiracy, to say when it was entered into and who entered into it. And I suppose when you retire, the first question for you to decide will be: Was there a conspiracy? Has any conspiracy been established beyond a reasonable doubt? If you say yes, then the next question for you to decide is, who conspired? Who were the members of that conspiracy?

After you do that there is one other thing you have to do: You have to find that one of the conspirators, for the purpose of carrying the conspiracy into effect, did something; that is called an overt act. You have to find that at least one of them did something to effect the object of that conspiracy. You must remember, gentlemen, that the overt act must come after the conspiracy. In other words, you cannot commit an overt act and make a conspiracy to fit it; you must have the conspiracy

first, and then do an overt act for the purpose of accomplishing the object of that conspiracy. The conspiracy must come first, and the overt act afterwards. You all understand that now.

Now, this indictment is so framed that the earliest time within the life of the statute limitations for an overt act is the 23d day of May, 1879. Why? The indictment charges that as the day the conspiracy was entered into. Any overt act in consequence of that conspiracy must have been done after the 23d of May, 1879. Now, get that in your heads, level and square. The conspiracy, according to this, is not back of the 23d of May, 1879, and any overt act done, in order to be considered an overt act, must be done after the date of that conspiracy. If they prove any act done before that time, it shows that it was not an overt act belonging to the conspiracy mentioned in the indictment. If it is an overt act at all, it is an overt act of another conspiracy entered into before the date mentioned in this indictment, and consequently will not do for an overt act in this case. Now, I want you all to understand that.

I forget how many overt acts are charged in this indictment; some sixty or seventy, I think. And understand me, now, gentlemen, no matter what date they fix to an overt act in the indictment, no matter whether there is any date to it or not in the indictment, if it turns out to have been done before the time fixed for the conspiracy it is dead as an overt act; it is good for nothing. The overt act is the fruit of the conspiracy; the conspiracy is not the result of the overt act. Now let me make a statement to you, so that you will understand it.

Every petition, every letter, every affidavit, upon which orders for expedition were based, was filed before the 23d of May, 1879, except on two routes—Toquerville to Adairville and Eugene City to Bridge Creek. If that is true, then not a solitary petition filed in this case can be considered as an overt act; and a conspiracy without an overt act is nothing; it simply exists in the imagination; it is an agreement made of words and air, and never was vitalized with an act done by one of the conspirators for the purpose of giving it effect. Recollect that every petition, every affidavit, every letter filed, was filed before the 23d day of May, with the two exceptions I have mentioned. That is the date when the conspiracy came into being. And consequently an overt act must be after that time.

Now, when they came to write this indictment, why did they not tell the truth in it? I do not mean that in an offensive sense, because a man has the right to write in that indictment what he wants to. That is a matter of pleading. But why did they not tell the facts? Why did they put in the indictment that a certain petition was filed on the 26th day of June, when they had the petition before them and knew that it was filed in April, 1879? Why did they put in that indictment that a certain affidavit was filed on the 26th or 27th of May, I think it was, when they knew that it was filed in April or March? Why? Because if they had put that in the indictment the indictment would have been quashed, so far as their overt acts were concerned. The court would have said, "I cannot allow you to put on paper that a man entered into a conspiracy on the 23d of May, and then did an act to carry that conspiracy into effect in April before that time. I cannot allow you to do that, because that is infinitely absurd, and pleadings have to be reasonable on their face." But you see they stated that this was done after the conspiracy. They had to do it or they would be gone. I believe there is no dispute about this law that if they describe the overt act—and they must describe it, because it is a part of the offense—that is, the offense is not complete without it—they must prove it exactly as

they describe it. If they describe it with infinite minuteness, they must prove it with infinite minuteness. If they set out that an affidavit was written on bark, they must produce a bark affidavit. If they were foolish enough to say it was written in red ink they must produce it in red ink. If they allege that an oath was sworn to twice before two notaries public they must produce an oath sworn to twice. They are bound to prove exactly what they charge, and if they were too particular about it that is their fault, not ours.

I say that all these, with the exception of the two routes I have named, were filed too early to play any important part in this case. Now, I will come to those routes. Remember, that every overt act must be after the conspiracy. There are two exceptions, and those two exceptions include petitions and affidavits. And there is a splendid kind of justice in the way this thing is coming out, so far as that is concerned.

The petitions filed on the Toquerville route and on Bridge Creek route, I believe, are genuine; I believe the Government admits that they are honest; and they were not attacked except upon one point, and that was that a daily mail did not mean seven times a week. The point made by the Government was that a daily mail meant six trips a week—that is, where you have them every day. We took the ground that daily mail meant a mail every day, and that in the western country, as here, they have seven days in a week. We contended that you cannot have daily mail without having seven trips a week. I think that was the only point made against these petitions—that they were for a daily mail, and that somebody put in a figure 7.

No petition for increase of service alone was ever attacked by the Government in this case, except 25 L, on The Dalles route, and 20 H and 29 H, on the Canyon City route. 25 L was filed April 23, 1879. That was two months too early, before the conspiracy had life.

Mr. CARPENTER. One.

Mr. INGERSOLL. Yes; one month before the conspiracy had life. Consequently that is mustered out of this case as an overt act.

23 L was filed June 27, 1879, and is in time, provided it had been a dishonest petition. And it is the only petition filed on the date alleged in the indictment, and it was not attacked. It was signed by the business men of Baker City, and is set out, I believe, on page 1617.

20 H was filed May 7. That is not in time. That is gone.

29 H has no file mark, and never was proved. So that goes.

All the allegations as to false petitions for increase of service—and by that I mean additional trips—are shown to have been genuine, honest, true petitions.

There are but two affidavits, one correctly described. Both were made by Peck. Mr. Bliss admits that Peck had nothing to do with any of these routes after April 1, 1879, and both of them were made by Peck, and were sworn to before that date.

The affidavit on the Toquerville route was filed by M. C. Rerdell, who swears that he was not in any conspiracy to defraud the United States; that he was not in a conspiracy with Vaile and Miner and John W. Dorsey, nor with anybody else. It was filed by the subcontractor of record, M. C. Rerdell, and it is the same route on which Mr. Rerdell, by virtue of his subcontract, appropriated about \$5,000 of money belonging to other people.

The other exception is on the Bridge Creek route, and, strange as it may appear, that was also filed by Mr. Rerdell. And, strange as it

may appear, it has not been successfully impeached as to the men and horses necessary under the existing and proposed schedules. The overt act is not proved, because the oath is not proved to be false, and because Peck and Rerdell, according to Mr. Bliss's admission and according to Rerdell's oath, were not in the conspiracy, and the overt act has to be done by one of the conspirators, of course.

The COURT. I understood—I do not know whether I have been under a delusion all this time or not—that the indictment charged that these affidavits and false petitions were the means by which the conspiracy was to be carried into execution; that they were not the overt acts. If they had been set out as overt acts in the indictment, the court would have seen that they antedated the time, and if an objection had been made to them the court would not have received them as overt acts. The reason why they have been admitted and regarded as in the case all along, to my mind, was that they were acts tending to prove, so far as they tended to prove anything, the nature of the combination between these parties anterior to the 23d of May.

Mr. INGERSOLL. Before the conspiracy.

The COURT. Before the conspiracy. So that whatever character belonged to that association anterior to that time, if it was continued on after that time, carried out with overt acts done subsequently to that time, they were properly received as evidence going to establish the conspiracy—not as overt acts, but as means to show the character of the combination amongst the parties anterior to that date.

Mr. INGERSOLL. That saves me a great deal of argument. Now, I understand, gentlemen, that the court will instruct you that you cannot take any petition, any letter, any oath, any paper of any kind that was filed or written, or used prior to the 23d of May, 1879, as an overt act; that all that evidence is for is to show you the relations sustained by the parties before that time.

The COURT. Yes; you are right.

Mr. INGERSOLL. Now, that saves a great deal of trouble.

There are on the Toquerville and Adairville route, and on the Eugene City and Bridge Creek route, petitions filed after the 23d of May, 1879, set out in the indictment as overt acts. I shall insist, if the court will allow me, that if there is no evidence that those petitions were dishonest, no evidence going to show that they were not genuine, those petitions cannot be used as overt acts for the reason that they are charged in the indictment as false and fraudulent petitions. So, gentlemen, I take that ground, that as to the petitions filed after the 23d day of May on the only two routes left for these gentlemen to find overt acts upon (Eugene City to Bridge Creek, and Toquerville to Adairville), if those petitions have not been proved to be false they cannot be regarded as overt acts for the reason that they were described in the indictment itself as false and fraudulent petitions. It is perfectly clear, is it not?

What else have we left? A couple of affidavits. Who made them? Mr. Peck. When? Before the 1st day of April, 1879, and Mr. Bliss admits that from that time on he never had anything to do with this business. Mr. Rerdell filed them, and Mr. Rerdell swears that he was never in any conspiracy; and Mr. Bliss admits that Peck, after the 1st of April, had nothing to do with this business. That substantially knocks the bottom out of that dish.

Now they attacked the affidavit on the Bridge Creek route, but they did not succeed in showing that it was not an honest affidavit.

Now, gentlemen, after what the court has decided I want to call your

attention to another thing. Do not forget what the court has decided—that all these things are not overt acts, but that they simply show the relations of the parties. Now, let us take them that way—that these affidavits and petitions, these letters and papers, are put in to show the relations of the parties.

The COURT. The nature of the combination.

Mr. MERRICK. Certainly.

Mr. INGERSOLL. That is what I mean—the business relations; that is, what they were doing.

Mr. MERRICK. Certainly.

Mr. INGERSOLL. And how they were doing it. Now, if you go and find Vaile and Miner getting up petitions on their routes, and you also find Dorsey getting up petitions on his routes, then they claim that that is the result of an agreement between them. That is not the law. Neither is there in that the scintilla of common sense. If I find you plowing in your field and your neighbor plowing in his field, I have no right to draw the conclusion that you have conspired to plow or to help each other. But if I find your neighbor and you plowing in your field, and I afterwards find you and your neighbor plowing in his field, I have the right to conclude that you have swapped work and that you have something in common. If I find you plowing in your field and your neighbor walking behind you sowing grain or dropping corn, and then I find you in the fall shucking out the corn together, and I find your neighbor taking half of it to his barn and you taking half of it to your barn, I make up my mind that you have had some dealings on the corn question.

Now, we find that on May 5, 1879, these parties absolutely divided, and after that, when Vaile and Miner got up a petition on their route, Dorsey did not help them; and when Dorsey got up one on his, Vaile and Miner did not help him. That shows what the relations of the parties were. Does that show that they were then in a conspiracy? Does it show that they had any conspiracy before that time? They had separated their interest; they had ceased to act together; one did nothing for the other. If there had been a conspiracy before that time that conspiracy died on the 5th of May, 1879; and if it did, then there is no possibility of any conviction in this case, no matter what the evidence is—not the slightest.

Now, I want you to understand that ground exactly. I am not begging the question. I am not afraid to meet every point, every paper, every scratch, in this case. But I want you to understand it. All those things were allowed for the purpose of showing the relations of the parties, the relations that the defendants sustained to each other; and the evidence is that they sustained no relations to each other after 1879; that each went his own road to attend to his own business in his own way. That is the evidence.

Now comes the next point. What are the overt acts in the indictment? Really they are the orders made by Mr. Brady, unless you take this poor little affidavit made by Peck and filed by Rerdell.

Then comes the next point. You cannot treat anything as an overt act unless it was made by one of the conspirators. Is there any evidence in this case that Mr. Brady ever conspired with anybody? Not the slightest. And unless he conspired with us any order made by him cannot be regarded as an overt act in this case. I think everybody will admit that. Unless Brady conspired with us, and we with him, any order of his cannot be regarded as an overt act. I ask you, gentlemen, what evidence is there in this case that Mr. Brady ever conspired with any of these defendants? I will answer that question before I get through, and I think I will answer it to your entire satisfaction.

I will go a step further in this case, and I may go a little further than the court will go. I say that when they state in that indictment that an order is made for the benefit of Miner, Vaile, and Dorsey, and the evidence is that it was made for the benefit only of Vaile and Miner, that is a fatal variance, and it cannot be treated as an overt act for any conspiracy. And when the indictment charges that an order was made for the benefit of S. W. Dorsey, and Vaile, and Miner, and it turns out that it was made for the sole benefit of S. W. Dorsey, I claim that that is a fatal variance.

Gentlemen, I was going through all these overt acts and all these terrible false claims. But the decision of the court has utterly and entirely relieved me from that duty. So I will turn my attention to another person.

The next defendant to whom I may call your attention is Mr. John W. Dorsey. My opinion of Mr. Dorsey is that he is an honest man; that he is a plain, straightforward man. It is claimed that John W. Dorsey was one of the original conspirators; that he helped to hatch and plot this terrible design. Let us see what interest John W. Dorsey had. You have heard me read the agreement he made, have you not, with Miner? Now, let me read to you the agreement that he made on the 16th day of August, 1878, I believe. Now, we will find out what interest John W. Dorsey had in all this conspiracy. On the 16th of August, 1878, there was no reason for telling any lie about it. They could not get on the routes in August, 1878; they had not the money, and so they took in Vaile. At that time, gentlemen, there was no reason for them writing anything in this paper that was not true, not the slightest. And I take it for granted that most people tell the truth when there is no possible object in telling anything else, if their memory is good:

This agreement, dated the 16th of August, 1878, by and between H. M. Vaile, of Independence, Missouri; John R. Miner, of Sandusky, Ohio; John M. Peck, of Colfax County, New Mexico; and John W. Dorsey, of Middlebury, Vermont, witnesseth as follows:

1st. A copartnership is hereby formed by and between the above-mentioned parties, for the purpose of managing certain mail routes in the Western States and Territories. Said routes are all those which have been awarded to said Miner, Peck, and Dorsey for the contract term from July 1st, 1878, to June 30, 1882.

Now, I go on to the fourth paragraph for the purpose of finding out what interest one of my clients, John W. Dorsey, had at that time in this great conspiracy:

4th. The profits accruing from the business shall be divided as follows: From routes in Indian Territory, Kansas, Nebraska, and Dakota, to H. M. Vaile, one-third.

That is all out there in the Indian Territory, Kansas, Nebraska, and Dakota.

To John R. Miner, one-sixth; to John M. Peck, one-sixth, and to John W. Dorsey, one-third.

From routes in Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, and California, to H. M. Vaile, one-third; to John R. Miner, one-third; to John M. Peck, one-third. [Page 4014.]

And to John W. Dorsey nothing. That is dated on the 16th day of August, 1878. The entire interest of John W. Dorsey in the whole business was one-third of the profits on routes in the Indian Territory, Kansas, Nebraska, and Dakota. This is signed by H. M. Vaile, John R. Miner, John M. Peck, and John W. Dorsey, and I believe these are all admitted to be the genuine signatures of the parties. In the fourth paragraph of this agreement, as I told you, John W. Dorsey was to have one-third of the profits accruing from the routes in the Indian Territory, Kansas, Nebraska, and Dakota; while of the profits arising

from the routes in Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington Territory, Oregon, Nevada, and California he was to have nothing. The only routes mentioned in this indictment in which John W. Dorsey on the 16th day of August, 1878, had any interest whatever were: Kearney to Kent in Nebraska, Vermillion to Sioux Falls in Dakota, and Bismarck to Tongue River in Dakota. Remember that, gentlemen. That is very important. The evidence is that he sold out his interest in the following December, made a bargain for \$10,000, and the evidence is that he received the money, and the evidence is that after that he never had any interest in the profits, no matter how much was made. And yet these gentlemen say that he was part and parcel of a conspiracy formed on the 23d of May, 1879. Long before that time he had sold out every dollar's interest he had, and had no more interest in it than though he had never existed. He got his \$10,000; that was all. Now let us see what he did when the routes were divided.

Mr. MERRICK. When did you say he sold out and got the money?

Mr. INGERSOLL. The bargain was made in December, and his brother wrote to him at first that Vaile would not give it to him, and then that he would. Don't you recollect the two letters you asked Dorsey so much about?

Mr. MERRICK. I recollect these letters, but I do not recollect—

Mr. INGERSOLL. [Interposing.] What I say is, that Mr. Vaile had agreed to it, and then backed out of it.

Mr. DAVIDGE. That is so.

Mr. INGERSOLL. And it was finally consummated, if the court please, after Mr. Dorsey came out of the Senate.

The COURT. That is what I understood.

Mr. INGERSOLL. It had been agreed to once, and then after S. W. Dorsey came out of the Senate John W. Dorsey was paid \$10,000, and Miner swears that the division was absolute, perfect, and complete; and that nothing was signed by one for the other after the 5th of May, 1879.

Mr. BLISS. Miner does not say when. He swore that he signed no papers after the 5th of May.

Mr. INGERSOLL. He says that he signed no papers for the other side, and that the other side signed none for Vaile and Miner.

Mr. BLISS. No. Mr. John W. Dorsey says that he signed papers afterwards. Mr. Miner says that he does not know what other people may have done, but he signed no papers after the 5th of May.

Mr. DAVIDGE. You are talking of two different things.

Mr. INGERSOLL. I will show you after a while that you are wrong, as I always do. I never made a mistake on you yet.

The only routes mentioned in this indictment in which John W. Dorsey on the 16th day of August, 1878, had any interest whatever were from Kearney to Kent, in Nebraska; Vermillion to Sioux Falls, in Dakota; and Bismarck to Tongue River, in Dakota. And I will say right here that if at any time I do injustice to Mr. Bliss or anybody else, if it is pointed out I will take it back cheerfully, and if it is not pointed out, and they show that I did it, I will get up and admit it and say that I was mistaken.

Mr. BLISS. You will have a great deal to admit.

Mr. INGERSOLL. Very well, I will do it, for I have the courage of conviction, and I have the courage to say that I am mistaken when I am.

Now, the evidence is that John W. Dorsey sold out his interest for \$10,000, and that he received the money, and that after that he had no

interest in the profits when the three routes were divided, and the only three were the ones I have mentioned.

On the first route, from Vermillion to Sioux Falls, John W. Dorsey was the subcontractor, and he gave Mr. Vaile the entire pay for all increases and all expeditions. John W. Dorsey had the right to subcontract, and Mr. Vaile had the right to make the contract. The statement on page 726 shows simply that John W. Dorsey never drew a dollar upon that route. That is one route fairly and squarely disposed of. Understand, I cast no imputation upon Mr. Vaile for having the contract and for getting the money. When I come to it I will show you that he had a right to.

The next route is from Kearney to Kent. John W. Dorsey had an interest in that route, according to the agreement of August 16, of one-third. You will see from page 726 of the record that the first quarter John M. Peck got the money, \$245.06; it was much. John W. Dorsey was entitled to one-third of that, if it was profit. The next quarter was paid on the 22d of January, 1879—that is, for the fourth quarter of 1878, and that was paid to H. M. Vaile. And never another solitary cent was paid to anybody in such a way that John W. Dorsey was entitled to any part or portion of it. That gets that route out of trouble, so far as John W. Dorsey was concerned, no matter what the increase may have been after that, no matter what the expedition was, no matter whether French carried it for nothing, no matter what happened to Cedarville or that city of Fitzalon; it was no interest to John W. Dorsey, no matter whether the road ran direct from Fitzalon to Cedarville or not. He was entitled to one-third of the profits on one payment to Peck, and that payment was \$245.06; whether he ever got it I do not know.

Let us see how he came out on the next route, from Bismarck to Tongue River. He went out there to build stations. I will come to that in a little while. Now, I call attention to page 727. The third quarter from July 1 to September 30, 1878, was paid November 8, 1878, to H. M. Vaile. Never a solitary dollar on the route was paid to John W. Dorsey, according to this record, if you can rely on these books.

That is the state of the case on those three routes. And yet it is solemnly averred in the indictment that all the orders on these routes were made for the joint benefit of John W. Dorsey and others. Now, before another payment was made the division of the routes had been completed, and John W. Dorsey sold out his interest in these routes and all others for \$10,000. So that he never received a dollar upon the Bismarck route and the Vermillion route except as it is included in the gross sum of \$10,000 which he received for his entire interest, and that entire interest is described perfectly in the contract of August 16, 1878. Now, if John W. Dorsey had no interest in any route except as stated in the contract, of course nothing was done upon any other route for his benefit; nothing was done in which he, by any possibility, had the slightest pecuniary interest. How were the petitions filed for his benefit? How were the affidavits made for his benefit? How were the orders made for his benefit? He had no interest; he had parted with it, and had nothing more to do with it than the attorneys for the prosecution in this case.

It is claimed by Mr. Bliss that when John W. Dorsey sold out he agreed to make the necessary papers for the routes, and he tried to impress upon your minds the idea that the bargain was that John W. Dorsey knew that for that \$10,000 he had to commit perjury and forgery

and several other cheerful crimes, from time to time, as he might be called upon by the gentlemen who had been his coconspirators. J. W. Dorsey frankly and cheerfully swore that he agreed to make the necessary papers. He did not swear that he agreed to commit any frauds, perjuries, or forgeries. Nothing of the kind. He agreed to execute, of course, the necessary legal papers—the papers that, as contractor, were necessary for him to make to vest title of the route in the person to whom he had sold—just the necessary papers that would allow the man who had paid him for the route to draw the money from the Government if he performed the service. If I were to sell you a piece of land it would be necessary to make a deed; and if I found that the title was defective and forged a deed, so as to make the chain of title complete, I would be responsible for that, but the man who bought the land of me in good faith would not be responsible for the fraudulent deed that I made.

Now, what were the papers? I say right here, gentlemen, that under the law as it was then, under the law as it is now, it is impossible for a contractor to assign his contract so as to be relieved from responsibility to the Government; the Government will not permit it. The Government will permit him to make a subcontract, and that is what John W. Dorsey did; that is one of the things he agreed to do. In order to make that subcontract absolutely certain; in order to put it beyond his power to do anything with it, that subcontract was made for the entire pay, for the entire increase and expedition. And what more? In order to make that absolutely perfect, so they would not have a loop-hole anywhere, he signed blank drafts upon the Post-Office Department for the entire pay of every quarter during the contract term. And then, if they were fined—and nobody knew how much they would be fined—they had the right to fill up that order for the amount due them from the Post-Office Department after deducting fines.

He sold out in March, 1879. The regulation or order making it necessary for the contractor to make an oath as to additional stock and men was not in existence, was not a binding law or regulation, until the 1st day of July, 1879. When he sold out in March, unless he were gifted with prophecy, he would not know what the regulation of the 1st of July following would be.

Now, there were two affidavits made by John W. Dorsey on route 38134, Pueblo to Rosita. Around those affidavits Mr. Bliss hovered and Mr. Ker remained. John W. Dorsey testifies that he received one of those affidavits in the morning and swore to it, and that it was filled up when he swore to it. Mr. Bliss and Mr. Ker, I believe, both say that it was not filled up.

Mr. BLISS. Where does Mr. Dorsey say that it was filled up when he swore to it?

Mr. INGERSOLL. He says it in his evidence.

Mr. BLISS. I would like a reference to it.

Mr. INGERSOLL. You will find it in Mr. Dorsey's evidence.

Mr. BLISS. I have looked in vain.

Mr. INGERSOLL. I have not the page here, but I will give it to you.

Mr. DAVIDGE. He certainly swore that he never swore to any blank affidavits.

Mr. INGERSOLL. He swore that a dozen times, that he never swore to any blank affidavits.

Mr. BLISS. I undertake to say that it cannot be found in his evidence.

The COURT. He testified that he received them both by mail, and that the second one was contained in a letter which said that there was an error in the first, and the second was sent for the purpose of correcting that error.

Mr. INGERSOLL. There could not have been any error in the first unless it had been filled up. You cannot make an error in blank.

Mr. MERRICK. My recollection is that he says he does not know whether they were blank or not.

Mr. INGERSOLL. On page 4838, Mr. Rerdell swore that he left this city on the 17th or 18th of April for the West, and then he adds, "I think on the 18th." Then the Government brought the hotel-keepers from Sidney, Nebraska, and from Denver, and from some other place, nearly as many witnesses as you had about the paper pulp.

The COURT. The other place was Greeley.

Mr. INGERSOLL. Yes, sir. And they proved that Rerdell was beyond the Missouri River on the 21st of April.

Now see what Mr. Bliss says on page 4914:

And yet, gentlemen, it is beyond dispute that as early as the 15th of April, 1879, Mr. Rerdell had left this city and gone West.

I should have thought that was a mistake of the printer, except for the next lines :

We placed upon the witness-stand here the three hotel-keepers, one from Sidney, in Nebraska, one from Greeley, in Colorado, and the other from Denver. They produced their hotel books, showing Mr. Rerdell's presence at those places respectively on or about the 19th or 20th of April.

The evidence shows that he left here on the 17th or 18th, and Rerdell swears himself that he thinks it was the 18th.

The COURT. Did not the witnesses prove that he was at Denver on the evening of the 24th, and that the same day he took dinner at Greeley?

Mr. BLISS. He was at Sidney earlier, the 21st, I think.

Mr. INGERSOLL. Mr. Bliss says here the 19th.

Mr. BLISS. I think I said the 19th or 20th.

The COURT. I am speaking of the evidence itself.

Mr. BLISS. Mr. Rerdell says the 17th or the 18th.

The COURT. You had three witnesses.

Mr. MERRICK. Two witnesses from the West.

Mr. INGERSOLL. Why did he have it stated on the 15th, gentlemen? I will tell you. Oh, I tell you the human mind is a queer thing when it gets to working. John W. Dorsey was in Middlebury, Vermont; if a letter had been sent from here on the 15th, it certainly would have got up there before the 21st. So they wanted Rerdell out of this town as early as possible, so that it would make it highly improbable that it would take a letter from that time to the 21st to get to Middlebury. Now, the evidence is that he left here, he thinks, on the 18th. When did the letter get up there? I think the 20th or 21st.

Mr. DAVIDGE. There was a Sunday intervened.

Mr. INGERSOLL. They say, gentlemen, that there is no evidence that the blanks were filled, and yet John W. Dorsey swears that he received a letter stating that the first affidavit was erroneous, and the second one was sent to him to correct it. How would you correct one affidavit in blank by another affidavit in blank? How did he ever get those affidavits? I will tell you. We will have that little matter settled.

Mr. CRANE (foreman of the jury). I would like to have this matter settled as to the time it would take for the affidavits to go from here to Vermont, if a Sunday intervened.

Mr. INGERSOLL. Sunday did intervene.

Mr. DAVIDGE. Sunday intervened.

Mr. INGERSOLL. More than that, if they put it in the mail in the evening of the 18th, it might not go out until the morning of the 19th. But here is what Rerdell swears on page 2232—the top line:

Q. When did you leave to go West?—A. I left either on the 17th or 18th of April.

Now, down a little further, near the bottom:

Q. What time did you leave?—A. I left here either on the 17th or 18th of April; the 18th, I think.

Mr. Bliss thinks that it was about the 15th. Now let us see how those affidavits got to John W. Dorsey:

Q. When did you return from that visit?—A. I returned about the 5th of May.

Q. State whether or not after you returned, about the middle of May, as you say, I believe—

A. [Interposing.] I said about the 5th of May.

Q. [Continuing.]—about the 5th of May, 1879, you found blank affidavits among the papers connected with the business?—A. Yes, sir.

Q. How many did you find?—A. Well, there were several blank affidavits of John W. Dorsey's and several of John M. Peck's. I don't know how many there were.

Q. Were they blank affidavits?—A. Well, sir, they were blank affidavits similar to that one I sent, leaving out the number of men and animals in each case.

Q. Did they purport to have been sworn to?—A. Yes, sir.

Q. Were those affidavits among the papers when you left here to go West?

Now, that was on the 17th or 18th when he left here to go West; he thinks on the 18th.

A. Some of them were. I think those of Peck's were here, probably four or five, or half a dozen, and I had made out, before I left here, a lot of them and sent them to John W. Dorsey. In the mean time, when I returned here, John W. Dorsey was here.

Mr. Rerdell swears that just before he went away he sent the affidavits to John W. Dorsey, and the only question between them is, were they in blank, or were they filled. John W. Dorsey swears that they were filled, because when he received the second he received a letter stating that there was an error in the first, and that error had been corrected in the second. The last nail in the coffin of that doctrine.

Will your honor adjourn now?

The COURT. Adjourn the court.

Thereupon (at 4 o'clock and 3 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

FRIDAY, MAY 25, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. INGERSOLL. [Resuming.] May it please the court and gentlemen of the jury, before finishing what I was about to say in regard to the two affidavits of John W. Dorsey, I will now call your attention to a statement made by Mr. Bliss, on page 304, in his opening speech to you:

Mr. Dorsey, while Senator, was, I think, chairman of the Committee on Post-Offices, and chairman of the subcommittee in charge of all the appropriations. That brought him, of course, directly into connection with the Post-Office Department and its officials, and gave him, as we all understand, necessarily, from the nature of the case, the possession of some exceptional power over officials of the department—greater power than a Senator would have when occupying some other position.

That statement was made to you, gentlemen, for the purpose of making you believe that while Senator Dorsey was a member of the Senate he was also chairman of the Post-Office Committee, and of the subcommittee having power over the appropriations, and that he not only took advantage of being a Senator, but by virtue of being chairman of that committee had exceptional power over the officials of the Post-Office Department. He was wanting to convince you that, finding himself chairman of that committee, finding himself with this power, he thereupon entered into a conspiracy. What evidence did the Government offer upon that point? Nothing. Did Mr. Bliss at that time suppose that Mr. Dorsey was chairman of that committee? The records were all here. The Government had plenty of agents to ascertain what the fact was; and yet, without knowing the facts, Mr. Bliss stated to this jury that he believed that; that Dorsey was chairman of the Post-Office Committee and of the subcommittee; wanting to poison your minds with the idea that Mr. Dorsey had taken advantage of having held that position. Now, the only evidence upon that point I find on page 3992, and that is the evidence of Mr. Dorsey himself. He is asked, Were you a member of the Post-Office Committee in 1877? No. In 1878? No. Or chairman of the subcommittee? Here is what he says, that he had not been on that Post-Office Committee "for nearly two years" prior to July 1, 1878. And yet an attorney representing the United States, representing the greatness and honor, the grandeur and the glory of fifty millions of people, for the purpose of poisoning your minds, there made that statement without knowing anything about it or without caring anything about it. I thought I would clear that point up the first thing this morning.

Now we will go on with the affidavits. You know these terrible affidavits that were sworn to in Vermont. It was stated that the first affidavit was wrong and that the second affidavit was substituted for the first. Now, if the second affidavit took more money out of the Treasury than the first affidavit you might say that there was a sinister motive, a dishonest motive in withdrawing the first and substituting the second, unless it appeared clearly that the second was true. But suppose it turns out that the substitution did not take an extra dollar from the United States? Then what motive do you say they had in doing it? Was it a motive to steal something, or was it a motive simply to be correct? What other motive could there have been? The first affidavit told the number of men and horses then necessary and the number that would be necessary. Now, if that affidavit took less money from the Government than the second affidavit, then you might suspect that the first was withdrawn so that the second might be filed, to the end that more money could be obtained from the Government. But if the second affidavit did not draw an additional dollar from the Treasury, then you have got to look to something besides avarice for a motive, and what other motive could there have been by any possibility, except the motive to be correct? Now, let us see. The first affidavit said three men and twelve animals; for the expedition, seven men and thirty-eight animals; and the proportion was exactly 300 per cent—that is, three times as much. Now, then, they put in another affidavit. The second affidavit says two men and six animals. That makes eight. And on the expedited schedule six men and eighteen animals, which makes twenty-four; and three times eight are twenty-four; exactly the same. Three times fifteen are forty-five, and three times eight are twenty-four, and the amount of money drawn under the second affidavit is precisely the same that would have been drawn under the first affidavit.

Now, do you pretend to tell me that they took the trouble to withdraw the first affidavit and put in the second affidavit when it would not give them another dollar? Do you pretend to tell me they took that trouble because they were trying to defraud somebody? On the contrary, they took that trouble because there was a mistake made in the first affidavit and they wanted to correct it, not for the purpose of getting more money, but for the purpose of getting a correct affidavit.

Mr. CRANE (foreman of the jury). Was not that first affidavit interlined?

Mr. INGERSOLL. No, sir. He first said they would require three men and fifteen animals, and on the expedited schedule it would take forty-five animals. Consequently, on the expedited schedule they would draw three times as much money from the Government, because three times fifteen are forty-five. It then took three men and fifteen animals, and on the expedition it would take forty-five animals. Consequently, if it took at first fifteen animals, and subsequently forty-five animals, it would cost three times as much to have forty-five animals as it would to have three men and fifteen animals. That was withdrawn by a letter, although it was not actually withdrawn. If there had been any fraud about it, would they not have withdrawn the paper? They had a right to withdraw it. Yet they left the paper there; they left it there as a witness. Why? Because it did not prove anything against them; it only proved they desired to be correct.

The second affidavit says it takes eight men and horses, and on the expedition it will take twenty-four men and horses. Now, three times eight are twenty-four. So that the pay under the second affidavit is the same precisely as under the first affidavit. My recollection is there were erasures in both affidavits. Let us find them. Before I get through I will endeavor to show you that every erasure and interlineation is an evidence of honesty instead of dishonesty. What are the numbers of these affidavits? [Examining the papers.] They are number 4 C and 5 C. Route 38134. I will read them:

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General:

SIR: The number of men and animals necessary to carry the mail on route 38134 on the present schedule is three men and twelve animals. The number necessary on a schedule of ten hours, seven times a week, is seven men and thirty-eight animals.

Respectfully,

JOHN W. DORSEY,
Subcontractor.

There does not appear to be any erasure or interlineation or anything else in that affidavit. Now, here is the other one:

Hon. THOMAS J. BRADY,
Second Assistant Postmaster-General:

SIR: The number of men and animals necessary to carry the mails on route 38134 on the present schedule, seven times a week, is two men and six animals. The number necessary on the schedule of ten hours, seven times a week, is six men and eighteen animals.

Respectfully,

JOHN W. DORSEY,
Subcontractor.

That is the second affidavit. The first was withdrawn. That is, they had permission to withdraw it, and in the second affidavit is the interlineation "seven times a week," isn't it? That is simply an interlineation, because there had been an omission to state the service that was then being performed or that was to be performed.

Mr. CRANE (foreman of the jury). That has puzzled me a good deal, to understand the motive of those two affidavits.

Mr. INGERSOLL. There certainly could not be any motive for putting in seven or three times a week, for this is simply to make it agree with the truth. If I give a note to a man for \$500 and should happen to write in the word "hundred" and not the word "five," and then should take it back and write in the word "five" above it, that is not a sign of fraud.

Will somebody give me number 18 K; I just happened to see something there which may be worth something, or may not.

Now, gentlemen, here is a petition marked 2 A, that Rerdell swears that the words "schedule thirteen hours" were written in by Miner. In one of these papers I happened to see the word "schedule." Just notice the word "schedule" on this paper [exhibiting to the jury], and then have the kindness to look at the word "schedule" in this other one [exhibiting to the jury], and see whether you think one man wrote them both. Rerdell says he wrote the word "schedule" in that one [indicating], and that Miner wrote the word "schedule" in this other one [indicating].

Now, gentlemen, there is another charge against John W. Dorsey, on route 38145, and upon that route he made two affidavits. You remember that Mr. Bliss took the ground that the first affidavit that stated the number of men and animals was false, because that was a matter not of opinion, but of fact, and that consequently a man had to swear to the number of men and animals then actually in use. Whereas, I took the ground, and still take it, that you swear to the number of men and animals required and necessary; and by that I mean reasonably necessary. Now, in two affidavits on route 38145—and that is another crime laid at the door of John W. Dorsey—in the first affidavit he swore it would require three men and seven animals on the schedule as it then was, and that makes ten; that with the proposed schedule it would take eleven men and twenty-six animals, making thirty-seven. Now, if it took ten on the schedule as it then was, and thirty-seven on the proposed schedule, then the Government, which accepted that affidavit, would have to pay him three times and seven tenths as much, which is the relation between ten and thirty-seven. The proportion then is three and seven-tenths. On the first affidavit his pay would have been \$12,935.52 a year.

Now I come to the second affidavit, which said that for the schedule as it then stood it would take twenty men and animals. The first one said ten, and the second one said it took twenty, as it then was. On the second affidavit he swore it would take five men and fifteen animals on the then schedule, making twenty! On the first affidavit he said ten; and on the proposed schedule he said it would take twelve men and forty-two animals, making fifty-four. Now, the ratio of the second affidavit was as twenty is to fifty-four. The ratio in the first affidavit was as ten is to thirty-seven, so that under the second affidavit, which they say was willful and corrupt perjury, he got \$8,457 a year instead of \$12,935.52. There were three years for the contract to run, and a little over. Under the first affidavit he would have received \$13,992.75 during the contract term more than he took under the second. An affidavit was put in there that he thought was erroneous. He withdrew that affidavit and put in a second one. If he had allowed the first to remain and they had calculated the amount on the first he would have received \$13,992.75 more than he did under the second affidavit. But he withdrew the first and put in the second, and took from the Treasury \$13,992.75 less, and they charge that as a fraud, as an evidence of conspiracy and perjury. Now, that is all there is against John W. Dorsey.

On page 4090 John W. Dorsey swears that General Miles wanted to know how far apart he (Dorsey) was building the stations on the Tongue River and Bismarck route. Let us turn to page 4090. You know they were trying to prove that when John W. Dorsey went out there and built the ranches that he was going to build them about fifteen or seventeen miles apart, because it was claimed that they knew there was to be increase and expedition. You remember that. Now, when John W. Dorsey came upon the stand he swore that when they went out there they started to build those stations, I believe, somewhere in the neighborhood of thirty or thirty-five miles apart, as they could get water. Then he swore that when he went himself over, I think, to Miles City, where General Miles was, that General Miles asked him how far he was building his stations apart. John W. Dorsey told him. Then General Miles gave him his advice. Now, I want to read this to you. I asked him this question :

Q. When you got to Fort Keogh did you go to see General Miles?—A. Yes, sir.

Q. Did you have any conversation with him with regard to this route, with regard to the needs of the country for mail service; and, if so, what was it?

Now, let us see what General Miles said. But before that I stated this to the court, that—

When he left Bismarck, or before that, he gave instructions to the men that were to build the stations to build them from thirty to thirty-five miles apart, according as they might find water. When he got to Fort Keogh he had a conversation with General Miles, in which General Miles told him that he knew that they would never get along with a weekly service there; that it would have to be three or four times a week anyhow, and that it would be put on shorter time, and that they would need at least twice as many stations; that he was wasting his time to build stations that far apart. Consequently, when they got through they turned around and went back, building stations between those they had already built.

Now, it has been claimed here that the orders were, when Rerdell or somebody else left the city, to build the stations fifteen to seventeen miles apart; that although they would not need them at first, they would need them when the increase came. I want to show by this witness that he was building these stations thirty to thirty-five miles apart, but that he made the change and built the intermediate stations on account of his conversation with General Miles.

Then came a little discussion on the propriety of admitting that evidence, and Mr. Bliss said :

Will your honor permit me to interrupt you? I merely wish to say that we do not object to the witness saying that in consequence of information received from General Miles he did so and so. But they seek to have given in evidence the alleged statement of General Miles in the conversation that he knew there would be an increase of that kind. That cannot be evidence.

The COURT. The evidence would be worthless without the statement of General Miles to the witness; and if it is to be admitted at all it is only efficient in the light of the advice given by General Miles. I think it is admissible. As to the weight of the evidence, of course the jury will have to decide that, whether it is one way or the other.

Then Mr. Bliss says :

If this is to be admitted you will understand that we have the right to recall General Miles to go into that subject.

Mr. CARPENTER. We do not object.

Mr. BLISS. From the conversation I have had with him—that is, General Miles—instead of testifying to anything of that kind, I think General Miles would contradict him.

The COURT. Whenever you offer that evidence the court will decide.

Mr. INGERSOLL. I hope the witness will not be frightened.

Now the witness gives the conversation on page 4091, and this is it :

A. As near as I can recollect it, I applied to him in the first place for an escort; told him what my business was; that I wanted a scout to find my way through; that I did not know anything about the country. He said that there was a surveying party out at that time who had an escort, and that as soon as they got in he would send the escort with me. He then went on to inquire about what we were expecting

to do. I told him all about the business generally. He seemed to understand it pretty well. He wanted to know how far apart we were building stations. I told him. He wanted to know how often the mails would run, and I told him it would be weekly service, I thought. "We have been pent up here two or three years," he says, "with mails from eighteen to twenty days apart, reaching us by the way of Ogden and Bozeman." And he says, "We can get it in seven or eight days over this line." And now I would like to say that he did not say that he knew there would be an increase, but he said he should like to have it increased to three trips a week, or daily, and fifty hours' time. I told him there was no use to try to get it at all; that it could not be done at present; that nobody knew the distance through that country; that we expected to have it measured; that it was claimed by everybody that it was a good deal more than two hundred and fifty and probably over three hundred miles, and nobody would undertake to carry it. Said I, "If you extend it the contractor can throw up his contract and you will be without any mail." He said, "We are going to ask for what we want, but we will take what they will give us."

Q. Did he say whom he would ask?—A. Yes, he said "I am going to write to General Key."

The COURT. This conversation does not relate to the point.

Mr. INGERSOLL. Yes.

The WITNESS. And he said he would write to General Sherman.

The COURT. He has not come to the point.

Mr. INGERSOLL. Yes, that he would have to build more stations.

Mr. MERRICK. He has come to the point, as I understand, where I object. I object, your honor.

The WITNESS. I will give it just as short as I can to make it intelligible.

The COURT. The court does not mean to say that everything that General Miles told the witness in that conversation is admissible.

The WITNESS. I have not told one-tenth of it.

Mr. MERRICK. How much can he give?

The COURT. So much as relates to the establishment of these posts.

Mr. INGERSOLL. That is it.

The WITNESS. He says: "Your stations are too far apart; you can't run any fast time with your stations so far apart; you want more stations, and nearer together." The result was that when I went back I met Mr. Pennell, who had built the stations thirty to thirty-five miles apart, and going back we put in intermediate stations. We only carried out lumber enough from Bismarck to build eight or nine stations, for the windows, &c.; we did not think of building any more at that time. Mr. Pennell says the order was to build the stations seventeen to twenty miles apart in going out. That is no such thing. There was not a station built going out closer than thirty to thirty-five miles.

Q. What, if anything, did General Miles say that convinced you that you ought to build stations nearer together?

Then he testifies that on account of what he said he did this, and that he had no instructions from Washington. He is asked, "Did General Miles give you any escort?" "Yes, sir; a large number of men, in eight or ten days."

That is the testimony. Mr. Bliss endeavored to frighten the witness by stating in his presence that he (Bliss) did not believe General Miles would swear to any such thing, judging, of course, from the conversation that he (Mr. Bliss) had had with General Miles. But they did not bring General Miles here to contradict John W. Dorsey. Notwithstanding that threat, John W. Dorsey went right on and told the story, and said that General Miles advised him to put his stations about fifteen miles apart, and that it was in consequence of that advice that he did build the stations that distance apart. Mr. Bliss intimated to the witness that General Miles would swear the other way, and that he (Bliss) knew it because he had had a conversation with General Miles. But John W. Dorsey, confident that he was telling the truth, knowing that he was telling the truth, told his story, and the Government never brought General Miles to contradict him.

Mr. CARPENTER. I do not believe he was here.

Mr. INGERSOLL. He was here, but not a word from him. Now the next thing about John W. Dorsey is the conversation that he had with some men in July or August out on the road, that I have spoken to you

about before. Nothing could be more perfectly improbable. It may be that he did tell some man that he was a brother of Senator Dorsey, and, perhaps, he did say that if he got into a tight place or hard up for money he could borrow money from his brother. I do not know what he may have said on that subject. But, gentlemen, there is not a man on this jury, not one of you, who has the slightest suspicion that John W. Dorsey at that time told those men substantially that his brother was in a conspiracy with the Second Assistant Postmaster-General, and that he, John W. Dorsey, was also a conspirator. There is not one of you who believes that, not one, and you never will. Why not? Because it is so utterly and infinitely unreasonable and absurd. Now, that is the evidence against John W. Dorsey. My attention is called to one other point in his case, and so I will call your attention to it.

Mr. Bliss, gentlemen, on page 243, in speaking of the two affidavits on the Pueblo and Rosita route, says :

We find this extraordinary condition of things. On route 38134, from Pueblo to Rosita, which, I think, is the same route upon which the obliging Mr. John W. Dorsey, as I have just stated to you, was allowed to make the affidavit instead of Mr. Miner.

Now, he goes on to describe these two affidavits, and then he says :

Those two affidavits were before Mr. Brady, made by John W. Dorsey on the same day, and yet Mr. Brady chose to pick out one or the other of them and say, "I believe *that* as the absolutely conclusive statement of the number of men and animals that are now in use upon that route, and upon that affidavit I will make my order taking from the Treasury thousands of dollars of money." You will see that the first affidavit made the number two men and six animals, making eight as the number of stock and carriers then in use; but the other one called for three men and twelve animals, making fifteen as the number then in use, and, therefore, according as he accepted one or the other, by the rule of three, to which I called your attention just now, there would be twice the amount of money allowed from the Treasury under the one affidavit that there would be under the other.

Just think of that, gentlemen. The number of men and animals then in use has nothing to do with the number of men and animals stated in the other affidavit; those amounts bear no relation to each other. The number of men and animals in use in the first affidavit, and the number that would be necessary on the next schedule, do bear a relation to each other. The number of men and animals on the second affidavit on the then schedule bears relation to the proposed number on the proposed schedule, and not to the number on the other affidavit. And yet Mr. Bliss stood right before you, with those two affidavits that would take the same amount of money out of the Treasury, to a fraction, precisely the same—not the difference of the billionth part of a farthing—and stated to you that one would take twice as much money from the Treasury as the other. You will think that he is as defective in mathematics as in law. I say to you now that the amount that would be taken out of the Treasury on those two affidavits is precisely the same. I did not think that anybody could excel Mr. Ker in mathematics, but Mr. Bliss bears off the palm. He bears off the palm even in misstatement, and bears off the palm in mistake. The two affidavits would call for the same amount of money precisely, and yet Mr. Bliss stands up before you and says there is twice as much on one as the other. Now, what is that for? That is to prejudice you; that is all.

Gentlemen, you saw John W. Dorsey; you heard his testimony; you know whether he is a man to be believed. It is for you to judge whether he is honest or dishonest, and I leave his testimony with you. It was direct; it was to the point; and his manner on the stand was absolutely and perfectly honest.

Now, there is another point made. You know you have to think of these things as you can, and step on them and then go on. Another point is made, and it was urged by Mr. Bliss day after day. And what is that? That Mr. Brady took the affidavits of all these men as absolutely true; that he allowed them to fix the limit of the money they would take out of the Treasury: that he allowed interested men to make the affidavits, and then he took the affidavits as absolutely true; that he allowed the contractors themselves to fix the sum they would seize. Now let us see what that is. Mr. Brady swears that he regarded the affidavit as the honest opinion of the man who made it, but not as necessarily true; that he had a standard of his own. Your views upon all such questions, gentlemen, will depend upon which side of human nature you stand—whether you are a believer in total depravity, or whether you think there is a little virtue left in human nature. If you stand on the side of suspicion, if you allow the snake of prejudice to forever whisper in your ear, why, your idea will be that every man is a rascal; and whenever he does a decent action you will say, “This action is a little velvet in the paw for the purpose of covering the claw of some devilment that he has in store.” If you judge from that side you can torture any act, no matter what it is, into evidence of guilt. But you may judge from the other side and say that men, as a rule, are decent; that they would rather do a kind act than a mean thing; that they would rather tell the truth than tell a lie. I tell you to-day that there is an immensity of good in human nature. There are hundreds and thousands and millions of men to-day who are honest, who would not for anything stain the whiteness of their souls with a lie. They are laboring-men, it may be, working by the day for a dollar or a dollar and a half, and only taking enough of it to keep life and strength in their bodies and giving the rest to wife and child. And there are battles, as grand as were ever won by a celebrated general, and just as bravely fought, with poverty day after day; and the man who fights the battles gains the victory and goes down to the grave with his manhood untarnished. You know it, and so do I. And yet you are all the time told to suspect everything, no matter what it is. There is a flower there; ah, but there is a snake under it! Always making that remark; accounting for every decent looking action by a base motive. That is not my view of human nature.

Now, Mr. Brady says that he had a standard of his own; that he let these men make their statements, and he took their statements as being what they believed to be the truth. And why not? Suppose I say to a man “What will you take for that horse?” And the man says, “That horse is worth a hundred dollars.” Suppose he goes and swears to it; that would not make any difference in the price I would give for the horse, not a bit. You see I am not buying an affidavit, I am buying a horse. So, when Brady says to the contractor, “What will you carry the mail at six miles an hour for?” and the man says, “\$25,000,” and he swears to it, Brady is not buying the affidavit; it is the service. If he does not believe the service is worth that much, he says, “I can’t do it,” and that is all. But they say “No; that is not what Brady did.”

Now, as a matter of fact, there are nineteen routes in this indictment, and I believe eighteen of them were expedited. I have made a calculation for the purpose of showing that the amount to be paid was a matter of bargain; that it was a matter talked over between the parties; that it was the result of agreement, and that Mr. Brady did not take the affidavit as the actual amount, and that they were not bound to take the amount that he actually said. Now, I have deducted what *was* allowed

from what *could have been* allowed on the affidavits, and I find that the price did not depend upon the affidavits. I find that there was a difference between the amount called for by the affidavits and the amount granted of over \$300,000. And yet these gentlemen say to you that Brady allowed the men who made the affidavits absolutely to fix the amount. Gentlemen, that will not do. It was a matter of agreement, a matter of bargain, the same as any other agreement or any other bargain.

Now, gentlemen, suppose they had had a conspiracy and said, "We want to get all the money we can out of the Treasury." They would have agreed upon a per cent.; they would have had all those affidavits showing substantially the same per cent., wouldn't they? Because they would have wanted harmony in it. They would have said, "It won't do for you to make an affidavit on that route with 1,200 per cent., on this route with 500, on that route with 220 per cent., and on the other route with 340 per cent. That won't do; that is nonsense; we are in a conspiracy and we want all these things to agree and harmonize." And the result would have been that they would have had about the same per cent. in all those affidavits. And yet those affidavits vary in per cent. all the way from 220 to 1,200. They say, "Result of conspiracy." I do not look at it in that way.

It is also claimed that the persons who sold out—that is to say, John M. Peck and John W. Dorsey—agreed to make the necessary papers that the other parties required. That being so, why should not affidavits have been made in blank? Now, I ask you if the other parties were willing to swear to anything that these men would write, why were they made that way? Why not avoid the suspicious circumstance of blanks and put the amount in at first, knowing that the men would not hesitate to swear? Of what use was it, gentlemen, to have an affidavit suspiciously made, to have blanks suspiciously left, when the men were willing to swear to any numbers they would put in? Why did not the parties who made the affidavits write in the amounts? Does not that very fact, that blanks were left, show that they were to take the judgment of the men who were to do the swearing? Why would they leave blanks? Why did they not fill them up at the time and have them sworn to?

Why were they not continuously written? That is another point, if this was a conspiracy. Guilt is always conscious that it is guilty. Guilt is always suspecting detection. Guilt is infinitely suspicious. Guilt would make all the papers as nearly right as possible. Guilt would look out for erasures. Guilt would abhor blots. Guilt would have avoided having blanks filled in with different colored inks. Guilt would want everything fitting everything else, nothing to excite suspicion. Innocence is negligent. The man with honest intentions is the one that does not care. But the guilty man does not travel in the snow. He wants no tracks left.

Now, another thing: The fact that no effort was made to have the affidavits in the same handwriting, no effort to have the blanks apparently filled at the same time, that they were interlined, that there were erasures—all those things tend to show that the parties were honest in what they did. It was just as easy to have one without an erasure as with it; it was just as easy to have one continuously written as to have the blanks filled up; just as easy to have one without any interlineations as with it. And yet these parties, knowing that they were conspirators (according to these gentlemen), Mr. Brady occupying a high and responsible position, were so careless of their reputation, that they did not even endeavor to make the papers passable upon their face.

Another thing : These very routes were investigated by Congress in 1878—this very business. If the parties at that time had been conscious of guilt, why were any suspicious papers left on file ? Why were not others substituted that had no suspicious interlineations, no suspicious erasures, no suspicious blanks that had been filled ? Why were these very affidavits at that time reported to Congress ?

Mr. GREENE (a juror). What time was that ?

Mr. INGERSOLL. The first investigation was in 1878, and on account of that investigation the contractors for about a month and a half were left in doubt as to whether they would go on with their contracts or not. Then there was another investigation in 1880. I have forgotten what the first investigation was about, but it was about these routes, and I remember that, according to the evidence, the contractors were delayed about a month and a half.

Now, I ask if the parties had been conscious of guilt why did they report these very identical affidavits and petitions to Congress, with all the erasures that they talk about, with all the interlineations, and with the blanks suspiciously filled ? General Brady at the time had absolute control of every one of those papers.

Mr. MERRICK. Is there any evidence that they were all reported to Congress ?

Mr. INGERSOLL. I think so ; I think that is here in the record. I understand the evidence to be that it was all reported to Congress.

Mr. MERRICK. The investigation of 1880 was general, and not as to these particular routes.

Mr. INGERSOLL. In 1878 there was a special investigation growing out of these Clendenning bonds and out of the Peck bids, and out of the connection that they said Stephen W. Dorsey had with this business. That is what it grew out of. Now, in the light of that investigation, let us take it for granted for one moment that according to their statement the parties had conspired. If anything on earth would make them afraid about papers I think it would have been that investigation ; and yet no effort was made to conceal one, not the slightest.

Then we will go another step. General Brady was Second Assistant Postmaster-General. All these papers were absolutely in his power. He could have called for them at any time. Every suspicious paper could have been destroyed or an unsuspicious one substituted for it.

Now I want to know if it is conceivable that General Brady, under these charges, when the new administration came in, under the threat of the Government, would voluntarily leave those papers upon the files if they had been dishonest and he knew it.

Take another step. So far as we have learned from the prosecution I believe there is one paper claimed by them to have been lost. They do claim that there was a second affidavit on the Bismarck and Tongue River route. One is gone and one remains. Which remains ? The affidavit for one hundred and fifty men and one hundred and fifty horses. It seems to me absolutely capable of demonstration that we did not take the one that is gone. Had we been going to take anything we would have taken the one for one hundred and fifty men and one hundred and fifty horses, and left the other. But the other, about which nobody ever did complain, was taken, and the one upon which they build their great argument of fraud upon that route was left. And then it turned out that General Brady only allowed 40 per cent. of that affidavit.

Now this prosecution was not begun in a moment. It was talked about for weeks and months, I might almost say for years. Talk, talk,

talk in the papers everywhere. These men were not suddenly charged with this offense. They understood it; they knew it. I think I have been engaged in this suit, or suits growing out of this business, for two years. It was a matter of slow growth. Mr. Brady retired, I believe, some time in April, 1881, knowing at that time that these charges had been made and that the charges were being pressed. Mr. Dorsey knew it at the same time. All these defendants knew it. Now they say that at that time we were in conspiracy with Mr. Brady, and they say that at that time we were in conspiracy with Mr. Turner. We had the papers in our power.

Now, if Mr. Dorsey was wicked enough to conspire, if Mr. Brady was villainous enough to conspire, I ask you whether they would have left behind the evidence of their conspiracy? Why were the papers left? Because General Brady never dreamed that one of them was dishonest. Why did not Vaile and Miner, John W. Dorsey and Peck and Stephen W. Dorsey ask for the papers? Because they believed every one to be honest, and they had no use for them. They were willing that the Government should make out of them what it could. I ask again, is it conceivable that John R. Miner, if he knew there was on the files of the department a petition that he had changed, that he had erased, that he had interlined or forged, is it conceivable, if he had been wicked enough to enter into the conspiracy, that he would have been foolish enough to leave the paper there? Would he not have gone to Brady and said to him, "I conspired; you know it; I changed the petition, and I want it; I erased a word in a petition, I want it; I signed a name to a petition, I want it?" And Brady would have said, "Yes, and you ought to have called for it long ago; you can have it." If S. W. Dorsey had interlined an affidavit or had filled a blank, if S. W. Dorsey had made an erasure or an interlineation, he, of course, must have known it, and if he conspired with Brady he must have known it, and he must have gone to General Brady and said, "I want that affidavit on such a route; we can write another, and I want that; I want that petition;" and it would have been given. You cannot conceive of such infinite stupidity as to say that those people knew that those papers were dishonest, and that they still left them on file as weapons for their enemies. You cannot do it.

So much, gentlemen, for the affidavits, and so much for the papers.

Now, there is another question, and I have no doubt but that you have asked it yourselves. It has been asked a great many times by the prosecution. That question is this: Why did Dorsey retain Rer-dell in his employ after the 20th of June, 1881? These gentlemen tell you that it is evidence of guilt that he did it. I will tell you why he did it. At that time the public mind was almost infinitely excited on this question. At that time the public was ready to believe anything. It had its mouth wide open, like a young robin, ready for worms or shingle-nails—it made no difference—anything that dropped in. Every newspaper was charging that these defendants were guilty, that Stephen W. Dorsey was a conspirator, that millions had been taken from the Treasury, and there were nearly as many mistakes in the press then as in the speech of Mr. Bliss now. But I can excuse that, because it was before the evidence. Now, what was Mr. Dorsey to do in the then state of the public mind? That man, no matter how bad he was, how base he was, had the power to have him indicted. That man could have gone before the grand jury and had Mr. Dorsey

or any other public man indicted in the then state of excitement and feeling of the public. What was the result of his going even to James and MacVeagh? I believe Mr. Turner says that on account of the state-

ment of this man Rerdell, he (Turner) was turned out of his office. That is the effect. What became of McGrew? What became of Lilley? What became of Lake? What became of twenty or thirty other officials upon whose reputation this man had breathed the poison of slander? Stephen W. Dorsey at that time knew that that man in the then state of public excitement was powerful for mischief. That man made the affidavit of June, 1881, at the request of James W. Bosler, as he himself says, and swore that he went to the Government simply to find out the Government's secrets; swore that he was still upon the side of Stephen W. Dorsey; took back what he had said, and swore that it was a lie. The question then was what to do with him? Stephen W. Dorsey made up his mind not to do anything more, just to let him alone, just let him stay as he was. That was the wise course. It was the course that any wise man, in my judgment, would have pursued under the circumstances. What else could he do? Let him alone. Let him alone. He did not at that time expect that he would ever be indicted. He shrank from an indictment, as every sensitive man does, because when you have indicted a man you have put a stain upon him that even the verdict of not guilty does not altogether remove. He did not want that stain. He was a man of power; he was a man of position, a man of social and political standing, a man wielding as much influence as any other one man in the United States. He did not wish to be indicted. He did not wish his reputation to be soiled and stained. And so he allowed that man to stay where he was. He may have made a mistake, but whether a mistake or not, that is what he did.

There is another question. Why did we fail to produce our books and papers? I will tell you. The notice to produce them was given to us on the 13th day of February. We had noticed curious motions. Two days afterwards, Mr. Rerdell went on the stand. What did they want the books and papers for? For Mr. Rerdell to look at. Why did he want to look at the books and papers? To stake out his testimony. He hated to depend upon his memory. We took the responsibility of letting the witness swear to the contents of the books and papers, and let them call that secondary evidence. We took that responsibility rather than to furnish the books and papers to be looked at by that man in order that he might make no mistakes in his testimony. What happened afterwards justified our course. If we had shown to him the books and papers, and checks, and stubs, do you think he would have made any mistake about that \$7,500 check? Would he have said that he went with Dorsey, and that Dorsey drew the money, and that he looked over his shoulder, and that then he and Dorsey walked down to the Post-Office Department, if he had known that that check was drawn to his order? If he had known before he swore, that he indorsed that check, he would have said he went down and got the money himself; he would not have said that Dorsey did. He would have made no mistakes there. He would not have been driven into the corner of saying, "stub" or "stubs," "check-book" or "check-books," "amount" or "amounts." No, sir. And that one thing justified absolutely the wisdom of our course.

Then the court decided that, having failed to produce our books on notice and allowed the other side to introduce secondary evidence of their contents, we would not be allowed then to produce them. I insisted that we had the right then to produce them, and the court decided that we had not. We took the responsibility of refusing, and we took that responsibility because we made up our minds that we would not allow that man to look over the books, checks, and stubs for the purpose of manufacturing his testimony.

The COURT. Where did you offer to produce the books?

Mr. MERRICK. Where did you offer the production of the books? That is just what I was about to ask.

Mr. CARPENTER. The court said we could not.

Mr. MERRICK. Where did you make the offer?

The COURT. I want to know.

Mr. CARPENTER. Mr. Ingersoll did not say he made the offer.

Mr. MERRICK. I think he did.

The COURT. I think he did.

Mr. CARPENTER. Just read it, Mr. Stenographer. He says nothing of the kind.

The STENOGRAPHER. [Reading:]

I insisted that we had the right then to produce them, and the court decided that we had not.

Mr. INGERSOLL. That is exactly what I say.

The COURT. The court did not give any intimation at that time, but after that point in the trial had passed, several days, several weeks, I think, the attention of the court was called to this question, and the court remarked, in the course of the opinion, that it understood the law to be that after a party, upon whom notice had been given to produce books, had failed to produce the books and the other side had given secondary evidence, then the court would not allow the party having the books to produce them for the purpose of contradicting the secondary evidence.

Mr. INGERSOLL. That is all I claim.

The COURT. But there was no such offer made, so far as I recollect.

Mr. INGERSOLL. Why should we make the offer after your honor had decided that we could not do it?

Mr. MERRICK. I will answer the question. Because whether it would have been accepted or not was a question for the counsel for the Government when the offer was made. And again, the learned counsel will recollect that after the notice was given, when S. W. Dorsey was on the stand on cross-examination, I demanded those books and those stubs, and he asked leave to consult his counsel. The court denied that request, and then there was a peremptory refusal to produce any book or any paper.

The COURT. Oh, yes. Mr. Ingersoll and Mr. Davidge repeatedly announced to the court that they were not going to produce books to assist the prosecution.

Mr. INGERSOLL. Yes; I said that twenty times, and the court, as I understood it, held that after we had refused to produce the books and driven the other party to secondary evidence, we could not then produce the books.

The COURT. You made no offer to produce the books.

Mr. INGERSOLL. I resisted the opinion of the court and made the best argument I could, but the court said that was not the law.

The COURT. The court's remark at that time was not upon any offer you made to produce the books; you made no offer.

Mr. INGERSOLL. No, sir; we said we would not produce them, and the court warned us at the time that if we refused to produce them we could not do so afterwards; and then I undertook to argue with the court that we could.

Mr. MERRICK. You will find what took place on on page 4438, in the cross-examination of Mr. Rerdell.

By Mr. INGERSOLL:

Q. What did you say your name was?—A. M. C. Rerdell.

Mr. INGERSOLL. That is all.

Mr. BLISS. [To defendants' counsel.] Have you made an examination, gentlemen, for that Clendenning letter?

Mr. INGERSOLL. I have never thought of it since.

Mr. MERRICK. Have you made an examination for the stubs of the checks?

Mr. INGERSOLL. Yes.

Mr. MERRICK. You are going to keep them, are you not?

Mr. INGERSOLL. Yes.

And subsequently the cross-examination of Mr. Dorsey did away with all the inferences of the preceding notice given in the progress of the testimony in chief. So that the case stands before us upon the demand made upon the cross-examination.

Mr. INGERSOLL. I do not understand it that way.

The COURT. The remark of the court, to which counsel has just referred and to which the court has referred, arose upon an argument on the part of Mr. Ingersoll, and, if I am not mistaken, upon the effect of the refusal to produce the books and papers, Mr. Ingersoll contending that there was no presumption against his client on account of the refusal to produce the books and papers, and that the jury ought to be instructed that the only effect of refusing to produce the books and papers was to leave the case upon the secondary evidence; and in that course of that discussion it was that the court remarked, I think, that the secondary evidence would be left for the consideration of the jury under all the circumstances of the case, and that the credit of the witness was to be weighed; but that if the party withheld primary evidence, the secondary evidence, as a general rule, was to stand, and that that rule was carried so far that the party having the books would not be allowed to produce them for the purpose of contradicting the secondary evidence.

Mr. MERRICK. That was it.

The COURT. I think that was the occasion when that remark was made by the court.

Mr. INGERSOLL. Do you mean during the argument of the case?

The COURT. During the argument of the question.

Mr. INGERSOLL. Before the jury?

The COURT. Yes.

Mr. INGERSOLL. Do you mean since I have been arguing the case before the jury?

The COURT. Oh, no; it was before you began, I think.

Mr. INGERSOLL. Long ago, while the evidence was being given. We will find it.

The COURT. No, no; it has been since the closing arguments began, I think.

Mr. INGERSOLL. It has been referred to by me during my present argument to the jury. I brought up the question, you know.

The COURT. Yes.

Mr. INGERSOLL. I brought up the question whether this evidence could be patched up by presumptions. But I am not referring to that discussion, nor to that decision of your honor; I am referring to the decision you made during the trial.

The COURT. That was the only occasion since this trial began, in which the court referred to that rule of law which denied the right to introduce primary evidence for the purpose of contradicting the secondary evidence, after the primary evidence had been withheld in the first instance.

Mr. INGERSOLL. Of course, I am not absolutely certain, I never am; but I will endeavor to find in the record exactly what you said on that subject.

And now, in order that we may be perfectly correct, and in order to show, too, how easy it is to be mistaken, Mr. Merrick just said upon that very subject of the books and papers, that while Mr. Dorsey was upon the stand, he asked leave to consult his counsel. If Mr. Merrick will read the testimony he will find that Mr. Dorsey made that remark when he was asked about the affidavit of June 20, 1881.

Mr. MERRICK. You are right.

Mr. INGERSOLL. That just shows how easy it is to make a mistake when it comes to a matter of recollection.

Mr. MERRICK. I think it was upon a question of the insertion of the change in the character of the affidavit—its being addressed to the President; and when I asked him if he had not made that change he asked leave to consult his counsel. For the moment I thought it was upon the books. But the substance still remains, that, on the question of the books, I asked him on his cross-examination—and the counsel will state his recollection to be the same—about the stubs and the books, and called upon him to produce them, and the counsel replied, "We will not."

Mr. INGERSOLL. I presume I did. I made that reply a good many times.

Mr. MERRICK. Will the counsel be frank enough to state when that decision was made?

Mr. INGERSOLL. Which decision?

Mr. MERRICK. When he was on the stand on cross-examination.

Mr. INGERSOLL. And I said we would not produce them?

Mr. MERRICK. After the testimony in chief and Rerdell was gone.

Mr. INGERSOLL. Then I said we would not produce them. And now I will say that the decision of the court was made before that time that we could not produce them, and if I do not show it then I will publicly take it back.

The COURT. I do not think you can show it.

Mr. INGERSOLL. If I do not, then I will beg your honor's pardon, and if I do—if I do—[Laughter.]

Now, I think what happened afterwards in this case with that very witness justifies the course that we pursued. He also stated at the time that we had, I believe, some twenty thousand pages of letters on all possible subjects to a great number of people. We knew that there was a spirit abroad—and some of it in a part of the prosecution—to find something against somebody else somewhere. We made up our minds that our private books and correspondence never should be ransacked by this Department of Justice. We took the consequences, and we are willing to take them. We say that the inference from our refusal is an inference of fact, and must be decided by the jury, and is not an inference of law.

We have been asked a good many times why we did not put James W. Bosler on the stand. The prosecution subpoenaed Mr. Bosler. They appeared to have an affection for him. They subpoenaed him, and he came here. Afterwards they issued an attachment for him. They had him arrested at midnight and brought here. He gave some testimony, and you will find it on page 2611.

Mr. MERRICK. I do not know that there was an attachment.

Mr. KER. He threw an officer out of the house.

Mr. INGERSOLL. I simply understood that there was an attachment. Mr. Clerk, was there an attachment issued for Mr. Bosler?

Mr. WILLIAMS (the clerk). I do not remember.

Mr. WILSON. He was certainly formally called in open court for the

purpose of laying a foundation for the issue of an attachment, whether they took one out or not.

Mr. INGERSOLL. You know you have a right to prove things by circumstances. Now, it is said that he put the marshal out of the house; I think that is evidence tending to show that an attachment issued.

Mr. KER. And kept him out with a club.

The COURT. I understood also that Mr. Dorsey kicked somebody else out of his house about the same time.

Mr. INGERSOLL. Oh, yes; it has been a very lively term of court.

There were two very important things that they were to prove by Mr. Bosler, and they were patting him on the back here for weeks. Friendship sprang up between them. It was a very young plant at first, but the Bosler ivy grew upon the oak of the prosecution. I saw him sitting here, everything delightful. The prosecution, I hoped, began to flatter itself that Mr. Bosler was on their side; I hoped that was so. Finally they put Mr. Bosler on the stand. What did they want to prove by him? That Dorsey wrote a letter to him on the 13th of May, 1879, telling how much money he had given to Brady; that is one thing they wanted to prove by him. The second thing was that Rerdell had written a letter to Bosler, I believe, on the 20th of May or 22d of May, 1880, stating that he (Rerdell) had been subpoenaed to go before the Congressional committee and take his books and papers; that he got very much frightened; that he had taken the advice of Brady and got a very valuable suggestion from Brady, which he was going to follow. They wanted to prove that by Mr. Bosler.

Mr. MERRICK. Were any questions of that kind asked him?

Mr. INGERSOLL. Yes; I think so; we will see.

Mr. MERRICK. Please point them out.

Mr. INGERSOLL. I am going to read it right now. Now, Rerdell had been examined. Rerdell had already sworn that Dorsey sent a letter to Bosler on the 13th of May, 1879. Rerdell had sworn to the contents of that letter; that the contents were that he had paid Brady so much money, &c., which you remember; and then that he, in 1880, had written a letter to Mr. Bosler, and I believe he pretended to have a copy of it. Now, here comes Bosler's testimony, on page 2611:

Q. Do you know Stephen W. Dorsey?—A. I do.

Q. Were you subpoenaed to produce here certain letters?—A. I was, sir.

Q. Have you made a search among your papers to find a letter alleged to have been written to you by Stephen W. Dorsey, and dated on or about the 13th of May, 1879?—A. Yes, sir.

That is the letter that Rerdell swore about.

Q. Have you searched?—A. I have.

Q. Did you find it?—A. No, sir.

Q. How thoroughly did you search?—A. I went through every letter that I had in my office.

Q. Is it now in your possession?—A. No, sir.

Q. If you ever had such a letter, is it, so far as you know, in existence?—A. No, sir; or I should have had it.

Q. And you did not find it?—A. I did not find it.

Q. You know Mr. M. C. Rerdell?—A. Very well, sir.

Q. Have you made search for a letter purporting to have been written by him to you, and dated on or about the 22d of May, 1880?—A. Yes, sir.

Q. Did you find that letter?—A. I did not.

Q. Did you make a thorough search?—A. I did.

Q. Is the letter in your possession?—A. No, sir.

Q. If you ever had such a letter, is it, so far as you know, in existence?—A. No, sir.

Now they are going to drop him. The object then was, having proved that the letter was lost, to prove the contents. This excited the curiosity of the court, and his honor said:

Was there ever such a letter?

Bosler replied :

There never was such a letter received by me.

Then the court asked him another question :

And the same question as to the other ?

And the witness replied :

The same [answer] as to the other.

Then Mr. Bliss came back at him :

By Mr. BLISS :

Q. You say you never received such a letter ?—A. I never received such a letter, or I would have it.

Q. Do you mean to say you have kept all the letters received by you from Mr. Dorsey ?—A. No ; I have kept all letters pertaining to business.

Q. All letters ?—A. All letters pertaining to business.

Q. And you have made thorough search and do not find it ?—A. I do not find it.

Q. And the same is true with Mr. Rerdell's letter, is it ?—A. Yes, sir.

Q. Your statement that you did not receive it is derived from the fact that you do not find it ?—A. It is.

Mr. BLISS. That is all.

CROSS-EXAMINATION.

By Mr. INGERSOLL :

Q. Have you been shown what purported to be a copy of the first letter about which you have been questioned ?—A. No, sir ; but simply as to the date ; there is where I am in the dark.

Q. Have you been told by any one substantially what the contents of the letter claimed to be ?—A. No ; I was told by counsel for the prosecution—

Mr. INGERSOLL. [Interposing.] I do not care by whom.

The WITNESS. By Mr. Bliss—

Mr. INGERSOLL. I am not asking that.

The WITNESS.—when I was subpoenaed, that he wanted a letter of that kind if I had it, and I told him I would make a search for it.

Q. What I want to get is, were you told what the contents purported to be ?—A. No.

Q. Were you of the second letter about which you have been questioned ?—A. I was, in a general way. In a general way for both of them ; and for that reason I made it my business to make a thorough search.

Q. Now, do you say that you never received either of those letters ?—A. That is, from the best of my information. I have no recollection of it, and I cannot find them ; the fact that I cannot find them is, to my mind, evidence that I never received them.

Q. After having been told in a general way what was claimed as the contents of the letters, did that furnish any other reason in your mind for knowing whether you had or had not received them ?—A. Please be a little more explicit.

Q. I understood you to say, in a general way, that you had been told the contents—that is, what they claimed as they contents ?—A. Yes, sir.

Q. Had you received a letter of the kind described, would you have remembered it ?—A. I certainly should have.

Q. Is that also true as to the second letter ?—A. It is.

Q. Now, there are two facts, what the contents were claimed to be, and the further fact that you had no such letters in your possession. Do you now say that you are satisfied from those facts that you never received any such letters ?—A. I am.

Q. Are you perfectly satisfied of that ?—A. I am, sir.

There is the testimony of Mr. Bosler, and on that testimony the two letters of May 13, 1879, and May 22, 1880, turn to dust and ashes.

Now they say, "Why didn't you put Mr. Bosler on?" Not much necessity of Mr. Bosler after that. And besides, gentlemen, I believe I will take you into my confidence just a little bit. The evidence of Rerdell as to the affidavit of June 20, 1881, and the affidavit of July 13, 1882 (an affidavit in which he swore that there was nothing against Mr. Bosler, an affidavit that was made apparently for the benefit of Bosler), all that evidence, the evidence of Mr. Stephen W. Dorsey upon those questions, advertised the prosecution that Mr. Bosler knew of many circumstances ; that he was present a portion of the time, and I did not know but finally the prosecution would get so much confidence

in Mr. Bosler that they would call him. I was hoping they would. They did not. It did not work quite as I expected. That is all there is about that.

Now, there is one further point to which I wish to call your attention. I want you to remember that a partnership is not a conspiracy, although all the facts about a partnership are consistent with the idea of a conspiracy up to a certain point; and all the facts about a conspiracy are consistent with a partnership up to a certain point. The fact that men act together does not show that they have conspired; does not show that they have a wicked design. The fact that they are engaged in the same business does not show that they have a wicked design or that they are there by conspiracy. In other words, I want your minds so that you will distinguish between a fact that may be innocent, and generally is innocent, and a fact that must be evidence of guilt. I want you to distinguish between the facts common to all partnerships, common to all agreements, and those facts that necessarily imply a criminal intent. If you will do that, gentlemen, you will have but little trouble.

[At this point a volume of the report of the trial was handed up to the court by Mr. Ingersoll with a reference to a certain page.]

The COURT. Without looking at the book I take risk of saying that the court never announced its opinion on that question until the case referred to a few moments ago.

Mr. INGERSOLL. I just gave my memory on the subject. It does not make any great difference in this case, of course.

The COURT. This refers to the occasion that I spoke of.

Mr. CARPENTER. This is during the cross-examination of Rerdell.

Mr. INGERSOLL. During that very cross-examination.

Mr. CARPENTER. Your honor expressly decided that we could not produce the books.

Mr. INGERSOLL. Now, gentlemen, what is meant by corroboration? You will hear a great deal before you get through, probably, about corroboration.

The COURT. Yes, the court did state on that occasion:

That is not the point here. If they are allowed to go on and cross-examine this way without the production of the books, they cannot contradict the witness afterwards by producing the books.

Mr. CARPENTER. Further on you discuss the question at considerable length and cite authorities.

Mr. MERRICK. Without reference to what the court may have said, the point is that they could not, according to the principles of law, introduce the books to contradict the secondary evidence after having made it necessary that we should introduce secondary evidence. But they could produce their books to the prosecution and let the prosecution offer them if the prosecution chose to do it.

The COURT. That was exactly the point referred to by the court—that you could not produce the books to contradict the witness after having driven them to secondary evidence.

Mr. INGERSOLL. That is what I said.

The COURT. That was the opinion of the court announced then. I had forgotten that I had announced it twice.

Mr. INGERSOLL. If the court please, I did not want to bring this up, because I knew you had, and so I thought I would slip you the book and let you off easy.

The COURT. I do not think it weakens the position at all that the same announcement has been made twice instead of once. [Laughter.]

Mr. CARPENTER. We thought it made it stronger.

The COURT. Still, the books were not produced.

Mr. MERRICK. And not offered.

Mr. INGERSOLL. Now, if the court please, I am not arguing——

The COURT. [Interposing.] I will leave you to the jury.

Mr. INGERSOLL. Your honor knows that I have always shown great modesty about trying to do anything against any decision.

The COURT. I do not dispute that.

Mr. INGERSOLL. Now the next question, gentlemen, is what is meant by corroboration? If you tell a man that he is not a great painter, he does not get angry. He says he does not pretend to paint, or is not a great sculptor. But if you tell him he has no logic, he loses his temper. Yet logic is perhaps the rarest quality of the human mind. There are thousands of painters and sculptors where there is one logician. A man swears, for instance, that he went down to a man's house in the morning at 6 o'clock, and that Mr. Thomas was standing just in front of the house, and when he went in the dog tried to bite him, and that after he got in he had such and such conversation. Now there are thousands of people who have brains of that quality that they think the fact that he did go there at 6 o'clock in the morning, and did see Mr. Thomas standing out in front of the house, and especially the fact that the dog did try to bite him, is a corroboration of the conversation that took place in the house. [Laughter.] There are just such people. In this case, for instance, in Mr. Brady's matter, they say that the fact of Walsh being in his house is important. Suppose that he was, what of it? Is that corroboration? Corroboration must be on the very point in dispute. It must be the very hinge of the question. Then it is corroboration, if the question is what did the man say. It is not corroboration to prove that the man was there unless the man swears that he was not there. Then the inference is drawn that if he would lie about being there he might lie about what he said.

Now, understand me. They will say, for instance, "Here is an affidavit, and these blanks have been filled up. Rerdell says they were filled up, and he says they were filled up after they were sworn to." Now, the fact that the affidavit is there and that the blanks are filled up is not corroboration, because the point to be corroborated is that it was done after it was sworn to. And so the existence of the affidavit, while it is necessary, is no corroboration; the filling up of the blank is no corroboration; its being on file is no corroboration. Why? The point to be corroborated is not that the blanks were filled, but that they were filled after the paper had been sworn to! That is the point. And when they begin to talk to you about corroboration I want you to have it in your minds all the time that to be corroborated about an immaterial matter is nothing; it has nothing to do with the question; but there must be corroboration on the very heart of the point at issue!

There is another thing, gentlemen. It does not make any difference what I say about this man, or that man, or the other man, unless there is reason in what I say. If I tell you that the evidence of a witness is not worthy of belief, I must tell you why. I must give you the reason. If I simply say the witness is a perjurer, that shows that I either under-rate your sense, or have none of my own, because that is not calculated to convince any human mind one way or the other. You are not to take my statement; you are to take the evidence, and such reasons as I give, and only such as appeal to your good sense. If I say, "You must not believe that man," I must give you the reason why. If the reason I give is a good one, you will act upon it. If it is a bad one I cannot make it better by piling epithet upon epithet. There is no logic in abuse; there is no argument in an epithet.

And there is another thing. An attorney has a certain privilege; he

is protected by the court. He is given almost absolute liberty of speech, and it is a privilege that he never should abuse. He should remember if he attacks a defendant, that the defendant cannot open his mouth. He should remember that it does not take as much courage to attack, as it does not to attack. He should remember, too, that by the use of epithets, by abuse, that he is appealing to the lowest and basest part of every juror's head and heart. It is on a low level. It is a fight with the club of a barbarian instead of with an intellectual cimeter. There is no logic in abuse. There is no argument in epithet. Remember that. The weight and worth of an argument is the effect it has upon an unprejudiced mind, and that is all it is worth. Therefore I do not want you, gentlemen, to be carried away by any assault that may be made—I do not say that any will be made—but any that may be made, that is not absolutely justified by the evidence.

There has been one little thing said during this trial; that is, about the testimony of defendants. I believe Mr. Bliss takes the ground that you cannot believe a defendant; that defendants cannot be believed unless they are corroborated. Mr. Bliss has the kindness to put the defendants in this case on an equality with his witness Rerdell. Gentlemen, you cannot believe any witness unless his evidence is reasonable. Every witness has to be corroborated by the naturalness of his story. Every witness is to be corroborated by his manner upon the stand and by the thousand little indications that catch the eye of a juror, or of a judge or of an attorney. Congress has passed a law allowing defendants to swear when they are put upon trial. Will you tell me that that law is a net, a snare, and a delusion, and the moment a defendant takes the stand the prosecution is to say, "Of course he will lie?" Why do they say that? Because he is a defendant, and you cannot believe a word that he says; he is swearing in his own behalf. There is that same low, slimy view of human nature again, that a defendant who swears in his own behalf must swear falsely. I do not take that view. The defendant has the same right upon the stand that anybody else has, and if his character is not good his character can be attacked; it can be impeached by the prosecution precisely as you would impeach the reputation of any other witness. If he tells a story which is reasonable you will believe it, and you will believe it notwithstanding he is a defendant and notwithstanding he has an interest in the verdict. In old times they would not allow a man to swear at all if he had the interest of a cent in any civil suit. They would not allow him to testify when he was on trial for his own liberty and his own life. That was barbarism. The enemy—the man who hated him—he could tell his story, but the man attacked, the man defending his own liberty and his own life, his mouth was closed and sealed. We have gotten over that barbarism in nearly all the States of this Union, and now we say, "Let every man tell his story; don't allow any avenue to truth to be closed; let us hear all sides, and whatever is reasonable take as the truth, and what is unreasonable throw away." And, gentlemen, let me say here that it is not your business to go to work picking a witness's testimony all apart and saying, "Well, I guess there is a little scrap now that there is some truth in," or "here is a line, and I guess that is so, but the next eleven lines I do not believe; the next sentence, I think, will do." That is not the way to do. If a witness is of that character you must throw his entire evidence to the winds, for it is tainted and the fountains of justice should not be tainted with such evidence, and a verdict should not be touched and corrupted with such testimony. You will take the evidence of these defendants as you would take that of any other man,

and it is for you to say whether that evidence is true. It is for you to say that.

If corroboration was so necessary why were not their witnesses corroborated? Why didn't they call Mr. Bosler to corroborate their witness?

Now, one of the defendants in this case is Mr. John R. Miner, and I want you to think of the terrible things they have against him. One of the charges made against him is that he wrote a petition and wrote in six names attached to it. His explanation is, that if he did anything of that kind it was because he received a petition which was so worn that it could not be presented, and he copied it, and that the six names were found on that petition. There was no other way on earth for him to get those names, and we find them on the same route in, I believe, seven other petitions which were filed; we find that those very names are on the other petitions, and I think Mr. Hall's name—the one the most trouble was made about—was on three or four petitions of the other kind.

Mr. CARPENTER. He admitted that he wrote them.

Mr. INGERSOLL. Yes; Hall admitted that he wrote them. But I believe this petition was never filed in the department. I think Mr. Woodward said he found it among the papers at some other place.

There is a petition called the Utah petition that has some names in Utah. I think Mr. Woodward swore that he found it in room No. 22 or 23.

Mr. MERRICK. In the case itself, in the department.

Mr. INGERSOLL. Yes; but it has no file mark. Mr. Woodward says he does not now remember how it got in there. As I was about to remark, there was a petition called the Utah petition with some names of persons living off the route, I believe—two or three sheets. The petition itself was genuine, and was indorsed, I believe, by Senators Slater and Grover and by Congressman Whiteaker. Now, then, how did these names come in there? The petition is ample without those names; large enough. I will tell you what I think. I think that it is a part of another petition, and that it was the result of an accident. I think it was done in the Post Office Department, not intentionally, but as an accident. The evidence is that they kept three routes in one pigeon-hole, and that the papers sometimes got mixed; that is Mr. Brewer's testimony. A very strange thing happened to that petition. While it was before this jury it came apart again. [Laughter.] And if some clerk not absolutely familiar with the papers had taken it up, he would have been just as liable to put it on the wrong petition as on the right one. My plan is to account for a thing in some way consistent with evidence, if I naturally can. I do not go out of my way hunting for evidences of crime. And when there was a petition, large enough, with a plenty of genuine names on it, I cannot imagine anybody would go and get names from any other petition and paste them on to that. But being in this same country, and the testimony being that they had three of these routes in one pigeon-hole, my idea is that the papers got mixed and mingled sometimes, and I say the probability is that it was an accident. That is the best way to account for it. If Miner had known that that petition was there that he had made, would he have allowed it to stay there? Why would he want to do such a thing if he was in a conspiracy with Brady? Why would he have to resort to perjury and interlineation in order to get Brady to make orders that he, Brady, had conspired to make? Absurdity cannot go beyond that. Here is the doctrine: "I have conspired with the Second Assistant Postmaster-General. He will do anything for me that I want. Now, I will go and forge some petitions." That seems to

me perfectly idiotic. This petition was indorsed by Senators Grover and Slater and Congressman Whiteaker.

Then, there is another petition; that one I showed you this morning, with the words "schedule thirteen hours," and the evidence was (that is, if you call what Rerdell stated evidence) that Miner wrote the words "schedule thirteen hours." I have shown you, this morning, those words, and without any other particle of argument I want to leave it to you who wrote those words—whether Rerdell wrote them or Miner.

Then, there is another wonderful thing about that petition. It is not on any of the routes in this indictment, and has no business here—I mean the Ehrenberg petition. The one I spoke of was the Kearney and Kent.

The next petition is the Ehrenberg and Mineral Park. They say that there has been some word erased and another written in. Nobody pretends that it is not a genuine petition. Nobody pretends that it was not signed by every one of the persons by whom it purports to be signed. Then, another peculiarity; it is not on any route in this indictment, and has no more to do with this case than the last leaf of the Mormon Bible; not the least.

Let us see if they have any more of these terrible things. Here is petition 2 A, on the Kearney and Kent route. That is the petition that has the words "schedule thirteen hours." That is the one indorsed by Senator Saunders. Petition 18 K, on the route from Ehrenberg to Mineral Park, is not a route in this case. It turned out that the names on it are genuine, and the genuineness of the petition has not been challenged. The only point made is that the word "Ehrenberg" has been written by somebody else. There is no evidence to show that the petition was not properly signed; that the persons on there did not sign their names or authorize somebody else to do it. The probability is there may have been some mistake in the name, or it may have been misspelled. There was some mistake made, and the word "Ehrenberg" was written in. On page 4186 Mr. Miner swears positively that in regard to the petition 2 A he never wrote the words "schedule thirteen hours."

Then, there is another petition, I think it is on page 1247, the Camp McDermitt petition. There are the words "ninety-six hours." And they get that down there to a fine point. Mr. Boone swore that he did not know who wrote the word "ninety," but that Miner wrote the word "six." Well, that is too fine a point, gentlemen, to put on handwriting. It seems there is an interlineation there of the words "ninety-six," and they say they do not know who wrote the word "ninety" and that Miner wrote the word "six." But Miner swears that he did not write it at all.

Now, then, you take away the evidence of Mr. Rerdell as to Miner, and what is left? The evidence left is that of A. W. Moore. And what is that? It is that Miner instructed him to get up false petitions. This was the first time he ever went out. But Moore swore that he made arrangements to do what Miner instructed him to do; that he made such arrangements with Major; but Major swears he did not. Moore swore that he made some arrangement with McBean, and the Government did not ask McBean whether he did or not, but I will show that he did not. The testimony shows that on the first trip, at the time he saw Major, he did not see McBean. Now just see. He swore, in the first place, that he made that arrangement with Major and McBean. I find afterwards that his evidence

shows that he did not see McBean on the first trip, but he did see him on the second. On page 1408 we find that when Moore went West the second time—when he left here and had made a bargain with Dorsey for one-quarter interest in his route, and Miner told him to go West and let Dorsey's routes go to the devil, and he said he would, and never notified Dorsey that he was going to do it—that man comes here now and swears that he made a contract with Dorsey for one-quarter interest, and then started West and made a contract with Miner, letting Dorsey's routes go. He did not have the decency to even notify Dorsey that he was going to do so. That is the man. On the first trip he did not agree with anybody about petitions. Now, understand my point, because it kills Mr. Moore again. We have to keep killing these people—keep killing them. It is something like the boy who was found pounding a woodchuck. He was pounding him away in the road with all his might, and a man came along and said to him, "What are you pounding that woodchuck for?" He said, "Oh, I am just pounding him." "But," the man said, "he is dead." "Yes, I know it," said the boy, "but I am pounding him to show him that there is punishment after death." [Laughter.]

Now, on page 1408, we find that this man Moore went to the West a second time. I have shown you that the first time he swears that he did not see McBean at all. He saw Major and made the arrangement with him, he says. Major swears that he did not. They do not put McBean on the stand. Now he goes a second time. He is asked this question:

Q. Then you went and sublet the Miner routes?—A. Yes, sir.

Q. How many of them did you sublet?—A. I sublet the Umatilla and Pendleton route.

Q. Did you tell them about how to get up petitions?—A. No, sir; I didn't stop for petitions at all. I was in too big a hurry.

Q. You were in too big a hurry to explain the petition business?—A. Yes, sir.

Now, on the second trip, he says he had nothing to do with the petition business at all, and did not explain the petition business to anybody because he had not the time, and on the first trip did not see McBean at all. And yet he swears that he made an arrangement with McBean about these very petitions. The proof that he did not see McBean on his first trip is found on page 1398.

At this point (1 o'clock and 5 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. INGERSOLL. There is one other point about which we have heard an immensity of talk and upon which a great deal of air has been wasted, and that is, that there was a bargain that Brady was to have 50 per cent. of all the fines that he remitted. In other words that he made a bargain with his coconspirators that if he fined them a thousand dollars and then remitted it, that he was to have \$500 or one-half of that fine. That is a nice bargain; for me to put myself in the power of a man and say "Now, you fine me what you want to, and then if you will take it off, I will give you half of it." It seems to me that that would be quite an inducement for him to fine me. There was a man bitten by a dog, and there was another man said to him, "I will tell you what to do; what will cure that. You take a little bread and sop it in the blood of the wound and give it to that dog, and you will get well." "Oh, my," he said, "but when the other dogs hear of it, I will be eaten up."

[Laughter.] Yet, here is a man who makes a bargain that Brady may impose a fine upon them and that he may have half of it back—that is, upon their doctrine, although they have never proved it, but they state it just the same as though they had. But here are the facts. Here are the fines and deductions on twelve routes. The fines amount to \$89,638.22 and the remissions amount to \$7,428.54; that is all. And yet they pretend that we had a bargain. Now, come to the mail routes, and we find that the fines amounted to \$61,232.20 and all that they could get their coconspirator to let off of that (although according to the doctrine of the prosecution they were to have 50 per cent.) was \$13,850.16. That was all they could get off. There are the figures. There has been talk enough on that subject, but all the air that wraps the earth could not answer those facts. Words enough to wear out all human lips could not change those facts. Fines \$89,000, remissions \$7,000; fines \$61,000, remissions \$13,000. And yet they pretend that he had a bargain by which he had 50 per cent. of all he remitted. I need not make any more argument on that point.

The COURT. And that depends, I think, on Walsh's testimony.

Mr. INGERSOLL. Yes, sir; I will come to Walsh presently. Walsh's testimony was that he was to have half the fines.

The COURT. That is, that Brady told him so?

Mr. INGERSOLL. Yes, sir. The first charge, as suggested by Judge Wilson, was that he was to refuse to fine; no matter whether they did the service or not, he was to refuse to fine. The evidence is that on twelve of these routes he fined them \$89,000. The next evidence is that he was to remit half the money, and he remitted \$7,000. Next he agreed not to fine, and he fined \$61,000. Then he was to have one-half of the amount, and it was only \$13,000. That is not worth arguing, gentlemen.

There have been one or two things in this trial that I have regretted, and one I find in Mr. Ker's speech, and I find frequent reference to it in other places, and that is the blindness of S. W. Dorsey. Affidavits were made by Drs. Marmion, Bliss, and Sowers that Mr. Dorsey had lost at least eleven-twelfths of his vision. And yet it has been constantly thrown out to you that it was a ruse, a device, and I believe Mr. Ker said in his speech that Mr. Dorsey saw a paper in Mr. Merrick's hand, Mr. Merrick, I believe, holding a balance-sheet from the German-American Savings Bank—a paper several feet wide or long—and because Mr. Dorsey said to him, "I believe you have it in your hand," why they said this man is pretending to be blind. His testimony was that he had been in a dark room for three months; that his eyes had not been visited by one ray of light for three months, and that for six months he had not read a solitary word. And yet the prosecution sneeringly pretended that there was nothing the matter with his eyes. They subpoenaed Dr. Marmion, but they dare not put him on the stand. They threw out hints and innuendoes that these doctors had sworn falsely, but they dare not put it to the test. It seems that nothing in the world can satisfy them about Stephen W. Dorsey except to see him convicted, except to have them put their feet upon his neck. Gentlemen, you never will enjoy that pleasure. You never will while the world swings in its orbit find twelve honest men to convict Stephen W. Dorsey—never. This Government may put forth its utmost power; it may spend every dollar in its Treasury; it may hire all the ingenuity and brain of the country, and it can never find twelve men who will put Stephen W. Dorsey in the penitentiary—never, and you might as well give it up one time as another. Try it year after year; poison the mind of the entire public with the newspapers; get all the informers

you can; bring all the witnesses you can find; put all of those whom you call accomplices on the stand, and I give you notice that it never can be done, and I want you to know it. Spend your millions, and you will end where you start. As long as the average man runs there will always be one or two honest men in a dozen, so that you cannot convict one of these defendants. Go on, but it will never be accomplished.

There is one other thing which perhaps may be worth noticing. I believe that they proved by Mr. Dorsey that he wrote an account of his relation to this business, and published it in the New York Herald. They asked him if he wrote it or if he authorized it. I believe he said he did; and the only point with which Mr. Merrick quarreled in that entire paper was the statement that Peck was a large contractor, and when Dorsey was put on the stand he explained that while Peck had not many routes in his own name, that he was the partner of a man named Chidester. That is the only thing of which he complained, and yet that communication pretended to tell the relation that Dorsey sustained to this entire business, and if that had not accorded precisely with Dorsey's testimony on the stand every word of it would have been read to you again and again. And Mr. Ker says that letter was written for the purpose of poisoning public opinion. Was the letter of the Attorney-General of the United States, written just before this trial began, written to bias public opinion also?

Mr. MERRICK. Is there any evidence of that letter in this trial? If not I object to any reference to it.

The COURT. You cannot refer to that, because it is not in the case.

Mr. INGERSOLL. I take it back. Was Dickson indicted to bias public opinion?

Mr. MERRICK. I object to that also. He was indicted by the grand jury on competent testimony.

The COURT. There is no evidence in this case that he was indicted.

Mr. INGERSOLL. I will take it back then. I would ask the court, however, after the attorney for the Government has said that Dorsey wrote that letter to bias public opinion, if I have not the right to say that he wrote that letter because letters had been written by others.

Mr. MERRICK. Not unless those letters are in proof.

The COURT. The fact that he wrote the letter is in evidence in the case. That of course makes it the proper subject of comment on either side. Anything else not in evidence is not a subject of controversy.

Mr. INGERSOLL. I will take it for granted, however, that the jury understands what is going on in this case.

Mr. MERRICK. Yes, they understand the evidence.

Mr. INGERSOLL. I understand that the jury, as members of this community, as citizens of the United States, have at least a vague idea of what the Department of *Justice* has done.

It is also claimed, and has been claimed, and I have answered it again and again and again, that S. W. Dorsey is the chief conspirator. Why? Is it possible that it is because he was the chief man politically? Is it possible that any politician was envious of his place and power? Is it possible that any politician was envious of the influence he had with President Garfield? Is it possible that he had interfered with the career of some piece of mediocrity? Why is it that he is made the chief figure? These are questions that are asked and questions that you can answer. How does it happen that his name never figures in any division? That his name never figures in any paper made in regard to this business? How does it happen that when he was contending with the German-American National Bank that he must be paid, how is it that it never occurred to Miner or Vaile to tell him, "Why, this is

a conspiracy of your own hatching. You advanced this money to give life to your own bantling, and you have got to wait until the conspiracy bears fruit, and if you are not willing to wait you can do the next worst thing, have it made public?" If at that time, when he was opposing and fighting Vaile because he had cut out his security, Vaile had known that Dorsey was in the conspiracy, one word from him and Stephen W. Dorsey's mouth would have remained shut forever. But it did not occur to Miner, it did not occur to Vaile. That won't do. Why didn't Vaile say to him, "Mr. Dorsey, you are making a great deal of fuss about a few thousand dollars. You are in the Senate; you are interested in these routes, and I want to hear no more from you." Why didn't he say it? Because it was not true; that is why.

Now, gentlemen, if what the prosecution claims is true, not only Stephen W. Dorsey, not only Thomas J. Brady, not only John R. Miner, not only H. M. Vaile, and John W. Dorsey are guilty of conspiracy, but hundreds and hundreds of other people. Do you believe it is possible that all the persons who petitioned for an increase of service, who petitioned for expedition—do you believe they were in a conspiracy? Do you believe they were dishonest men, and do you believe they asked for what they did not want? Do you believe that these defendants had at their beck and call the representatives of the entire great Northwest? Do you believe that members of Congress of the Lower House and of the Senate were their agents and tools? Was Senator Hill a conspirator? Was the present Secretary of the Interior a conspirator? Were Senator Grover and Senator Slater also conspirators? Were generals, judges, district attorneys, members of State and Territorial legislatures—were they all conspirators? Did they indorse false petitions for the purpose of putting money in the pockets of these defendants? Let us be honest. Do you believe that General Miles was a conspirator, or that General Sherman, whose title is next to that of the President, and whose name is one synonymous of victory, entered into a conspiracy? Do you believe that he knows as much about the mail business as Colonel Bliss? Do you believe that he knows as much about the wants of the great Northwest as the gentlemen who are prosecuting this case? Was he a conspirator with their Representative in Congress from Oregon? Was Horace F. Page a conspirator? These are questions, gentlemen, that you must answer. Were all these men, these officers of the Army, State officers, Federal officers, and men of national reputation—were they all engaged in a conspiracy; were they endeavoring to assist these defendants in plundering the Treasury of these United States? These are questions for you to ask and questions for you to answer. Is it not wonderful that such a conspiracy should have existed in all the Western States at one time?

Gentlemen, is it wonderful that all the people of the West want mails? Do you not know, and do I not know, that the mail is the substantial benefit we get from the General Government? Don't you know that the mail is the pioneer of civilization? Do you not know that there ought to be a mail wherever the flag floats? Do you not know that the only way to keep a great country like this together, a vast territory of three million square miles—three million five hundred thousand square miles—is by the free distribution of the mail? If you are going to keep the people who populate that territory together, if you are going to keep them of one heart and one mind, if you are going to make them keep step to this Union and to the progress of this nation, you must have frequent intercourse with them all. The telegraph must reach to the remotest hamlet; the little electric spark, freighted with

intelligence and patriotism, must visit every home ; and the newspaper and the letter, bearing words of love from home and news from abroad, must visit every house, so that every man, whether digging in the mine or working on the farm, may feel the throb and thrill of the great world, and be a citizen of a mighty nation instead of an ignorant provincial. I am in favor of frequent mails everywhere, all over the plains, all through the mountains, everywhere, wherever the flag flies, I want the man who sits under it to feel that the Government has not forgotten him ; that is what I want. I take pride in this country. I am one of the men who believe that there is only air enough in this entire continent to float one flag. I am one of the men who believe that it is the destiny of the United States to control every inch of soil from the Arctic to the Antarctic, and that when a nation loses its ambition to grow, increase, and expand it begins to die. And what right has a man who is carrying the mail to interfere with the policy of the Post-Office Department ? These are large questions, gentlemen of the jury, and I want you to deal with them in a large and splendid American spirit. I want you to feel that we are citizens of the greatest government on this globe. I want you to feel that here, to every man, no matter from what clime he may come, no matter of what people, no matter of what religion, the soil will give emolument, the sun will give its light and heat, the Government will give its protection. I like to feel that way about the Government. And yet, because the department adopted a splendid and generous policy, it is tortured into evidence of conspiracy.

Now let me speak just a moment about these people—the defendants in this case. First, there is Stephen W. Dorsey. I take a great interest in this case ; I admit it. I would rather lose my right hand than have you convict Stephen W. Dorsey. I admit it. I admit that if he were convicted I would lose confidence in trial by jury ; I would believe that there were no twelve men in the world that had the honor and the manhood to stand by what they believed to be the evidence and the law. I would feel as though trial by jury was a failure. I admit I have that interest in it—all that anybody can have in any case. You can only convict that man by the testimony of A. W. Moore and M. C. Rerdell. That testimony withdrawn from the record and there is not one word against him. I want you to know and I want you to remember what kind of a man he is. You have seen him ; you know him ; and you know something of him. It is for you to decide whether you will take the testimony of Rerdell as against that man. It is for you to decide whether you will take the testimony of A. W. Moore as against that man.

Time hath, my lord, a wallet at his back
Wherein he puts alms for oblivion,
A great-sized monster of ingritudes:
Those scraps are good deeds past: which are devour'd
As fast as they are made, forgot as soon
As done.

These men who are prosecuting him seem to forget who he is and what he has been. Yet men disgrace the position that Stephen W. Dorsey helped to give them by attacking him.

John W. Dorsey can be convicted by the testimony of nobody. There is no testimony against him, except that of one man. He is an honest man. He told exactly what he did, and he told it like an honest man. He told why he did not put his money in the bank at Middlebury, Vermont, because they thought that he owed a debt which he did not think he owed. He need not have told it, but he is an honest man, and that

is the reason he told it. The prosecution does not appreciate that kind of man, that is, they say they do not.

The only witnesses against Miner are Rerdell and Moore, and they being dead, that is the end of it.

What evidence is there against Harvey M. Vaile? One witness, Mr. Rerdell. What did Harvey M. Vaile do? At the solicitation of Mr. Miner he advanced money to prevent his having a failing contract. What else did he do? He wrote a letter saying that he was trustee for S. W. Dorsey, and he was, because the concern owed S. W. Dorsey a few thousand dollars, and agreed out of the profits to repay Stephen W. Dorsey. That is all. That is all. You have seen Mr. Vaile here from day to day. You know that he is a man of mind. I think he is an honest man. I think he testified to the exact truth. He did what any other man had the right to do, he helped a man, not entirely from charity, but believing after all that it might be a good investment, as you have done if you have ever had the opportunity. And there is not the slightest scintilla of evidence against him, not the slightest. I believe every word that he testified, and so do you.

And then they come to Thomas J. Brady, and they tell you that that man is to be convicted upon the testimony of whom? Mr. Walsh. And who else? Mr. Rerdell. You have some idea of human nature. You have a little and I have a little. Here is Mr. Walsh, an athlete; a man who, had he lived in Rome in ancient times, might have been a gladiator. [Laughter.] He loans Mr. Brady twenty-five thousand or thirty thousand dollars. For some of this money he has notes, for other portions he has not. He sends word to Brady that he would like to fix the interest. He goes there and Brady takes these notes and puts them in his pocket and they part as philosophers. If we believe that, we must believe it as idiots. You do not believe it. You do not believe any man ever allowed another to take \$25,000 in notes belonging to him and put them in his pocket and walk off, he taking off his hat at the door and you bowing and wishing him a happy voyage. [Laughter.] My mind is so constructed that I cannot believe that; I cannot help it. I imagine your minds are built a little after the same model. I do not believe the story; you do not.

What is the next witness against Mr. Brady? Mr. Rerdell. It is sufficient for me to speak the name. I need argue no further. That is enough. You saw Mr. Brady on the stand and you heard him give his testimony. No man could listen to it without knowing it to be true. I say now to each one of you that when you heard it you believed it, and every one of you believed it was the truth. Take from this record the testimony of Rerdell, Walsh, and Moore, and what is left? Some papers, petitions, orders, affidavits, all made, signed, and filed in the cloudless light of day. That is all that is left. Where is your conspiracy? Faded into thin air, nothing left.

I presume it will be said by the prosecution that I spent about three days on Mr. Rerdell. I admit it. Why? Because I regarded Rerdell as your case. Because I made up my mind that when I killed Rerdell the case had breathed its last. That is the reason. And had it been necessary to spend a few weeks more I should have done so. But it is not necessary. Probably I wasted a great deal of time upon the subject, but if he is not dead I do not want it in the power of any human being to say that it was my fault. I went at him with intent to kill, and I kept at him after I knew that he was dead. [Laughter.] I admit it.

Now, gentlemen, let us see what I have proved. Let us see what up

to this time I have substantiated in my judgment. First, I think I have shown that John W. Dorsey, John M. Peck, and John R. Miner agreed in 1877, to go into the mail business. That Peck wrote a letter to Stephen W. Dorsey, who was then a United States Senator, asking him to get some competent man to get reliable information as to the cost of service on routes in the Western States and Territories then advertised by the General Government. That S. W. Dorsey gave that letter to A. E. Boone. That he told him to say nothing about it to other contractors. That Boone sent out circulars for the purpose of getting the requisite information; that is, the cost of corn and oats and the wages of men.

That John R. Miner came to Washington on the 1st of December, 1877. That he went to the house of Stephen W. Dorsey, as had been the custom for several years. That he occupied a room in that house, and that he and Mr. Boone went on with the business of making proposals and getting up forms of contracts.

That John W. Dorsey came here in the early part of January, 1878. That after his arrival the partnership was formed between him and A. E. Boone, and that the partnership was dated the 15th day of January, 1878.

That S. W. Dorsey, at the request of his brother and brother-in-law, advanced the amount of money necessary to pay incidental expenses. That he gave his advice whenever it was asked. That he assisted the parties all that he conveniently could.

That the last bids or proposals were put in by these parties on the 2d of February, 1878. That the awards were made on the 15th day of March of the same year. That Miner, Peck, Dorsey, and Boone received about five times as many awards as they had anticipated. Thereupon another partnership was formed with the style of Miner, Peck & Co., and that the partners in this firm were John R. Miner, John M. Peck, and John W. Dorsey. That thereupon John W. Dorsey and John R. Miner went West for the purpose of subcontracting the routes. That John R. Miner on his return from the West met Stephen W. Dorsey at Saint Louis about the 16th of July, 1878. That Stephen W. Dorsey up to that time had advanced eight thousand or nine thousand dollars. That he then gave to Mr. Miner notes amounting to about \$8,500 to be by him discounted at the German-American National Bank of Washington. That Stephen W. Dorsey then told Miner that he would advance no more and would indorse no more. That Stephen W. Dorsey went from Saint Louis to New Mexico; that John R. Miner came to the city of Washington, arriving here about the 20th of July. That John R. Miner then found that service in Eastern Oregon was not in operation, although it had been subcontracted; but he then applied to Thomas J. Brady for an extension of time. That Brady refused to give it. That Miner, Peck & Co. had not the money to stock the routes not then in operation, and that Stephen W. Dorsey had refused to advance further means. That John W. Dorsey was then in the West and that John M. Peck was then in New Mexico. That thereupon Mr. Miner applied to Harvey M. Vaile, and that Mr. Vaile went to Mr. Brady and asked whether an extension of time could be given, provided he undertook to put the service on those routes. That Brady then gave him until the 16th day of August, 1878. That thereupon Miner, under the authority of powers of attorney from John M. Peck and John W. Dorsey, agreed upon the terms on which H. M. Vaile should advance the money necessary to put the service in operation.

That the contract bears date the 16th day of August, 1878, and was

duly executed by all the parties on the last of September or first of October of that year.

That the service was not in operation by the 16th of August, and that in August Brady telegraphed to H. M. Vaile to know what routes he was going to put service on.

That thereupon Vaile replied that he would see that all the service of Miner, Peck, and Dorsey was put in operation. That through the assistance of Mr. Vaile the service was put in operation.

That before that time Stephen W. Dorsey had been secured by Miner, Peck, and John W. Dorsey executing Post-Office drafts upon the routes that had been awarded to them.

That on the 17th day of May, 1878, an act was passed by the Congress of the United States allowing subcontractors to place their subcontracts on file.

That after Vaile came in and agreed to furnish the money necessary to put the service in operation, John R. Miner having powers of attorney from Peck and John W. Dorsey, executed to H. M. Vaile subcontracts for the purpose of securing him for the money he had advanced.

That H. M. Vaile put these subcontracts on file, thus cutting out and rendering worthless as security the Post-Office drafts that had been given to S. W. Dorsey for the purpose of securing him.

That John W. Dorsey returned from the Bismarck and Tongue River route in November, 1878, and that he then offered to sell out his entire interest in the business to Vaile for \$10,000, and left instructions authorizing his brother, S. W. Dorsey, to make such sale for such amount. That John W. Dorsey then returned to the Tongue River route.

That Stephen W. Dorsey returned to Washington in December, 1878, and for the first time found that the subcontracts had been given to Vaile. That he and Mr. Vaile had a quarrel with the German-American National Bank on that question.

That afterwards Dorsey was to give \$10,000 to John W. Dorsey, and \$10,000 to John M. Peck. That he then concluded not to do so.

That on the 4th day of March, when S. W. Dorsey's Senatorial term expired, he immediately wrote a letter to Brady insisting that the subcontracts that had been filed by Vaile were in fraud of his rights. That thereupon the parties in interest came together. That S. W. Dorsey acting for Peck, his brother, and himself agreed with Vaile and Miner to a division of the routes.

That S. W. Dorsey paid Peck \$10,000 for his interest, paid John W. Dorsey \$10,000 for his interest, and took substantially 30 per cent. of the routes, and paid himself the money that was owing to him by Miner, Peck & Co.

That the parties at the time executed to each other subcontracts and such other papers as were necessary to vest, as far as they then under the law could vest, the routes so divided in the parties to whom they fell.

That on the 5th of May, 1879, the division was completed, and that from that time forward Vaile and Miner had no interest in the routes that fell to Stephen W. Dorsey, and that from that time forward Stephen W. Dorsey had no interest in the routes that fell to Vaile and Miner, and that John W. Dorsey and John M. Peck had no interest in any route from that date forward until the present moment. That S. W. Dorsey took entire and absolute control of his routes, and that Miner and Vaile took entire control of their routes. That from that time until the present neither party interfered with the routes of the other.

That Vaile and Miner made no paper of any sort, character, or kind for Stephen W. Dorsey after the 5th of May, 1879, and that neither John W. Dorsey, nor John M. Peck, made any papers of any kind, sort, or character for Miner or Vaile after that date, no matter what date papers bear that were made before that time. That S. W. Dorsey made no papers for Miner or Vaile after that date. And that Miner and Vaile made no papers for S. W. Dorsey after that date, May 5, 1879. That all the papers bearing date after the 5th of May, were in fact signed by the parties at or before that time. That they were so signed for the purpose of making the division complete.

That Vaile and Miner on their routes got up petitions that they had a right to do. That S. W. Dorsey upon his routes got up petitions, as he had a right to do.

That the routes were increased and expedited by the Second Assistant Postmaster-General in accordance with the policy of the department and in accordance with the petitions filed and the affidavits made, as he had a right to do.

That it was not for the contractors to settle the policy of the Post-Office Department.

That the evidence of A. W. Moore is unworthy of belief, and that his statement that he settled with S. W. Dorsey is demonstrated to be false by the receipts that he afterwards gave in final settlement to John R. Miner, as admitted by himself. That his testimony as to the existence of a conspiracy is rendered worthless and absurd by the fact that he sold out not only his interest but his services up to that time for \$682. That his conversations with Miner could not have taken place. That he never made or offered to make such contracts with Major as he pretended he was instructed to make, and as he swore that he did make. That his conversation with S. W. Dorsey never occurred.

That the testimony of Rerdell is utterly and infinitely unworthy of credit. That he is not only contradicted by all the evidence, but by himself, and how can you corroborate a man who tells no truth? There must be something to be corroborated.

That the red books never existed.

That the pencil memorandum was forged by himself.

That the Chico letter was written by him.

And that the letter from Dorsey to Bosler, said to have been dated May 13, 1879, was born of the imagination of Mr. Rerdell.

That Rerdell's letter to Bosler of the 22d of May, 1880, was never sent, was never received, and was never written until after this man made up his mind to become a witness for the Government. That Bosler never received that letter, nor the letter pretended to have been written by Dorsey on the 13th of May, 1879.

That the tabular statement in which 33½ per cent. was allowed to Brady never existed. That Rerdell did not visit Dorsey's office in New York in June, 1881, and that he had no conversation with Torrey. That Rerdell was not there. That he did not have the conversation detailed by him with Dorsey at the Albemarle Hotel. That Dorsey did not write the letter of the 13th of June, 1881.

That Rerdell swore in June, 1881, that Dorsey was entirely innocent. That he swore to three affidavits of the same kind. That he again swore to the same thing on the 13th of July, 1882. That he admitted by his letter of July 5, 1882, that S. W. Dorsey did not even ask him to make the affidavit of June, 1881, but that he was persuaded to do it by James W. Bosler. That he was not locked up at Willard's Hotel. That he was not threatened with a prosecution for perjury. That he was not

shown the letters he had written to a woman. That the whole story with regard to the making of that affidavit was utterly and unqualifiedly false. That he never had the conversation with Thomas J. Brady that he claimed. That Brady never suggested to him to have any books copied. That there were no books of Dorsey's that needed to be copied. That he did not see S. W. Dorsey draw any money at Middleton's bank at the time he states. That he, Rerdell, drew the money himself. And that his entire testimony is absurd, contradictory, and utterly unworthy of credit.

Let me say another thing to you, gentlemen, right here. It would be better a thousand times that all the defendants tried in the next hundred years should escape punishment than that one man should be convicted upon the evidence of a man like this—a man who offered to the Government to make a bargain while the trial was in progress, that he would challenge from the jury all the friends of the defendants, and help the Government to get the enemies of the defendants upon the jury. You never can afford to take the evidence of such a man. It turns a court-house into a den of wild beasts. You cannot do it.

I have shown that the story of Walsh is improbable, and that all that Boone swears against these defendants cannot be believed. That Walsh never loaned the money to Brady that he claimed, and that Brady never took from him the notes as he says. That Brady never made in his presence the admissions that he swears to. Think of it; Brady robbing Walsh, and at the same time saying to Walsh, "I am a thief and public robber."

I have shown to you, gentlemen, it seems to me, that no reasonable human being, taking all this evidence into consideration, can base upon it a verdict of guilty. It cannot be done.

Now, gentlemen, the responsibility is upon you, and what is that responsibility? You are to decide a question involving all that these defendants are. You are to decide a question involving all these defendants hope to be. Their fate is in your hands. Everything they love, everything they hold dear, is in your power. With this fearful responsibility upon you you have no right to listen to the whispers of suspicion. You have no right to be guided or influenced by prejudice. You have no right to act from fear. You must act with absolute and perfect honesty. You must beware of prejudice. You must beware of taking anything into consideration except the sworn testimony in this case. You must not be controlled by the last word instead of by the last argument! You must not be controlled by the last epithet instead of by the last fact. You must give to every argument, whether made by defendant or prosecution, its full and honest weight. You must put the evidence in the scales of your judgment and your manhood must stand at the scales, and then you must have the courage to tell which side goes down and which side rises. That is all we ask. We ask the mercy of an honest verdict, and of your honest opinion. We ask the mercy of a verdict born of your courage, a verdict born of your sense of justice, a verdict born of your manhood, remembering that you are the peers of any in the world. And it is for you to say, gentlemen, whether these defendants are worthy to live among their fellow-citizens; whether they shall be taken from the sunshine and from the free air, and whether they are worthy to be men among men.

It is for you to say whether they are to be taken from their homes, from their pursuits, from their wives, from their children. That responsibility rests upon you.

It is for you to say whether they shall be clothed in dishonor, whether

they shall be clad in shame, whether their day of life shall set without a star in all the future's sky ; that is for you.

It is for you to say whether Stephen W. Dorsey, John W. Dorsey, John R. Miner, Thomas J. Brady, and H. M. Vaile shall be branded as criminals.

It is for you to say, after they have suffered what they have, after they have been pursued by this Government as no defendants were ever pursued before, whether they shall be branded as criminals.

It is for you to say whether their homes shall be blasted and blackened by the lightning of a false verdict.

It is for you to say whether there shall be left to these defendants and to those they love, a future of agony, of grief and tears. Nothing beneath the stars of heaven is so profoundly sad as the wreck of a human being. Nothing is so profoundly mournful as a home that has been covered with shame—a wife that is worse than widowed—children worse than orphaned. Nothing in this world is so infinitely sad as a verdict that will cast a stain upon children yet unborn.

It is for you to say, gentlemen, whether there shall be such a verdict, or whether there shall be a verdict in accordance with the evidence and in accordance with law.

And let me say right here that I believe the attorneys for the prosecution, eager as they are in the chase, excited with the hunt, after the sober second thought, would be a thousand times better pleased with a verdict of not guilty. Of course they want victory. They want to put in their cap the little feather of success, and they want you to give in the scales of your judgment greater weight to that feather than to the homes and wives and children of these defendants. Do not do it. Do not do it.

I want a verdict in accordance with the evidence. I want a verdict in accordance with the law. I want a verdict that will relieve my clients from the agony of two years. I want a verdict that will drive the darkness from the heart of the wife. I want a verdict that will take the cloud of agony from the roof and the home. I want a verdict that will fill the coming days and nights with joy. I want a verdict that, like a splendid flower, will fill the future of their lives with a sense of thankfulness and gratitude to you, gentlemen, one and all.

The COURT. Let me inquire of the counsel for the defense if there are to be any other arguments upon their side.

Mr. HENKLE. May it please your honor, inasmuch as I alone represent two of the defendants, it is perhaps due to this jury and to myself to explain why I do not propose to argue the case. I had prepared myself, with a good deal of labor and painstaking, to submit an argument to the jury. But after the exhaustive and able argument of my Brother Wilson, I and my colleagues were of the opinion that there was room but for one more argument on the part of the defense, and with entire unanimity we selected our colleague, Brother Ingersoll, to make that argument. And how grandly he has justified the choice, the jury, your honor, and the spectators will determine.

I saw some time ago a little paragraph in a paper in this city, which represents the interest of the Government, in which it was said that the defendants' counsel were afraid to argue this case because they would come in collision with each other ; that each would try to throw the conspiracy at the door of the others and exonerate himself, and that therefore they were afraid to argue the case. I want to say to your honor that so far from being afraid to argue the case, I should have been very

happy to pursue the argument, so far as I am concerned. But out of tender consideration to the jury, who have been kept for six long months from their business and their interests, which I know are suffering, we have unanimously concluded that we would close the argument with that which your honor has just heard. And I simply want to say further, that I not only do not antagonize with anything that has been said by my Brother Wilson, or by my eloquent friend who has just concluded, but I indorse most fully and cordially every word that has been uttered. And so far as my clients are concerned, gentlemen of the jury, the case is with you.

Mr. DAVIDGE. May it please your honor, perhaps I ought to add a single word. It was understood among counsel when Colonel Ingersoll, as stated by General Henkle, was unanimously selected to represent the defendants, that both Colonel Ingersoll and myself should have the privilege of addressing the jury if, in the judgment of either, it should be necessary. I have felt such a deep interest in the present case that I have almost hoped he might leave unoccupied some portion of the field of argument. I have listened to every word that has fallen from his lips. He has filled the whole area of the case with such matchless ability and eloquence that I have no ground upon which I could stand in making any further argument. He has so fully uncovered the origin of this so-called prosecution, its methods, and the character and weight of the evidence upon which a conviction is sought, that I can add nothing whatever to what he has said. I need not add that every syllable he has uttered receives my grateful indorsement, as well as that of all the defendants and their counsel in this cause.

The COURT. The arguments for the defendants are closed, therefore?

Mr. DAVIDGE. Yes.

The COURT. I shall expect the Government to commence the closing argument on Monday.

Mr. MERRICK. I hope it will not be long after Monday when I shall finish. I shall, of course, be ready to proceed on Monday.

The COURT. I cannot hope for a very brief argument from you, because you have a great deal of matter to consider.

Mr. MERRICK. I do not think I shall occupy a very long time.

Mr. DAVIDGE. Well, they have all said that, upon both sides.

Mr. MERRICK. There is a great deal in number to answer, but not a great deal in quantity.

The COURT. I shall be agreeably disappointed if the argument is brief.

Mr. CARPENTER. Presuming that it will be agreeable to Mr. Merrick not to begin his argument until Monday, I hope the court will now adjourn.

The COURT. I should not ask him to go on at present. It is Friday afternoon, and is now 20 minutes past 3.

Mr. MERRICK. I am much obliged.

The COURT. Adjourn the court until Monday morning.

Thereupon (at 3 o'clock and 20 minutes p. m.) the further hearing of this case was adjourned until 11 o'clock Monday morning, May 28, 1883.

MONDAY, MAY 28, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

HON. RICHARD T. MERRICK

addressed the jury on behalf of the prosecution, as follows :

MAY IT PLEASE YOUR HONOR, AND GENTLEMEN OF THE JURY: This case has been so elaborately and ably argued on both sides, and those arguments have gone so much and so thoroughly into all the minutiae of the facts, that it will be hardly necessary for me to spend much time in dealing with them. I propose to submit or to spread this case before you in such a manner, by a generalization of the facts, together with an enunciation and application of the principles of law, that each one of you will fully understand it from the beginning to the end. In performing this duty I shall deal with you in the same spirit of candor, frankness, and earnest sincerity which I believe you, the people among whom I live, recognize as the controlling rule of my conduct in all the transactions of my life. I shall shrink from nothing that, in my judgment, I ought to say or ought to do, and shall speak without regard to counsel or parties or consequences, and whilst I shall call things by their proper names, after I have shown what they are, I shall carefully abstain from straining any point of law or overstating any fact even in the estimation of a hair, for the purpose of showing guilt where I do not sincerely and without a doubt believe it to be.

I declared in open court before the last trial of this case, that, as an Assistant Attorney-General, representing the United States in this prosecution, I should, when the evidence was concluded, frankly and openly announce the fact as to any and each of the defendants in regard to whose guilt that evidence left any doubt upon my mind. In conformity with this declaration, and in execution of what I regarded as my duty, I did at that trial, after the evidence was closed, and after I came to argue the case, request the jury to bring in a verdict of acquittal as to William H. Turner. This was accordingly done. That verdict, which is before you, found M. C. Rerdell and John R. Miner guilty as indicted, and the jury failed to agree as to the other defendants. On the motion for a new trial I said to the court that I did not deem it consistent with the dignity of the United States that such a verdict should stand upon the records of one of its courts. It was a verdict convicting the subordinates but withdrawing in craven fear the hand of justice from the masters. The verdict was set aside and no longer stains by its cowardice or corruption the records of the court, and the case is now before you for trial as though it had never been tried before.

On the threshold of this argument, in view of the evidence in the case, its clear, distinct, and unequivocal character, acting on behalf of the Government of the United States, and in the name of the whole people of the United States, I demand from you a verdict of guilty against all these defendants.

The counsel for the defendants who last addressed the jury with so much eloquence, said, in a tone of warning, which he would have been wiser had he heeded himself, that there is no logic in abuse, that there is no argument in epithet, and that the weight and worth of an argument is the effect it has upon an unprejudiced mind. I agree with the

counsel entirely, and will add that there is no logic in appeals to a jury in behalf of a prisoner's wife and home, and that there is no reasoning in tropes and metaphors and figures of speech. The prisoners wives and homes are not on trial. The prisoners themselves, and they alone, are on trial, and to attempt to assail the heart of the jury by tears and tear-provoking pathos is the ingenious device of an advocate conscious that he cannot reach the mind of the jury by reasoning upon the law and the facts, and appreciating that he cannot constrain sound and solid judgment by legitimate argument.

The counsel have ascribed to us the anxiety and the heat that belongs to a contest where victory is the ultimate end and object. He said we want a little feather of success, and that we want you to give, in the scales of justice, greater weight to that feather than to the homes and wives and children of these defendants. If he supposes that in the performance of my solemn duty in this case I am moved by sentiments of ambition and vanity to gain a triumph against justice he greatly mistakes and unjustly wrongs my character. The end I seek here is simple justice, plain, cold, stern, and unadorned. A contest for victory and feathers to decorate counsel in such a case as this when a great Government is seeking to vindicate the majesty of its outraged laws and protect its people by punishing crime should be beneath the thoughts of a man whose heart can throb with the noble sentiments that ought to inspire every American citizen. But what does he mean by saying that we want that feather to outweigh in the scales of justice the homes, the wives, and the children of the defendants? What have feathers and wives and children and homes to do in those scales? What have decorations and tears, maudlin tears, or even tears of blood from the heart, to do in those scales? Cast all these things out, gentlemen, they are temptations held up to you, and beckoning you on to infamy and disgrace. The scales of justice must contain nothing but the cold and naked facts and the rules of law as given to you by the court, and they must be held up with a firm and rigid arm and the balance noted with an unmoved heart by a clear and steady eye, unmoistened by tears and uninflamed by passion. Thus and thus only can you discharge with honesty and to the satisfaction of your consciences the solemn duty imposed upon you by the law of the land. See when you hold up these scales that on neither the one side nor the other shall there be any make-weight against what they ought properly to contain. We may sorrow, we may grieve, we may weep for affliction, but our sorrow, our grief, and our weeping are not for the solemn offices that belong to a jury. It is true there is hardly a more melancholy spectacle than a man wrecked and a home blackened and hearts crushed; but who wrecked the man, who blackened the home, who crushed the hearts? Not the verdict of the jury, but the commission of the crime which the jury by its verdict under oath finds that the defendant has committed. Appreciation of the dignity and obligations of virtue and performance of duty under the law should be always present to a man when he is in safety. It comes too late when he stands before a jury. It is the inevitable law that where guilt is sorrow shall answer it. If the husband and father brings guilt upon himself that instant sorrow that follows guilt and guilt blackens the home and crushes the heart. It is not your verdict that does the work. It is the crime that does the work. It is better a defendant's home should be blackened, better that hearts there should be crushed, than that by a verdict which speaks your sympathies and not your judgment you should commit a yet higher crime and give to conscience the stinging voice of an eternal and ceaseless remorse.

I have said, using nearly the language of counsel, that there is hardly anything more melancholy than a home blackened and destroyed. But there is one thing sadder still, one thing which must appeal more earnestly to thoughtful men and to the hearts of all who love their country. It is to see a country moving downward to destruction, as manifested by the impossibility of obtaining a jury to convict a criminal because of his high standing and social position. The saddest thing on earth for me would be to realize the fact that in this tribunal, or any tribunal of justice, there should appear such a degree of corruption or weakness in the hearts of the people that the voice of their Government demanding retributive justice for crime should be hushed by appeals for sympathy for wife and children.

The counsel further says that Stephen W. Dorsey can never be convicted, and adds this defiance to the Government:

This Government may put forth its utmost power; it may spend every dollar in its Treasury; it may hire all the ingenuity and brain of the country; and it can never find twelve men who will put Stephen W. Dorsey in the penitentiary—

Never find twelve men that will put Stephen W. Dorsey in the penitentiary! Then he continues—

never, and you might as well give it up one time as another. Try it year after year; poison the mind of the entire public with the newspapers; get all the informers you can; bring all the witnesses you can find; put all of those whom you call accomplices on the stand, and I give you notice that it never can be done, and I want you to know it. Spend your millions, and you will end where you start. As long as the average man runs there will always be one or two honest men in a dozen, so that you cannot convict one of these defendants. Go on, but it will never be accomplished.

What does this rodomontade mean? The great figure standing out in it all is Stephen W. Dorsey. You may put other men in the penitentiary, you may convict other men of their crimes, but you can never convict Stephen W. Dorsey. His prominence places him beyond the reach of justice, away up above ordinary men and even above the law—places him where the very tips of the fingers of the hand of justice cannot soil his sacred robes by a touch.

It is emphasized when the counsel adds:

These men who are prosecuting him—

Stephen W. Dorsey—

seem to forget who he is and what he has been. Yet men disgrace the position that Stephen W. Dorsey helped to give them by attacking him.

We who are prosecuting Stephen W. Dorsey forget who he is and what he has been. What of it, in a court of justice, that a man has been high; what of it, in a court of justice, that a man has intellect and power? Why should we remember who he is or what he has been? What have you to do with what he has been or who he is? Your task is with him as you find him at the bar of justice, arraigned by his country for crimes against her laws. If you should remember what he has been, it ought to be a memory stimulating you the stronger on the act of justice. The low and the needy, the homeless and the starving may violate the law, and may be led astray by their associations and surroundings. Their love of life is little; their love of country is little. They pass on to the place of doom and expiation without a murmur or sigh from any one. But is not their crime less than the crime of him who has been raised by the voice of his country to high position, and robed by the people in that sacred mantle which it should be his pride and glory to preserve pure and unspotted? Is the crime of these myriads less than the crime of that intellect which the people chose to guide them and help to make their laws, when the possessor of that intellect in his high position forgets the sacred trust

the people gave and violates the solemn obligations that he took when he entered upon the people's service? It is painful to see a great man fall; painful to see a great mind corrupted and poisoned by immorality and crime. But it is sadder still to see a jury let him go unwhipped of justice because he was a great man.

Counsel gave some loud outburst of patriotic devotion to his country and its liberty. I cannot rave with him. In my heart of hearts I cherish for that country and that liberty as earnest a love as any man that walks upon its soil or looks up to its flag. But if the judicial power of that country is made only for the low and humble of our land, I would tear its flag to tatters and trample its constitution under my feet. I believe in the equality of human rights before the law. No man is high enough to put his head in the heavens where the hand of justice cannot reach him. Thank God! my country is not yet on that downward way.

Your verdict may possibly mark an epoch. Your verdict must and will mark an epoch in one of two events. If, yielding to sympathy, you should grant all that the eloquent counsel has asked, it will mark a very sad epoch. It will also mark an epoch in another direction; it will designate a period of time when official peculation shall have been sanctioned instead of being denounced by law. Acquit these defendants, and all the rings of the time will accept the acquittal as their charter to assail the Treasury of the people. Convict them—but mark you, only on the facts—and from the temple of justice throughout the whole land goes the ringing sound, “official peculation shall answer for its crime, and henceforth honor and integrity in office are declared to be the rule of conduct and the moral code of America.”

But what does the counsel mean when he says that two or three honest men can be found on the jury that will never convict the defendants. I will not speculate about his possible meaning, but it may be that he reasons that what has been done once can be done again and repeated indefinitely. I think not, gentlemen; I think not.

What did he mean by a Government disgracing itself by prosecuting such a man as Stephen W. Dorsey? He says:

These men who are prosecuting him seem to forget who he is and what he has been. Yet men disgrace the position that Stephen W. Dorsey helped to give them by attacking him.

Is an effort by a citizen to help a man to the Presidential office to condone the crime of that citizen? Does the counsel mean that Garfield disgraced his position, which Dorsey helped him to get, by putting this investigation on foot and directing its prosecution through his Attorney-General, MacVeagh? Does he mean that Arthur, Garfield's successor, disgraces his position by prosecuting Dorsey for his crimes through his Attorney-General, Brewster? Are two administrations disgraced because they prosecute Stephen W. Dorsey? Gentlemen of the jury, my humble judgment and my candid and earnest sentiment is that they would be disgraced if they had not done it. All honor, then, to these slandered men—all honor to Garfield in his grave—all honor to Arthur, the Chief Magistrate of the nation,—who rising above political prejudices, beyond individual preference and personal affection, have, from a simple sense of the obligations of their high office, prosecuted for their crimes against the law the man that helped them to get that office. In the performance of that duty their tears may flow, their hearts may bleed; but, it is a proud and pleasant thought that our country has officers whose judgments and sense of duty are not beguiled

or stained by considerations of love or hatred, friendship or antipathy. Do you so, likewise.

But to recur for a moment to the counsels warning given to the Government, and to his gauntlet thrown down before this jury, that Dorsey would never be convicted! I take it up. I may never try this case again. I hold that gauntlet till this trial is over, and it may be longer, but I hope not—I trust not—I believe not. But I tell the gentleman that this effort to secure justice will be pursued so long as this Government lives in an atmosphere of purity.

Mr. INGERSOLL. We will be there.

Mr. MERRICK. No, sir; after this verdict is rendered you will be somewhere else.

Mr. INGERSOLL. No, sir.

Mr. MERRICK. Now, gentlemen, I will proceed to show my reason for my belief in the guilt of Stephen W. Dorsey and of the other defendants. I may have to carry you to the grave of Rerdell, and if I cannot make you hear him from the sod, I may make another grave by his side which will call the learned counsel to his favorite entertainment, of lachrymose lamenting at a funeral. [Laughter.]

The COURT. The audience must preserve order. No laughing.

Mr. MERRICK. Gentlemen of the jury, it becomes imperative upon me to tax your patience by a somewhat dry discussion. We have been so long in this argument; you have listened to so much that was entertaining and interesting in the profoundly learned and able addresses of my Brothers Ker and Bliss in reference to the minutiae and details of the facts; and you have heard so much of the resounding eloquence of Mr. Ingersoll, that I feel that I ought in justice to you and to the case to call you back for a little while to the principles and rules that lie at its foundation. And when I have done that I shall take up such facts, generalized, as I think you desire to hear discussed, and go over them with as much brevity and conciseness as I can, having all the while a due and sympathetic regard for your much-burdened patience.

First, I propose to say something of Mr. Brady, only as incidental, however, in the first part of my argument, to the laws which contained his grants of official power and which constituted the limitations upon his trust. I believe, gentlemen, that you have heard nothing of these laws since December's snows saw you called into this box and December's blast beat against that window; and now, in the spring time, near the month of roses, it is wise to recall your attention to them, in view of the natural lapses of the memories of ordinary men.

I submit, in the first place, that the policy of the law of the United States in reference to the letting of mail contracts always was, still is, and always ought to be, that there shall be allowed, with a view to the rights of the citizens and the economical administration of the department, free competition for contracts all over the country.

And here I make one remark, to which I may recur in the course of my suggestions to you in reference to public policy. You have heard a good deal about the policy of the Government, about the policy of the department, and about the Jewellian policy. And you have seen a great deal in reference to the Bradyian policy. What is the policy of the Government; of the department? Who makes it? How do you ascertain it? Where do you go to find it out? His honor will tell you that the policy of a government or of a department is the rule prescribed by statute, and that when you want to enlarge the rule prescribed by statute—for a statute is a condensed expression of the legislative will—

you must go to that statute, and from that expression of legislative will thus condensed, draw your policy. No man in America can make a policy. No department can make a policy. It is for the legislative department, and that alone, to make a policy. Otherwise the lesser instrumentalities of governmental machinery might override the legislative will by creating a habit against the law and calling it a policy. Statutes, and statutes alone, are the sources to which we must look to find the policy of the Government and the policy of any department of the Government. I submit that the statute provides that all mail lettings shall be by public advertisement; and the policy derived from that law is this: that every citizen of the United States—you, every member of the jury, and I—should have an opportunity, each for his own individual benefit, if he desires, to enter upon that field of enterprise, to compete for the contract under a public advertisement; and that, for the benefit of the Government, we should all have the right to compete in order that economy in the administration of the department may be preserved by getting the work done at the lowest price. The policy then, derived from that law, which I will presently read to you, was double—a policy looking, first, to the citizen, inviting the citizens to come in and bid, the one against the other, each on an equal footing, and with special and unfair advantage to none. The policy was for the benefit of the Government in order that by competition the Government should have its contracts executed at the lowest price. Section 3941 of the Revised Statutes—in which Revised Statutes, as you are aware, gentlemen, are embodied the laws of the United States existing from the organization of our Government, and still remaining in force—provides as follows:

The Postmaster-General shall cause advertisements of all general mail lettings of each State and Territory to be conspicuously posted up in each post-office in the State and Territory embraced in said advertisements for at least sixty days before the time of such general letting.

There is the rule of law, and there is the policy. I believe such has been the policy of the Government from its organization down to the present day. The exceptions I will call your attention to presently. The statute now operative makes some changes of an immaterial character. Another section (3949) provides that:

All contracts for carrying the mail shall be in the name of the United States, and shall be awarded to the lowest bidder tendering sufficient guarantees for faithful performance.

The lowest bidder in the competition shall have the contract. The competition is for the benefit of the citizen, the lowest bidder, as well as for the benefit of the United States. And that the lowest bidder should have the contract, is the policy, for the benefit of the United States, with a view to the economical administration of the department. It was designed that everything in regard to these contracts should be open, public, and in the full light of day. Where there was failure to execute the contract as originally made, the department had the right to suspend such contract; and where the service was needed, to engage temporary service without advertisement. But since the date of the law that I have read, there is a provision giving wider powers for advertisement than in the law as it originally stood.

Section 3946—and I do not think there is any modification of that section—provides that:

Each bid for carrying the mail shall hereafter have affixed to it the oath of the bidder, taken before an officer qualified to administer oaths, that he has the pecuniary ability to fulfill his obligations, and that the bid is made in good faith and with the

intention to enter into contract and perform the service, in case his bid shall be accepted.

This act shows also the further policy of the law to have been that good and responsible bidders only should become contractors, and that the bidder himself was expected to perform the service. He was required to swear that he had the pecuniary ability to perform the service. This is directly opposed to the system adopted by these defendants, of organizing a band of contractors and copartners, who were to sit here in Washington and draw large sums of money from the Treasury, whilst paying a comparatively small allowance to the men to whom they might farm out the service and who were to, and who actually did, perform the work. Brady knew this, and knew it when he passed his orders of increase or expedition giving to the contractor a clear profit of some \$10,000 after providing for the payment to the man who did the work, according to the terms of his contract, some small sum. I am now considering the policy of the law as to competition by public advertisement, as that declared by Congress, and shall return to Mr. Brady in due course.

The general power is a power to advertise and let to the lowest bidder. Now, let us consider an exceptional power granted by Congress in regard to these contracts, which was intended to be used, like all exceptional powers, with great delicacy and only in the particular emergencies they were designed to meet. Exceptional powers do not change the policy of the law. They rather prove the rule and restrict the general power with greater particularity.

Sections 3960 and 3961 provide for additional trips and for expedition. Those are the sections in which you are most concerned. Having it clear in your minds what was the general rule and the general policy, you apply yourselves to consider the exceptional rule under the exceptional power. Peculiar and pressing emergencies are liable to arise in the course of the running of a contract, and these exceptional powers were given to meet those peculiar and exceptional emergencies. For instance, during the progress of the contract term a Leadville may spring up in the wilderness, necessitating daily trips where one, two, or three, at the time of the advertisement, were sufficient. That you can readily appreciate. A single trip would have been enough at the time of the letting, but gold or silver may be discovered, and the enterprise of America may throw its citizens in vast masses around that discovered mine. A new emergency has arisen; an exceptional case has occurred; and the wisdom of the law provides the power to meet that exceptional case.

Or, another exceptional case may occur—two railways approaching each other in process of construction, a railway coming from the Pacific coast, leaping or undermining the Rocky Mountains, as the case may be, finding its outlet on this side, whilst another railway, going from the Atlantic and seeking the Pacific, may come within a reasonable distance of the other (say one hundred or two hundred miles) and, uniting the termini there, may be a star route. Now, as between the termini of these two approaching railroads, whilst one trip a week on slow time might have been sufficient when the advertisement was made, this changed and exceptional condition may call for the exercise of the exceptional power, so that there may be three or four or five or six trips made to connect these two incomplete but approaching roads. Hence the origin of these statutes to meet these exceptional emergencies.

But General Brady practically repealed the fundamental law of the land in reference to the award of mail contracts by the gross perversion

of two subordinate sections of the law intended only to provide for unforeseen and urgent contingencies. He made these two subordinate sections, according to the evidence in this case, to override the general rule and policy of the law, by using the authority that these sections gave him, not to meet the exceptional and extraordinary emergencies they were intended to meet, but to gratify his moods. And he tells you he had his moods; he had his increasing and decreasing moods. And he used these powers not only to gratify his moods, but, as I will show you pretty conclusively, to gratify a baser passion than a mood can be called.

Brady became Second Assistant Postmaster-General in July, 1876. Service on the routes embraced in this indictment went, or should have gone, into operation July 1, 1878, two years later. I want you to bear this fact in mind, and the reason why I want you to bear it in mind is this, gentlemen: I want you to understand that he had two years in which to learn, in which to study the course of departmental business, to know all its windings, all its various and multiform phases, its open and secret passages; two years in which to learn all about the force and effect, under the law, of a particular paper; two years in which to study the law with a view to its application; and two years to practice upon its application.

The abuse of power in ordering increase and expedition occurred mostly during the last six months of 1878 and the first six months of 1879. You see in this the gradual growth and development of the knowledge the student was acquiring at the desk of the Second Assistant Postmaster-General. He had been sixteen months in office before the advertisement of November, 1877, was issued. Of course, therefore, he cannot plead inexperience. On the contrary, I think you see the outcoming in his action in the last six months of 1878, and the first six months of 1879, of mature experience, and large and acute learning. The same public necessities which existed in the fall of 1878, before this wild dance of corruption began, existed also in November, 1877. There was nothing in the history of the country or the circumstances to mark an era and to show that behind the fall of 1877, lay desolation, behind lay a dormant people, behind that period enterprise slept and industry dallied along the primrose path, but that in 1878 all woke up as if Mr. Ingersoll's trump had sounded.

As the fundamental law provides for a full description of the routes to be let, and for free competition, no subsequent change increasing the cost should be made unless its necessity is affirmatively demonstrated. Do you not think so, gentlemen? The policy of the law being advertisement and open competition, and the power to change a contract being an exceptional power to be exercised only in an exceptional and special case, do you not think that before the Second Assistant Postmaster-General undertook to exercise that exceptional power he ought to have had affirmative proof of the exceptional necessity? As an honest man, would not you, before you undertook to exercise an exceptional power like that, taking thousands of dollars from the public Treasury by a secret and quiet contract, when you knew the policy of the law was in all these cases to advertise and secure public competition, feel that you ought to have had before you satisfactory evidence of the exceptional condition, bringing into activity the exceptional power and justifying its exercise? All the presumptions and equities are against increases during the progress of the term of the contract. The contract is intended to be a permanent thing during the term. There is no evidence in this case that Brady ever made an inquiry

to ascertain the propriety of a single one of these numerous and costly increases. He tells you so himself. He tells you upon the stand with a pomposity of arrogance that I have seldom seen equaled by any man, "Oh, I don't care. I never bothered about it. They gave me these jackets and I signed them." "Why?" "Let me see the papers and I will probably tell you," or, "I don't recollect. I don't know. I did it because I thought it was right." "But you made a great many more increases than any other other Second Assistant. What did you do that for?" Said he, "I am just so many times a better Second Assistant than the other."

Mr. KER. Twenty times.

Mr. MERRICK. Said he, "I am just twenty times a better Second Assistant." "You did not make any inquiry?" "Oh, no; I had too much to do. I did not look into these things," and then he shelters himself behind petitions and Congressional solicitations. Let me say one word in passing. What had this august personage to do that required the exercise of his vast brain? There was hardly a single thing in that office to be done that required the exercise of the judgment and the supervision of the Second Assistant except the execution of these exceptional powers. It was stated before you that there were some ten thousand star routes, steamboat routes, and routes of all kinds in his office, and that he was master of them all. What had he to do? His clerks prepared the advertisements, his clerks prepared the contracts. The advertisements and the preparation of the contracts and every other duty belonging to that office consisted of routine matter. The only quasi-judicial power he had, as his counsel knew when he talked to this jury about his multitudinous duties, was to attend to these expeditions and these increases. There was not another thing he had to do. All the rest was routine work. When lowest bidders were announced and the contracts were prepared, he had to sign the contracts.

Mr. BLISS. He did not even do that.

Mr. MERRICK. He did not even sign them. I believe some other man signed them for him. But in reference to these expeditions and these increases, there was a case for the exercise of judgment, there was a case for the Second Assistant to inquire into himself. To say that he did not do it simply because he was burdened with other duties is to trifle with the jury in a manner beneath the dignity of an advocate. Suppose his honor—I will not suppose his honor, but suppose a chancellor, a judge upon the bench, is arraigned for having made a corrupt decree in a case, and the inquiry is submitted to you whether that decree is corrupt or not, and the judge comes before you and is sworn, and says, "Oh, yes; I recollect something about that; my clerk did that; I did not bother with these minutiae," would not you say, "What were you put there for? Your clerk kept your books; your clerk kept your record; your clerk filed your papers. Pro forma orders may have been passed without your seeing them; but when rights of property were changed by your decree and Greene's property was taken away and given to Crane under your decree, how dare you say, 'It is a formal matter. I did not look into it.' Tear off his judicial robes and clothe him in the stripes of the penitentiary!" Yet counsel has the audacity to ask to be shown one case where Brady violated the law. I will show them plenty of cases. The exercise of power under these contracts was quasi-judicial in giving expedition and increase; and the exercise of his judgment and his personal supervision over all cases when increase and expedition were asked was a duty that rose paramount to every other in

his office, and became his personal duty, which it was criminal for him to assign to a subordinate.

In 1878, then, gentlemen, Brady was not a novice. He was not a simpleton. He is no simpleton now. Nobody accuses Brady of being a simpleton, else why within a brief period should he change his habitation from the humble cottage of the poor to the palace of the rich? How can a simpleton accumulate those vast resources that change the modest, quiet, retired room of the poor man to the highly decorated and gorgeously adorned saloons of the almost millionaire? No; he is no simpleton.

The COURT. We will take our recess now.

At this point (1 o'clock p. m.) the court took its usual recess.

AFTER RECESS.

Mr. MERRICK. [Resuming.] Brady, gentlemen of the jury, professes, as I said to you, to shield himself behind petitions and solicitations of members of Congress. In your hearts as men and as members of the jury, do any of you believe that after all the evidence produced on this long trial Brady is now any better informed in respect to the real value of the petitions or other influences to which he seemed to subordinate his actions than he was when he made the orders in question? Having served in that office for two years, having been a public man for nearly all his life, do you believe that he did not know then just as well as he does now what was the real value of those petitions and what was the real value of the solicitations of members of Congress upon this subject? It is easy enough in this country to secure basketsful even of genuine petitions for any purpose. As one of the witnesses said to you on the stand, it is easy enough to secure petitions in the wilderness of the West to have the Government pay some indifferent musician to come out there and blow a horn once a day to break the stillness of its forests and to pierce the calmness of the air on its solitary prairies. I shall have occasion hereafter to speak of the subject of petitions. I mention it now simply to put one or two questions to you. After having explained as I have done Brady's quasi-judicial function in reference to granting expedition, I ask you was it the duty of General Brady, as Second Assistant, to obey the law and guard the interests of the people, or to yield unquestioningly, either from weakness or from wickedness, to importunities which were permitted to serve as a pretext for the multiplication of the cost of the service to an almost unlimited extent? He seems by the evidence of the defense to have considered himself a sort of bounteous Kris Kringle, endowed with illimitable resources, and whose chief function it was to scatter gifts for the asking, and to fill the stockings of the contractors with United States Treasury notes. If an official shovels money out from the Treasury for no better reasons, will he not to a certainty be followed by swarms of petitions?

Now, gentlemen, in connection with this subject, I desire to call your attention to a point arising under the two sections giving exceptional power that I am particularly anxious shall find a lodgment in your minds. I want you to take up those sections and consider their meaning, determine their practical application, and ascertain with me by some fixed rule what would be the necessary result of their practical application; and I want, when you have finished that piece of work,

that you should bear it in mind, and carry it with you throughout this case, and apply it to every order that has been presented to you in evidence. Under sections 3960 and 3961 it was the obvious purpose of the law-maker that the compensation for increased service should be exactly proportioned to the increased cost:

Compensation for additional service in carrying mail shall not be in excess of the exact proportion which the original compensation bears to the original service, and when any such additional service is ordered, the sum to be allowed therefor shall be expressed in the order and entered on the books of the department; and no compensation shall be paid for additional regular service rendered before the issuing of such order.

That section applies to increase of trips. I now pass that by and come to the other section which I have indicated as one I desire you to consider with me calmly, quietly, and intelligently:

No extra allowance shall be made for any increase of expedition in carrying the mail unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the original compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

Bear that in mind as well as you can: that the same proportion in respect to compensation must exist between the stock and carriers necessarily employed under the original contract as is borne to the stock and carriers under the new contract expediting the time. They must each bear the same relative proportion. Thus, a contract which under the original award barely paid expenses would continue to pay expenses after the award, and no more. I want you, gentlemen, Mr. Greene and Mr. Horri-gan, to put down the figures and figure this up when you get a chance. If the original contract yielded a profit it would continue to yield a profit, and a profit to the extent of the same percentage on the enlarged capital required for the new service. Now, taking arbitrary figures for comparison, if the profit was 40 per cent. per annum on \$10,000, at which the route was let, it would still continue 40 per cent. on the doubled investment, \$20,000, required after expedition. The proportion would have to be the same under the law if it was 40 per cent. profit on the contract as originally let. When expedition was granted it would have to be 40 per cent. on the contract changed by the expedition. It could not be more or less under the law. As the investment expanded from \$10,000 to \$20,000 the profits would grow *pari passu* from \$4,000 to \$8,000, the proportion being exactly maintained. But under section 3961 there is no alchemy whereby, through orders for expedition, A LOSING CONTRACT CAN BE CONVERTED INTO A GAINING CONTRACT. Take the figures and figure it out in any way you can under the law, and you will find that there is no process by which *a contract that was a losing contract originally can ever be made a gaining contract by expedition.*

I will further explain it to you. The law says:

The additional compensation shall bear no greater proportion to the additional stock and carriers—

I desire that his honor should give me the benefit of hearing this also. I am sure he is reading the section now—

necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

The COURT. But, Mr. Merrick, I think one or two of the witnesses who were here—practical men, who were examined in this case, testified that when the original service was once a week—

Mr. MERRICK. [Interposing.] Oh, yes. On increased service there may be a difference. I am not talking about increase of service.

The COURT. I will come to that again. When the original service was once a week at a certain sum, and the service was increased say to six times a week, and an allowance of six times the original price of compensation was made, there might be a profit on the additional service of six times a week when, in fact, on the original service there might have been a loss, because there is economy always in the management of increased service.

Mr. MERRICK. That is true. Where there is increase of service there may be a small profit, and if that increased service is then expedited, possibly in that case expedition might give a small profit. But in these cases Brady expedited first and doubled up afterwards.

We have, gentlemen, a simple sum in the rule of three, a sum so simple that any beginner in arithmetic could understand it. As the stock and carriers required for the original service is to the stock and carriers required for the expedited service, so is the compensation for the original service to the compensation for the expedited service. That is the sum. I am now speaking of expedition made under the law and in conformity to the law; that is, an expedition where there is an honest ascertainment of the number of men and animals required on the original schedule, and an honest ascertainment of the men and animals required on the expedited service. Of course, disregarding the law and falling away from morality into the realms of perjury, it is easy enough to make expedition one of the most profitable experiments that man ever entered upon; but within the domain of honesty it is utterly impossible to convert by expedition a losing contract into a gaining contract. In this plain formula that I have given you is embraced the entire theory and philosophy whereby the rate of pay for expedited service is fixed. Expedition when legally paid for can only augment the losses on unprofitable routes as it augments the gain on profitable routes. I am glad to see you all thinking along with me. I do not mean to say by that remark that you are thinking as I think, but thinking while I think. That is all I want. If you do that, you will think as I think when you are through.

The COURT. Suppose there is a slow schedule calling for two miles an hour between two points and that the trip can be made in daylight by the carrier conveying the mail at the rate of four miles an hour. If it is increased to four miles an hour, without saying anything about night, of course it could not be carried except day and night. The men and carriers required for daylight service might be a certain number. For the expedited day and night service might it not require as many more?

Mr. MERRICK. It might, unquestionably. There are more men and carriers required for an expedited service than for an original service I will concede in any case. But the law says that the proportion shall be preserved.

The COURT. The proportion as to the additional men and animals.

Mr. MERRICK. And that the proportion as to the pay——

The COURT. If the time is shortened 50 per cent. and the men and animals required are 75 per cent. upon the original amount, then the compensation for expedition ought to be 75 per cent., according to the rule.

Mr. MERRICK. Take this: The additional compensation, no matter what it is, shall bear no greater proportion, says the law, to the additional stock and carriers necessarily employed than the compensation on the original contract bears to the stock and carriers necessarily em-

ployed in its execution. That is, the proportions must be observed. It is an iron mathematical rule, and I will tell you why it was made.

The COURT. Then it just amounts to this: That if the original schedule required ten men and animals, and the hours of that schedule were reduced one-half, and the new schedule required thirty men and animals, the compensation for the expedited service would be twice as much as for the original service; or, in other words, the additional compensation for the proposed schedule would be 66 $\frac{2}{3}$ per cent. upon the original schedule.

Mr. MERRICK. Suppose that on the original schedule he was losing 10 per cent. of his compensation; that he took it too low, and it was a losing contract, and there was an honest statement of the number of carriers necessary on the expedited schedule, and the proportion was preserved, and there were twice as many carriers on the new schedule as on the old, he would lose at exactly the same rate, 10 per cent. on the amount after expedition.

The COURT. That might or might not be.

Mr. MERRICK. That would necessarily be. Your honor can figure it. I have figured it over and tried it in every shape, and it cannot help but come out as I state. I will show your honor that it is so proved by witnesses on the stand.

Mr. GREENE (a juror). When did this law or regulation go into effect?

Mr. MERRICK. There was always, or for many years, a law upon the subject. It was passed, I think, in 1836 originally.

Mr. BLISS. 1825.

Mr. MERRICK. And was embodied in the Revised Statutes.

Mr. BLISS. It appears first in the statute of 1825.

The COURT. The regulation made in pursuance of that law, however, was not promulgated until the 1st of July, 1879. I refer to the regulation in relation to the affidavits.

Mr. BLISS. Yes, sir.

The COURT. The law always provided for the compensation, but the law did not provide for the means of getting at the compensation. The regulation adopted and promulgated the 1st of July, 1879, authorized the Postmaster-General to take the affidavits or to look at the affidavits, although it did not make the affidavits binding. The practice had existed in the department before then.

Mr. WILSON. That is shown by the contracts, your honor.

Mr. BLISS. The question was put as to the law.

Mr. MERRICK. I will explain that when I get along. I will explain the origin and meaning of the law. The question of Mr. Greene was a very proper and natural one, and I anticipated it. I will say now that that law first appeared in 1825.

Mr. WILSON. That is right.

Mr. MERRICK. And appeared occasionally along down and found its way into the Revised Statutes. It was a law to meet emergencies. It was an exceptional power, seldom or never evoked from its place of repose until 1878.

Mr. WILSON. Are you not mistaken in saying it occasionally appeared? It continued as the law.

Mr. MERRICK. Mr. Boone says that in 1878 when he drew these contracts for S. W. Dorsey he had been a mail contractor all his life, and never had a route expedited, and never thought of such a thing, although he then had eleven hundred routes.

Mr. WILSON. I was only speaking of the existence of the law.

Mr. MERRICK. The law existed. I have just said the law existed, but

it was a grant of power, it was an exceptional grant of power to be used, in derogation of the general policy of advertisement and competition, only when extraordinary emergencies arose requiring its exercise, such as I have already explained to you. For instance, a sudden springing up in the wilderness of a Leadville, or the approaching of two railroads, one from the Atlantic and one from the Pacific. When they get within one hundred miles of each other the Atlantic mail stops at the point where the Atlantic road stops and the Pacific mail stops at the point where the Pacific road stops. A slow schedule prior to that time between those points might have done, but now the railroad makes it important that there should be expedition between those two termini of the new roads, and that the mail should travel rapidly between them. That condition arises after the letting of the original contract, and to meet that condition this exceptional power comes into exercise; but it never was thought of calling it into exercise except when the exceptional condition of things came about which, as I told you this morning, should be proved, as a condition precedent to the exercise of the power, to the satisfaction of any officer desiring honestly to administer his trust in that regard. Expedition, when legally paid for, can only augment the loss on losing routes, and augment the profits on profitable routes. For service just paying expenses the lines representing income and outgo will continue to run parallel. The proportion must be preserved between them. Let me illustrate. This sheet represents out-go [exhibiting sheet of paper to jury]. This [exhibiting another] represents income. They are just equal. If they, by the law, preserve the same proportions, they must run parallel indefinitely. You cannot change those proportions. If the service just pays expenses, these lines will continue to run parallel after expedition as they did before, because the proportion between them must be preserved. Their relative length must be preserved. If the service is profitable, the lines will diverge after expedition so as to embrace a larger gross profit, still maintaining the same proportion. How and why? Before expedition it was profitable to the extent of a certain percentage. After expedition there is additional work and additional income in the same proportion, and consequently it is still more profitable, because the rule of proportion enlarges the sum. If the service was unprofitable, the lines will diverge after expedition so as to embrace a larger gross loss, the percentage continuing unalterable. The percentage must be unalterable if the proportions are preserved. By no legerdemain or sleight of hand can the lines representing cost on the one side and compensation on the other, if the law is obeyed, be made to so cross each other as to convert a loss into a gain. A. W. Moore understood this. He is one of the numerous men that Mr. Ingersoll kept killing. He had his hands full of killing! It was his business to kill. He not only had to kill Rerdell and to kill Moore and to stun Boone, but he had to kill half a dozen men out on Tongue River, because he knew that nothing but the moral execution of the witnesses could stand as a barrier between S. W. Dorsey and the penitentiary. Moore understood this rule when, at Denver, in the summer of 1878, he told Miner as to the service in Oregon, that the more increase and expedition they had the worse off they would be. That was his exact language. Miner understood what was coming, as I will explain to you, and the process by which the logic of the situation was to be defeated, the law trampled under foot, and the Government defrauded, when he replied, "*Expedition, Mr. Moore, depends on the affidavits of the contractors, and we are all good affidavit men.*" You will see, as I go along, that the given quan-

tities in the sum under Brady's *régime* depended on the affidavit. Give a Second Assistant a man that is willing to swear to anything, and he will swear so that all the proportions will apparently be preserved under the law, but the given quantities will all be lies, and then the profit comes not from the expedition under the law, but from the perjury in the affidavit. I know, as well as I can judge, what some of you gentlemen have been thinking about in reference to this subject. I will come to the affidavit and answer the inquiries that have been made in regard to them verbally, by one or two of the jury, and by longing expressions from others.

To prevent hardship the contracts were so worded as to permit the contractor to throw down the service, if he so elected, when expeditions were ordered. The Government reserved the right to order expedition under the law, but they understood perfectly well that if the contract was taken at a very small profit, or by blundering, taken at a loss, and the contractor went on to execute his contract, an expedition ordered upon the contract would involve him in a greater loss. Therefore they gave him a guarantee of the means to protect himself against the greater loss by saying he might throw up his contract:

And in case of decrease—

Says the contract with the Government—

curtailment, or discontinuance of service, as a full indemnity to said contractor, one month's extra pay on the amount of service dispensed with, and a pro rata compensation for the service retained: *Provided, however, That, in case of increased expedition, the contractor may, upon timely notice, relinquish the contract.*

Why? Because when expedition was ordered in the exercise of this exceptional authority upon a losing contract or a contract which paid but little, or was equal in outgo and income, the additional amount would involve the contractor in a greater loss or greater labor without adequate pay. Therefore, on expedition being ordered, he was given the right to relinquish his contract. I want you, gentlemen, to get this clearly into your minds. It was fully understood and appreciated that acting strictly under the rules of the law expedition of time on a route might become oppressive to the contractor, and that therefore he was entitled to a remedy or a guarantee of means of self-protection. The department seems to have acted upon the policy of dealing very carefully with this exceptional power until after the awards of 1878.

I am not going to leave this point that I am on, but will now introduce another one along with it that I want you to put away in your minds at the same time. Boone says, in speaking of the preparation of the subcontracts under Dorsey's directions (page 1524), that up to that time in all his business he never had a route expedited, and never thought of having one expedited. The new Bradyian policy was to him a revelation, although he had been a mail contractor from his earliest manhood, had made it the business of his life, and at that time had about eleven hundred contracts, not in the old States, but in that State, which of all others in the Union needed expedition, if expedition was to be granted, that State which is struggling forward with rapid movement and giant strides to claim the position of the empire State of the Union; the State of Texas, more prosperous, developing larger resources, accumulating a larger population, building up more towns and more railroads than any other State in the Union, measuring an area, I think, from three to five times as great as that of the State of New York—an empire of herself! This century will not close until you see millions of people on her soil, and her vote in the electoral college

of the country will outbalance the vote of any other State in the limits of the Union.

Boone did not seem to understand it, and certainly did not comprehend this new policy, but S. W. Dorsey did both understand and comprehend it, as is apparent from the clause he required Boone to insert in the subcontracts Boone was writing for him, providing for pay to the subcontractors in case of expedition. Boone had never heard of such a clause. They pretend to combat this piece of Dorsey's pre-knowledge and prophetic vision by saying the clause was inserted because of the act of May 17, 1878, allowing the subcontracts to be filed. Not so. They knew it was not so when they told you so. Why? Boone says he did it under general instructions, and the instructions were given and obeyed long before that law was passed. The contracts were written by Boone long before that law was passed. Dorsey dictated the clause to Boone long before that law was passed. You may ask for my proof. On page 1524 Boone identifies 6 G as a contract. 6 G will be found on page 1223. 6 G is a contract on the route from Redding to Alturas, and was executed on the 1st day of May, 1878. It was in the form of Boone's contracts, says Boone. 6 G is a contract drawn in the form that S. W. Dorsey told him to draw it. It is dated the 1st day of May, 1878, and it was executed on the 1st day of May, 1878, on the Pacific coast, in California. Therefore, long before the 1st day of May, 1878, that contract was sent out to the Pacific coast. This law, gentlemen of the jury, did not pass until the 17th of May, 1878. This contract was certified by the postmaster in California on the 1st of May, and it was filed in the department and recognized as a valid paper, made on the 1st day of May, 1878. The law did not pass until the 17th day of May, and yet these gentlemen have the audacity, have the daring boldness to tell you that that clause for expedition was put in because of the passage of the law. It was put in because Dorsey knew what was coming. Brady had taken the scales from his eyes, and they sat down together in union contemplating what was to be done—

Two souls with but a single thought,
Two hearts that beat as one.

Mr. GREENE (a juror). There have been so many papers shown here that it is impossible to keep them in mind. Did not Mr. Wilson refer to this clause in a previous contract?

Mr. MERRICK. Mr. Greene asks if Mr. Wilson did not refer to this clause in a contract existing previously to the passage of the law.

Mr. BLISS. A Government contract.

Mr. WILSON. All the contracts provided for expedition and increase of service.

Mr. BLISS. With the Government.

Mr. WILSON. With the Government.

Mr. MERRICK. With the Government.

Mr. WILSON. The question was asked me and I want to reply. I did not state that it was in the subcontract. I said it was in the contract.

Mr. MERRICK. With the Government?

Mr. WILSON. With the Government.

Mr. MERRICK. That is right.

Mr. WILSON. The Government contract provided for twenty years before this time for increase and expedition.

Mr. GREENE. That is what I recollect.

Mr. WILSON. That is right.

Mr. MERRICK. The Government, in its contracts since 1825, has pro-

vided that wherever there is expedition the contractor may throw the contract up. I read to you just now the clause in the Government contract. Prior to this time there never had been any provision between the contractor and subcontractor for expedition, for the reason that whilst the Government contract provided according to law that he might throw it up if there was expedition, it was so exceptional a power, a power so rarely exercised, that there was no use for the contractor or subcontractor to calculate upon it or make any bargain about it.

Mr. GREENE. I would like to ask another question.

Mr. MERRICK. Ask me anything that you want, gentlemen.

Mr. GREENE. I understood that previous to a certain period, I do not know what year, subcontracts could not be put on file in the department.

Mr. MERRICK. No; they could not. There was no law providing for them to be put on file, but they made subcontracts.

Mr. GREENE. The subcontract was simply, previous to the passage of the law, an agreement between the contractor and the carrier, whoever he might be.

Mr. MERRICK. It was simply a private agreement by which the contractor stipulated to pay the subcontractor just as he does now, but the subcontractor had to look to the contractor to get his pay. The contractor would draw it all, and then he would pay the subcontractor. The act of 1878 provided that the contracts between the contractors and the subcontractors might be put on record, and also that when the department came to pay they should look at the subcontract, and the department itself should pay directly to the subcontractor what was due to him and pay the contractor what was due to him. Do you understand?

Mr. GREENE. I understand.

Mr. WILSON. Will you allow me to ask a question right there?

Mr. MERRICK. No, sir.

Mr. HOWARD (a juror). The contractor then was surety for the subcontractor's pay, wasn't he?

Mr. MERRICK. Yes, sir. You recollect that S. W. Dorsey did not want any of these subcontracts put on file, and that he sent word out West not to put them on file, saying that he would guarantee them, and he did personally guarantee the payment of a great many, so as to keep them off the files. The passage of the law guaranteed to the subcontractor payment by the Government.

Mr. HOWARD. After the subcontract was filed?

Mr. MERRICK. After it was filed. That law was passed in 1878.

Mr. WILSON. It was still, however——

Mr. MERRICK. [Interposing.] Allow me to make my argument. I have no objection to extending a reasonable courtesy, even after your speech.

Mr. WILSON. I do not understand that.

The COURT. Mr. Greene's inquiry suggests to me the thought, how are we to know as to what these subcontracts contained prior to the 17th of May, 1878?

Mr. DAVIDGE. That is the point.

Mr. BLISS. Mr. Boone testified on that subject.

The COURT. They were not filed prior to May 17, 1878.

Mr. MERRICK. We know from Boone's testimony. Boone says he had been a contractor all his life, and he never heard of such a clause.

Mr. HENKLE. Mr. Boone was a clerk in the department in 1875.

Mr. MERRICK. Yes, I know he was.

Mr. HENKLE. And never had a contract before 1876.

Mr. MERRICK. How do you know? He does not say so.

Mr. HENKLE. He says he had not been a contractor before 1876.

Mr. MERRICK. Excuse me, he says no such thing. He says he had been in the business all his life.

The COURT. He was hardly a contractor while he was a clerk in the department.

Mr. MERRICK. I suppose I might reply in the language of Pinafore, "Hardly ever;" yet such things have been. [Laughter.] It does not make any difference whether he had been a contractor all his life or not; he had been a contractor for some years before 1878, and he was taken into the business, as the man most experienced in the business, to attend to it, by Dorsey and his copartners, his coassociates and cosomething else, when I have proved it.

Now, you understand that, according to the testimony, there never was any agreement between contractor and subcontractor as to any expedition prior to 1878.

Mr. HENKLE. Mr. Merrick, excuse me. I want to call your attention to the testimony.

Mr. MERRICK. I do not want to be interrupted.

The COURT. Allow the counsel to call your attention to the testimony.

Mr. HENKLE. On page 1544 Mr. Boone testified:

Q. How long have you been engaged in the business of carrying the mail?—A. Since October 1, 1876.

Mr. MERRICK. I think if you will look in Boone's testimony you will find that he says that he has been engaged since that time in carrying the mail, and had been before. That is my recollection.

Mr. HENKLE. [Reading:]

Q. How long have you been engaged in the business of carrying the mail?—A. Since October 1, 1876.

Mr. MERRICK. That was my impression, whether right or wrong; but I will let you have it as you want it; you can have it just to suit yourself.

Mr. HENKLE. I only want it as it is in the testimony.

Mr. MERRICK. 1876 is long enough. He had been in the department and learned all about the business. Prior to 1878 he had never heard of any such arrangement between contractor and subcontractor, and the reason was that, although the Government contract with the contractor stipulated that when the Government ordered expedition the contractor might throw it up, yet it was a power so rarely exercised, so rarely brought into force, that it did not enter into the calculation between contractor and subcontractor when they were making their stipulation. At that time the contractor had to pay the subcontractor and had all the money. On the 17th of May, 1878, Congress provided that the subcontracts might be filed, and that when they were filed and the pay on them became due, the department itself should pay the subcontractor what he was entitled to by the subcontract, and pay the balance to the contractor.

Mr. SHIELDS (a juror.) I forget the point you were trying to make.

Mr. MERRICK. The point I am trying to make is this: that that clause was written in there by Boone under Dorsey's direction, because Dorsey and Brady knew exactly what was coming and how it was to be done. You remember I showed you one paper (6 G) made out in the Pacific States.

Mr. SHIELDS. Do you mean that there was no law at that time governing the subcontracts?

Mr. MERRICK. Not at all; at the time he ordered that expedition there was no law governing subcontracts. Their pretense of a defense on that is the merest nothing.

Now, gentlemen, a new and previously unthought-of line of departure was to be made in the spring of 1878 in this power of expedition; this exceptional power; this extreme medicine of the service was to become its daily food. Prior to that time this power was exercised only to meet unforeseen and abnormal conditions, as medicine meets abnormal conditions in the human system. But in the spring of 1878, just before these contracts were to go into effect, a revolution takes place, as I have said to you, and this extreme medicine of the department, to meet its diseases, was to become its daily bread. And S. W. Dorsey foresaw what was coming.

I have been led a little away from the point I was discussing, to mark an epoch in the history and practice of the Second Assistant's office, in order that this new departure might be known to you before I entirely left the subject of converting losing into gaining contracts. I want you to understand this matter, and then you can much better apply the evidence. Mark down this new epoch.

Now, I have explained to you how, under the law, a losing contract cannot be turned into a gaining one by expedition, and I want you to comprehend it; I want you to make it part of your own knowledge. I do not want you to say that one of the counsel says so. I want you to digest it and make it part of your mental possessions, and comprehend it. It is not necessary that I should reread the section to you or again examine its provisions. But if you have a contract to carry the mail at \$1,000, and there are two men and horses required to perform the service, and you find that you are losing 10 per cent. a year, will you, Mr. Foreman, or any one of you, tell me how that proportion of loss can be changed by a resort to expedition in which greater number of men and horses must be employed? I am talking about an honest transaction now, not one of Mr. Miner's affidavits, for he, in the line of solemn oaths, is the most extensive moral acrobat that ever performed in an executive department or before a court of justice.

Mr. CRANE (foreman of the jury). I think it might be done somewhat on the principle that a man who sells goods at wholesale makes more money than if he sold them in a small jobbing way.

Mr. MERRICK. Where you are keeping shop it might be true, but if the proportions have to be observed it is not. The outgo must be in proportion to the income. You may say that you can keep four horses a little cheaper for each horse than you can two. I do not think that is so out West. I do not think you can hire two men for less in proportion than you can hire one. If the loss is 10 per cent., and you double your investment, you double your outgo, and you lose 20 per cent.

Mr. CRANE. I thought perhaps it might be figured out.

Mr. MERRICK. You can do it; I know you can.

Mr. CRANE. You have to take into account the stable room, &c.

Mr. MERRICK. If you are running two horses and are getting \$1,000, you have to have stable room for two horses; then, if you want to run four horses, you have to have stable for four horses. If your loss was 10 per cent. with two horses, with four horses and the extra stable room and extra number of men the loss would be just double.

Mr. HORIGAN. I am a little stuck in that; I do not understand it.

Mr. MERRICK. Suppose I ask you to shoe a horse for me; I agree to

give you a dollar a nail; you put in five nails at that price, and then promise me that you will do horse-shoeing for me in the same proportion; but you find out after you have put in five nails that you have lost 5 per cent. (twenty-five cents); then I say to you, "Look here, Horigan, you bargained with me to put in as many nails as I wished at the same price; now I want you to put in five more;" but you say, "Oh, Mr. Merrick, I cannot do that; I lost twenty-five cents on the other." I then say to you, "You made your bargain with me, and I have got the right to insist upon it. You have the right to throw up my business if you want to, but as long as you are doing my business you must stick to the bargain." So if you put in another five nails in the same proportion you would lose fifty cents.

The COURT. Mr. Horigan cannot understand how he would lose money on a dollar a nail.

Mr. MERRICK. That is rather hard, but I am only trying to make it agreeable to Mr. Horigan, for his long absence from his business, confinement on the jury, and consequent pecuniary heavy loss, by letting him imagine a case where he could shoe a horse at a dollar a nail.

The COURT. If you should ask him to put a shoe on your horse for five cents, which is less than the cost, and you wanted him to shoe the horse all around, that would be a case that he could understand better.

Mr. MERRICK. That is the same thing.

The COURT. A proposition of that kind he could understand.

Mr. MERRICK. Suppose I ask Mr. Horigan to shoe my horse——

Mr. HORIGAN. [Interposing.] You must give me a reasonable price.

Mr. MERRICK. How much do you charge for such horses as I drive?

Mr. HORIGAN. Two dollars.

Mr. MERRICK. Two horses all around?

Mr. HORIGAN. Four dollars.

Mr. MERRICK. That is fifty cents a foot. Now, suppose I say to you, "Mr. Horigan, here I have advertised for a blacksmith to shoe my horses, and you are the lowest bidder; you agree to shoe them at fifty cents a foot; I want you to shoe two feet every month." And suppose that in that contract you agreed that you would put on as many shoes as I wanted, provided the outlay that you made in putting the shoes on should bear the same proportion to the compensation as the outlay you made in putting on the two shoes bore to your compensation for these two.

Mr. HORIGAN. I would not have made that contract.

Mr. MERRICK. No, you would not make it; I know you would not; but that is this contract. Putting on two shoes at fifty cents a shoe, you get \$1, and after figuring up everything you find that you have lost 5 per cent. (twenty-five cents).

The COURT. He does not understand.

Mr. HORIGAN. That I would not do. I don't do business that way. [Laughter.]

Mr. MERRICK. I know you do not, and those contractors could not do it that way if their affidavits were honest.

The COURT. You cannot make Mr. Horigan understand how he is going to lose money in shoeing horses at fifty cents a nail. [Laughter.]

Mr. MERRICK. I have no doubt of that.

Mr. HORIGAN. I do not understand it, and that is the reason why I asked; I thought I was justified.

Mr. MERRICK. Certainly.

The COURT. If Mr. Horigan had undertaken to shoe the horse for twenty cents a foot, and had had to pay a journeyman twenty-five cents a foot,

then the more feet he had to shoe, of course the more money he would lose.

Mr. MERRICK. Mr. Horigan, may it please your honor, will never lose money on shoeing horses. He is probably the best man at his trade in this city to-day, and has more of it than he can do, and is making plenty of money. He cannot comprehend these propositions which involve the possibility of his losing by his labor.

The COURT. You give him a price upon which he would lose money.

Mr. MERRICK. He would not take it; I have asked him to do it, but I cannot get him to.

The COURT. Give him twenty cents a foot for shoeing your horse, so that he will lose five cents a foot.

Mr. HORIGAN. I wouldn't touch no man's horse for that. [Laughter.]

Mr. MERRICK. Suppose all you have to pay out in the first instance is for the labor, feed, and care of one horse; and after you have paid that, you receive \$1,000 from the Government, which you find is just \$100 short; then you get expedition on which the number of men and horses necessary to be employed is four, and for which you will receive \$2,000. If the one man and one horse cost you \$1,100 for carrying that mail, then it follows that the four required on the expedition will cost you \$2,200, and you cannot get out of it in any possible way.

Mr. DAVIDGE. A man counts as an animal, but does it take the same amount of money to keep him?

Mr. MERRICK. It depends on what sort of an animal it is. I do not know how they would count you. Now, allow me to make my speech.

Mr. DAVIDGE. Let me say——

Mr. MERRICK. [Interposing.] No, sir; I will not let you. You have retired apparently from the argument of the case, and I do not choose to have your argument interpolated into mine. Now, I defy the jury, when they come to calculate it, to make it any other way than as I represent it.

Mr. INGERSOLL. Will you allow me to ask a question?

Mr. MERRICK. No; I will not consent, may it please your honor, to be interrupted, except to be corrected if I misstate the testimony.

You will then be out of pocket just \$200, being in exact proportion to your original outlay.

I prefer, instead of being interrupted by the counsel on the other side, to take their witnesses, and I will now come to them.

The COURT. Counsel on the other side have no right to interrupt the counsel for the purpose of meeting his argument to the jury.

Mr. DAVIDGE. I concede it.

Mr. MERRICK. Mr. Ingersoll very politely asked me, but I do not wish to yield, except to be corrected if I misstate the testimony.

Mr. INGERSOLL. All right.

Mr. MERRICK. Now let us consult authority upon this subject. I refer to Vaile's evidence at page 4064:

Q. If it was a losing contract—

Says Mr. Bliss to Mr. Vaile—

If it was a losing contract before expedition, and the expedition was to be made according to the rule laid down in the law, how could it, after expedition, become a profitable contract?—A. It did not.

He is speaking of Tongue River. This is the next question:

Q. How could it be?—A. It *could not* be.

There is their witness on the stand, and he is an old mail contractor, a lawyer of some sort by profession, a mail contractor since 1862, has been bidding ever since more or less, knows all about every turn in the department and every rut on the western roads—has made an immense fortune out of it. He came into this transaction on account of his wealth, according to their statement, to help his newly discovered friends, for whom his poor heart had been made to bleed almost, though he had never seen them in his life. His wealth is also shown by himself when he says he had gone on bonds, he does not know whether for \$100,000 or \$1,000,000 (page 4050).

Mr. HENKLE. Does he say he made his wealth out of those contracts?

Mr. MERRICK. He said that had been his business in life; I do not know whether he stole it or got it in some other way.

Mr. HENKLE. Do you know that he did not inherit it?

Mr. MERRICK. I do not know. He said mail contracting had been his business. I presume he did not inherit it, for he is a man somewhat more ancient than my patriarchal friend, Mr. Henkle, and men of that age in Independence, Missouri, do not inherit large fortunes. I presume he made it. He certainly started out to make money in this business, and did make it in this business, as I will show you. But, independently of that, he is an experienced mail contractor, knows all about it, and yet he says that a losing contract cannot by expedition of the time by any possibility be converted into a gaining contract.

Mr. HENKLE. He did not say that; he said that—

Mr. MERRICK. [Interposing.] No, sir; the correction is not in order, for the reason that I have read the testimony. Let the gentleman take the book, and I defy him to find that I have omitted a word or added a syllable. Read it, Mr. Bliss.

Mr. BLISS. At page 4064:

Q. If it was a losing contract before expedition, and the expedition was to be made according to the rule laid down in the law, how could it, after expedition, become a profitable contract?—A. It did not.

Q. How could it be?—A. It could not be.

Mr. MERRICK. That is the answer—"It *could not be*." The first answer applied to Tongue River; the second was an honest answer wrung from the witness in reply to the second question.

Now, what of Brady? We will take his testimony upon this subject, too. I shall have to read several passages from his testimony; Brady is an elaborate gentleman. I find this at page 3453. The question is by Mr. Bliss:

Q. If the allowance for expedition is to be gauged by the number of men and horses used on the one service and the number of men and horses that would be used on the other service, how would you in that way convert a losing service at one trip and slow time into a profitable service at three trips and fast time if you did not make an allowance in cases of that kind in excess of the amount authorized under the statute?—A. That is a matter that—

There Mr. Chandler interposes and there is some discussion.

The WITNESS. It is a matter that I have had very little experience in personally. As I said before, a contractor could tell you much more about that than I could. In some way I arrived at the conclusion that we benefited the contractors more or less in that way.

Yet he could not explain to save his life how it was done. He, the experienced head of the contract office, who had been dealing in these things for years, when asked how it was, said that he could not explain it, but that he "arrived at the conclusion that in *some way* it benefited

the contractor." Ay, it did in *some way* benefit the contractor. It benefited the contractors when they made perjured affidavits, and got Brady to help them trample on the law and fraudulently shovel out the public money from the Treasury on the papers they had filed in the department. He could have explained it if he had chosen, but he sheltered himself behind the statement that he could not explain it, and that he had come to the "conclusion that in some way it benefited the contractor."

Let us see what further, at page 3452:

Mr. BLISS. I will explain to you. You stated with reference to the Bismarck and Fort Keogh route:

"But how to increase it by simply adding trips to it at the ridiculous figure at which it had been taken by the contractor was a stumbling-block.

How to increase it—

"No contractor could even do the once-a-week service really across there at that price. They had probably bid upon it blindly, like a good many contractors, lumping the whole service, bidding so many dollars a mile, as is the common practice among contractors.

"It was very evident that it could not be increased to three-times-a-week service and make an efficient service simply for three times what they had bid for once a week."

Then comes Mr. Bliss's question:

Then you went on to state that you ordered expedition. Now I ask you in what way that tended to make an efficient service?—A. It tended to make a more efficient service as a matter of course, to make it three times a week. It tended as a matter of course to make it a much more efficient service to make it a fast service, and that could not be done with any regard for the rights or safety of the contractor at the price, as I have said before, that they had originally bid for the contract.

After his explanation, how he worked it out so that he benefited the contractor I do not know. But he was going to work here to benefit the contractor. He says it could not have been done by making three trips, and it could not have been done under the law by expedition, and yet it was done. Let us see what further. At page 3540 I have a memorandum of what the distinguished Second Assistant Postmaster-General says:

Q. But the contractor having been anxious to throw up his contract, and you being satisfied that he could not perform the service for the amount for which he had offered to perform it, and you being desirous to get a good fast service on that route, why proceed by the method of expedition rather than by a new contract?

He first proceeded by the method of expedition, you see.

That was the question substantially which I put to you. You said that you could not have got temporary service, you thought.—A. *I preferred to do it that way, and it was the policy of the department at that time to do things in that way.*

That was the Bradyian policy. What do you think of this autocratic trustee? He says somewhere, and I will find it for you and read it, that he kicked the stumbling-block (the law) out of his way.

I have read from the testimony of these two men, Brady and Vaile, at this time, only to show that to change a losing into a gaining contract under the law and in conformity thereto is an impossibility. Miner sounded the key-note of the music for this carnival of fraud and perjury when he said to Moore at Denver:

WE ARE ALL GOOD AFFIDAVIT MEN.

Everything depended on the affidavit; the affidavit depended upon nothing—that is, upon the conscience of the contractor who made it, and that was nothing. The given quantities in the case depended upon the affidavit, how many men are necessarily employed on the present

schedule and how many men will be necessarily employed on the proposed schedule. The affidavit set that forth, and those quantities thus given in the affidavit formed the given quantities by which to ascertain the amount of compensation by giving you the elements of your rule of three. Therefore, gentlemen, the exercise of those exceptional powers under those peculiar clauses of the statute, according to Brady's idea of administering his trust, depended upon the affidavit. I shall hereafter speak of the manner in which he says he administered that trust. These affidavits, therefore, naturally excite in your minds the profoundest interest. These affidavits were the levers by which the Treasury doors were to be prized open. And I can readily understand the interest manifested in the various inquiries you have made about those affidavits. I could see the interest running down the two lines of this jury about those affidavits. I shall treat them as the core of the case, and I propose, in the progress of my argument, to arraign these affidavit-makers for perjury, and I will argue the case on each several affidavit as though it were upon an indictment for perjury. I will show you who wrote the affidavits; I will show you how the affidavits prevaricate and lie; I will show you how the affidavits were manufactured in stock and held for common use, to be filled up whenever needed. These are things, I know, that you have been asking yourselves all along. I will explain to you, Mr. Crane, how it was that those two affidavits came from Vermont from John W. Dorsey; I will explain to you, and to your entire satisfaction, why the two were made. If I do not convince you that they were blanks when Rerdell came back here on the 5th of May from the West I will agree never again to open my mouth as an advocate in a court of justice.

The COURT. Mr. Merrick, whilst you are waiting to rest a little while, there is something I want to inquire about of somebody.

Mr. MERRICK (*sotto voce*). I would rather you would ask somebody besides me.

The COURT. Mr. Brady testified that the check he had in his own mind upon those affidavits was a rule.

Mr. MERRICK. That is what I said to the jury just now that I would come to by and by.

The COURT. And the rule was to allow for good service (that is, six times a week, night and day service) at the rate of from \$30 to \$35 per mile.

Mr. BLISS. Thirty dollars a mile.

The COURT. Thirty dollars a mile. On Bismarck and Tongue River he allowed, he says, \$37.63.

Mr. MERRICK. Yes.

The COURT. The compensation upon that route, after it was expedited, was \$70,000, I believe.

Mr. MERRICK. Yes, sir.

The COURT. At that rate (\$37.63) it will not make \$70,000. At \$30 a mile it is \$3,000 for one hundred miles, is it not?

Mr. MERRICK. Certainly.

The COURT. And for three hundred miles it would be \$9,000. I have been trying to see whether I understood Brady's rule in regard to that.

Mr. BLISS. I think he counted each trip at \$30 a mile.

Mr. WILSON. Once a week service, your honor.

The COURT. No.

Mr. WILSON. Yes, sir.

The COURT. [Reading from page 3397:]

A good service, running night and day, was worth anywhere from \$25 to \$35 a mile. Was then, and I do not know but what it is now, in that country. [Refers to paper.] This service, as it was expedited, cost \$37.63 per mile, running night and day, upon a fast schedule. I did not consider that an expensive service then, and for the time I do not consider it an expensive service now.

Mr. BLISS. Your honor has figured it at \$30 a mile for three hundred miles, making \$9,000. I may be in error, but I understand that that is for one trip; that if it was increased to six trips, it would be \$54,000. I understood that to have been Mr. Brady's theory.

The COURT. Thirty dollars a mile was his average for each trip.

Mr. INGERSOLL. Counting one way. Then six trips, at \$30 a mile for three hundred miles for a year, would make \$9,000 for the one trip; six trips would be \$54,000.

The COURT. One way?

Mr. BLISS. Yes, sir.

The COURT. And both ways would be \$108,000.

Mr. INGERSOLL. Let me give my figures. This route was three hundred and ten miles long; six trips a week one way would be eighteen hundred and sixty miles; at \$37 a mile—and there is a fraction——

The COURT. [Interposing.] Sixty-three cents.

Mr. INGERSOLL. Leaving out the fraction, it would amount to \$68,820.

The COURT. He does not explain it that way.

Mr. INGERSOLL. That is the way it goes, by the mile, one way.

Mr. MERRICK. Allow me, gentlemen, to ask you to bear in mind what I have said about the cost of expedition—that a losing contract can never be made into a gaining one—and to remember what Vaile and Brady have testified about it; and bearing that in mind, follow me while I proceed by a consecutive line of thought and narrative to show you how Brady performed this extraordinary operation as against law and mathematics, and losing routes sprang up all of a sudden, under the genial influences of affidavits, to be trees bearing fruit of greenbacks and gold.

Now, if agreeable to the court, I would like to adjourn.

The COURT. Adjourn the court.

Thereupon (at 3 o'clock and 48 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

TUESDAY, MAY 29, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. MERRICK. [Resuming.] With submission to the court, and gentlemen of the jury, I have now developed to you fully the theory and the policy of the law that there should be public advertisement of all contracts for carrying the mails of the United States in order that every citizen should have the opportunity of entering upon that field of enterprise if he thought proper to do so upon equal terms with every other citizen, and also for the reason that thereby the economy of the administration of the department would be materially advanced, and I showed to you clearly and I think beyond all question that competition was the principal element of the policy spoken of, and that competition among citizens for this service was the design the law intended to reach. To emphasize a little logic that I then used, as well as to emphasize the expressions of the statute which I then read, I beg to call the attention

of the court and jury to the language of the Supreme Court of the United States upon that particular subject. I refer to 93 United States, page 244, the case of Garfield against The United States, where the court, speaking by Mr. Justice Hunt, after quoting the laws to which I referred, and concluding the quotation from that law which provides that contracts for the transportation of the mail shall be awarded to the lowest bidder rendering a sufficient guarantee for faithful performance of the service, says:

The object of the statute was to secure notice of the intended post routes, of the service required, and the manner of its performance, that bidders might compete, that favoritism should be prevented, and that efficiency and economy in the service should be obtained.

That favoritism should be prevented, says the court, and it might have further added, that the exercise of a disposition in public affairs should never be allowed, because it is a violation of a public trust wherever and whenever it colors or controls or modifies in any form the execution of a public power.

I have also shown to you, and I think to your satisfaction then, and certainly if not to your satisfaction then to your satisfaction now, after the experiments you all made with the figures, that a losing route on an original contract can never by expedition be changed into a paying one. In that connection, at about the close of my remarks, when I was referring to the way that General Brady administered his trust, I read to you one or two passages from his testimony, but failed to find in my notes, because of an error, the passage which I particularly desired to call to your attention. I read from page 3454, when Mr. Bliss had him in his hands, and under his sharp fire of cross-examination:

Q. But you stated that to increase the pay—

Speaking of the Tongue River route—

by simply adding trips at the original figure at which it had been taken by the contractor was a stumbling-block?—A. Yes, sir.

To increase the pay by simply adding trips was the *stumbling-block*. This Brady had to testify to, and the question was predicated of Brady's own avowal on the stand that it was his purpose to increase the pay for the benefit of the contractor.

Q. Finding that stumbling-block, you did not refer to the provision as to a temporary contract under the miscellaneous letting, but increased the contractor's pay out and out, did you not?—A. We kicked the stumbling-block out of our way, and did it just as we did it—

Q. [Interposing.] Was it not possible—

Mr. INGERSOLL. [Interposing.] Let him finish.

Mr. BLISS. I thought he had finished.

A. [Continuing.]—for the purpose of getting a good service.

Q. Was it not possible for you to have allowed the service to go along under the existing contract and then advertise in the miscellaneous advertisement for a contract, which would have been a contract for three years and a fraction, and so have placed the matter open to public bidding?—A. *Not and do what we wanted to do.*

Namely, to benefit the contractor, as he had been obliged to say in the previous part of his examination. What was the stumbling-block? The stumbling-block was the law of the land, and Brady kicked that law of the land out of his way in order to do what he wanted to.

Mr. CHANDLER. Mr. Merrick, I call your attention to the fact that you have not read Mr. Brady's answer fully in regard to that matter.

Mr. MERRICK. Pardon me. Let me refer to it again. What is the page?

Mr. CHANDLER. 3454.

Mr. MERRICK. I have read it all. Tell me what I have omitted, sir.

Mr. CHANDLER. The following question and answer you did not read——

Mr. MERRICK. [Interposing.] The following question and answer ?

Mr. CHANDLER. Certainly.

Mr. MERRICK. I have misread nothing.

Mr. CHANDLER. I did not state that you had misread.

Mr. MERRICK. I cannot read all his evidence.

Mr. CHANDLER. I ask the privilege of reading it.

Mr. MERRICK. No, sir; I object to your reading anything, unless I misread or misstate the testimony. Counter-testimony cannot be read whilst I am talking.

The COURT. Is it on the same page ?

Mr. CHANDLER. Yes, sir.

The COURT. Is it on the same subject ?

Mr. CHANDLER. Yes, sir.

The COURT. You can read it.

Mr. CHANDLER. I do not state that Mr. Merrick has misread.

The COURT. You can read it.

Mr. CHANDLER. [Reading:]

Q. What could you not have done that you wanted to do other than benefit the contractor ?—A. We wanted, as I said before, to get a good service on the Bismarck and Tongue River route, and we chose to do it in the way we did.

Mr. MERRICK. Is there anything else along there which the court says you may read ? Did not Brady say in his testimony that his object was to benefit the contractor ?

Mr. CHANDLER. He said what I read.

Mr. MERRICK. Did he not so state in the rest of his testimony, sir ?

The COURT. You may address the jury rather than counsel.

Mr. MERRICK. Did he not say, gentlemen, that the service had been taken at too low a rate or that the contractor could not carry it for that rate, and that his object was to benefit the contractor, and he was scheming as to what he could do to make it pay the contractor ? Then he threw over that declaration the thin covering which the dimmest eye could penetrate and see the substance—the thin covering of the declaration that he was looking to *get a good service*, when by the last law of Congress he was bound under the circumstances to put it in a special advertisement as a new route thrown open to public bidding. I have read all that was needed to explain his testimony.

Now, gentlemen, I have shown to you that as there was no way of converting a losing into a gaining contract under the law, these parties were providing some means by which this extraordinary result could be accomplished without regard to the law, and as the affidavit was to furnish the leverage for opening the Treasury and to furnish material and ascertain the quantities in the sum of proportion, affidavits from contractors passed into the rules of the department, and thenceforward from the day of that revolution in the practice of the department the use of exceptional powers in emergencies became the habitual practice without regard to emergency. Now let us see, gentlemen (for it is upon these affidavits, as I have said, that the case rests), what was the practical operation of this new scheme, accomplishing results which, under the law, I think we now, court, jury, and everybody, all agree could not have been achieved. First, let me remark to you that when I came into this case, and my distinguished associate, Mr. Bliss, came, by direction of the Attorney-General, to my office to explain the nature and character of the case, I

was most forcibly struck with a very singular, and to me unaccountable, fact. It was this: I learned what you have now had in proof, that a plain and a plainly educated and seemingly unenterprising man, living in a village in the State of Vermont, engaged in the honest but humble occupation of selling tinware, had come down to Washington City and entered upon the business of mail contracting; that without previous knowledge of the business, probably with an observation limited to the corporate limits of his town, he had suddenly entered upon this field of public enterprise in Washington City, where the tiger lies in political jungles waiting for any careless wayfarer that may come along. He had bid for a mail route and had obtained it, and on a contract made with the Government was to receive \$1,700. He had then taken that contract and had let it out at a cost of \$2,500, thus making the Government a present of \$800 a year. The question arose in my mind, how comes this? How comes it that a merchant in the State of Vermont leaves his business to come here and take from the Government a contract upon which he is losing \$800 a year? That does not look to me like Yankee thrift. That does not look to me like the keen-sighted vision and astute enterprise of that people in whose astuteness and keen sight we take so much pride, and which elements of capacity have added so largely to the wealth of the nation. It is not like a Yankee to do that. He is losing money. He is losing \$800 a year. Why is it? How comes it? Is he sane? Oh, yes, he is probably sane. Then if he is sane and has lived to his forty-fifth or fiftieth year in the State of Vermont, how comes it that he drops down here to Washington City and takes a Government contract which involves him in the necessity of making a present to the Government of \$800 a year? At once I said, and I think I almost put it in words as I now tell them to you, or words like these: "There is something behind this mysterious transaction." Does it not strike you as strange and mysterious that a man should do a thing of that kind? Yet that is the identical thing that John W. Dorsey did on route 38113, from White River to Rawlins. But, gentlemen, whilst I was inquiring as to the mystery that lay behind this singular transaction, the solution of the mystery very soon broke upon my vision as its profits had grown in the pockets of John W. Dorsey. He had taken that White River and Rawlins route at \$1,700. He had hired it out to be carried, and paid for carrying the mail over it \$2,500, thus giving the Government \$800 a year, as you will find at page 1955 of the record; but as it went along in a little while this \$1,700 that the Government paid him swelled and enlarged, by the orders of Brady from time to time on expeditions, until it reached the sum of \$31,981.35, and when he received that \$31,981.35 from the Government under the benign influence of Brady's cultivation, he paid to his subcontractor for carrying the mail upon the route \$23,333.33, putting in his pocket thereafter \$8,647.92 as the clear net profit, where when originally taken he had been losing \$800 a year. Think of it, Mr. Greene. Take it home, gentlemen, as you did my problem of yesterday. Weigh it in your minds and ask how such things can be while the law constrains the action of public men, and personal honor and morality rule the conduct of men in their transactions. Here, then, was a route losing \$800 a year converted into a route where the profits became \$8,647 a year, and all this done within some twelve months or a little over—done against the rule of mathematics, against the rule of arithmetic, against that inflexible rule which shows that it could not by any possibility be done if the law permitting increase or expedition was obeyed and the affidavit upon which the order was made was true.

Mr. CHANDLER. If your honor please, I would like to call Mr. Merrick's attention to the fact that that contract was let at a profit of \$200 by John W. Dorsey instead of a loss of \$700.

The COURT. Where is that?

Mr. CHANDLER. Page 1954.

Mr. MERRICK. Look at page 1955.

Mr. CHANDLER. I understand that, but that was a contract let by Mr. Rerdell. We are talking now about a contract let by John W. Dorsey and not by Mr. Rerdell.

Mr. BLISS. It was let to a Mr. Wright at a profit. Mr. Wright broke down and failed to carry the mail under the contract, and it was then sublet at a loss, as Mr. Merrick states.

Mr. CHANDLER. By Mr. Rerdell.

Mr. MERRICK. By Mr. Rerdell acting as agent.

Mr. CHANDLER. The statement was, however, that Dorsey took it for \$1,700 and let it at a loss.

Mr. MERRICK. Is it not a fact?

Mr. CHANDLER. No, sir. The record is that he took it for \$1,700 and let it for \$1,500. That is the record.

Mr. MERRICK. Then he only lost \$200.

Mr. CHANDLER. He took it for \$1,700 and let it for \$1,500. It seems to me he would make \$200.

Mr. MERRICK. [To Mr. Bliss.] What is the fact?

Mr. BLISS. The fact is as I stated. It was let at that rate and the contractor broke down within the second quarter of the term, and then his subcontract was withdrawn, and a new contract was made at \$700 loss, as Mr. Merrick states.

Mr. MERRICK. Then I am right.

Mr. CHANDLER. No, sir. If your honor please, the question is not whether the contractor broke down. It was let at a profit of \$200.

Mr. BLISS. Look on page 1955 and you will see that that subcontract was withdrawn from October 1, 1878.

Mr. CHANDLER. The question I raise is this: The statement is that he took it for a certain amount and let it for \$700 loss. I do not say whether the contractor broke down or not. The record shows it was taken for \$1,700 and let for \$1,500. Those are the precise figures.

Mr. MERRICK. I am much obliged to the gentleman.

The COURT. They made that bargain.

Mr. MERRICK. It was let at \$1,500, and the contractor could not carry it at \$1,500. It could not be done. He was ruined by it, and then John W. Dorsey had to let it at another rate, and he then let it at the losing rate of \$700 a year. So my statement is not only true, but it is emphasized by the fact that they had tried to carry the contract on the original price and failed to do it; and counsel might well have told you that if the subcontractor was afraid of the contract and wanted to throw it up, under the law, as I have explained it to you, he had the right to throw it up the very first time expedition was ordered. But he did not throw it up. He had the right to do so, but he held on to it at a loss, and immediately it grew and swelled and enlarged to be a tree of fruitful profit.

Mr. CHANDLER. I want to call attention also to the fact that there was no loss on the second letting. The three trips are precisely three times the amount paid for the first letting of one trip. So that in that respect my friend is in error.

Mr. MERRICK. The three trips a week the counsel speaks of came in under the original letting and the contract expressly provided for a cer-

tain proportion to go to the subcontractor. Now, will the gentleman answer me, as he seems to be so extremely solicitous on this subject, whether or not there was not a net profit of \$8,647 which the contractor put in his pocket here in Washington without doing any particle of work?

Mr. CHANDLER. I think there was, and that disproves the gentleman's theory that a losing contract cannot be made profitable.

Mr. MERRICK. I did not hear the last part of what you said.

The COURT. He says it disproves your rule; that it shows that a losing contract may be converted into a profitable one.

Mr. MERRICK. Yes; that is true on their side, and how? By the perjury of the contractor. Give me a set of villainous contractors and I can convert a losing contract into a mountain of fortune. That is the point I am making. The foundation of this case is these affidavits. As I told you yesterday, written on every one of these affidavits is perjury, and without perjury a losing contract can never be converted into a gaining one. Perjury did it in this case, as I will prove when I come to argue that particular part of the case.

Mr. CHANDLER. The affidavit on this route is not attacked.

Mr. MERRICK. Why, yes it is; I attack every one of them.

Mr. CHANDLER. I mean by the evidence.

Mr. MERRICK. There seems to be a disposition to unnecessarily interrupt me, may it please your honor, and I call your attention to it.

The COURT. Yes; that last interruption was, I think, rather beyond the limit.

Mr. CHANDLER. I beg your honor's pardon; I did not suppose I should so easily disconcert the gentleman.

Mr. MERRICK. You cannot disconcert me.

Mr. CHANDLER. I did not suppose you would receive my suggestions offensively.

Mr. MERRICK. I do not receive them offensively; but I have understood that there was a purpose to interrupt me.

Mr. CHANDLER. You are mistaken, so far as I am concerned.

Mr. MERRICK. I have so understood.

Mr. CHANDLER. I called your attention to what I thought was the record.

Mr. MERRICK. Much obliged, but I know this record, as I will convince you as well as the jury.

As I have stated, the foundations of this case are these affidavits, and it is for that reason that I have pursued the course of remark I have up to this time, leading along, as well as I could, by a continuous current of thought, to those foundations; establishing the basis of my argument in the principles of law, and showing you what was the rule of law by which Brady was to be guided in making expedition; showing you that in the application of that rule within the law a losing contract could never be made a gaining contract; and I am now proceeding to show you that these affidavits lay at the foundation of the extraordinary profit on these contracts; and then I shall proceed to show you that those affidavits are false as dicers' oaths.

Let us now look at the route from Pueblo to Rosita, upon which John R. Miner, the acrobatic swearer, was contractor. The original contract was given at the pay of \$388 a year. The original subcontract pay was \$700 a year. So this enterprising gentleman from Sandusky, Ohio, was making a present to the Government of \$312 a year. He is searching upon the book to find it. Find it, and if I have misstated the record, call my attention to it. I say that the record shows that the

original contract pay to John R. Miner on Pueblo and Rosita was \$388 a year; that the subcontract pay was \$700—\$312 more than he got from the Government; and that in consideration of being allowed to be contractor on this route he was making a present to the Government of \$312 a year. I have called to be corrected, and there is silence. The contract pay after expedition was—what? \$8,148. It had gone up a little beyond the \$388. The subcontract pay when John R. Miner was getting his \$8,148 was \$3,100 (page 871). This gave to him a clear profit of \$5,048, which he put in his pocket for doing not a particle of work, sitting here in Washington, drawing his profit of \$5,048 substituted for what had been a loss of \$312. How can these things be?

Mr. HENKLE. Mr. Merrick, the record shows——

Mr. MERRICK. [Interposing.] Show the record.

Mr. HENKLE. The record shows that Mr. Miner never drew a dollar on that route after it was expedited.

Mr. MERRICK. "Miner never drew a dollar!" Why, you are a band of partners and conspirators, one drawing for the other and participating in the profits, and when I speak of the contractor you tell me that he "did not draw a dollar." Gentlemen of the jury, they may tease you and worry you, but don't let them play upon you. Then the counsel admits the statement that I made, but, he says, "John R. Miner did not draw the money;" somebody else drew it. John R. Miner was probably too busy at that time to draw it. He was writing to Hayes, telling Hayes that he "*must recollect that getting expedition in Washington costs money.*" Remember the letter. I am coming to it by and by.

Let us take another route, No. 38135, Saint Charles to Greenhorn. Again the acrobatic gentleman jumps into the contract. What was the pay? Contractor, John R. Miner, pay \$548, subcontract pay \$548. He was losing nothing, he was gaining nothing. He was giving bonds, had assumed a responsibility to the department, and then hired out his contract to a man who agreed to do the work for just the price received by the contractor from the Government. Now let us see how this little plant improved under the genial influences of Brady's tender solicitude and agricultural processes. The contract pay after expedition was \$3,945.60; subcontract pay, \$1,000; profit, \$2,945.60. Sitting here in Washington in his office, doing nothing but watch the operations of the machinery, manipulating men, and counseling with Brady and with Dorsey and with Rerdell, John R. Miner draws this sum of money from the Treasury. This contract, upon which he neither gained nor lost in the beginning, is converted into one upon which he receives his clear profit of \$2,945.60 after paying \$1,000 to the man that did the work. Mr. Bliss says that the subcontractor did actually carry it for \$540. That is too small a matter to talk about. [Addressing Mr. Horigan, a juror.] Would it not be a good thing to have a contract with a man to shoe his horses for just what it cost you to shoe them? You see I am paying my respects to you, in consideration of your having handed me that handful of horse-shoe nails this morning.

Mr. HORIGAN. You can use them as tooth-picks after it is all done.

Mr. MERRICK. That is very good. Would not you like to have some contracts at that rate to shoe horses out here on Mr. Greene's race-course for four years, upon which you did not make anything at all, provided that in one year after you entered into the contract on which you did not make anything you could make a clear profit of \$2,945? Yet that is what the Government of the United States did; that is what Mr. Miner did; he gained nothing on the original contract, and in a year or a little over there was a profit of \$2,945.

Now, let us take another route—Silverton to Parrott City, No. 38156. And here we come to the Vermont gentleman. John W. Dorsey was the contractor here; original contract pay, \$1,488; original subcontract pay, \$2,280 (page 1860); loss to John W. Dorsey on that contract, \$792. Why, John was getting into the losses heavily. But he saw the light. He was gifted with prophetic vision, and felt that the humble shall be exalted, and the poor made rich. He saw the coming day when, for the stripes he wore, he should be clothed in the garments of financial glory. "Yes; I will bear my burden; I will pay my loss." I can imagine some Yankee friend of his from Middlebury saying to him, "Look here, Dorsey, what are you doing? Have you lost your senses—taking a Government contract at a loss of \$792? Better go back to your tin-shop." "Oh, no; you don't know what is coming; blessed are those who can wait and hope." And he waited, and he hoped, and the day came for the realization of his expectations, in a contract paying, after expedition, \$16,512.28, when he was paying his subcontractor \$9,400, realizing a clear profit of \$7,112.28. And after that, when he was realizing the profit of \$7,112.28, instead of suffering a loss of \$792, he meets his Middlebury friend and says to him, "Look here, old boy, I didn't like to tell you all about it, but here it is; I knew it was coming." Does not this startle you, gentlemen?

Now, let us take another—Toquerville to Adairville. And here we come to J. M. Peck. Mr. Peck, I believe, is proved not to have been in Washington since 1877, if indeed he had been here for a year before that time. S. W. Dorsey proves it. Mr. Peck is dead; he sleeps the last sleep; let him rest in peace; he is dead. Still even above his grave, and above the grave of every man, justice must be done whilst men live upon the earth and hope for the blessings of society and Government. On this route J. M. Peck was the contractor; \$1,168 was the original contract price; and he sublet that route to a man that did the work for \$1,127; that gave him a profit of \$41. That might be increased so as to enlarge this profit, but it never could be increased to enlarge the profit beyond the relation that that profit then bore to the profit on his original contract, his contract price. But what of it? After expedition this contract pay, which had been \$1,168, became \$19,311.33; the subcontractor's pay, which had been \$1,127, became \$8,444; and the profits of Peck, which had been \$41, became \$10,867.33. How was it? How could it be achieved? Can you imagine, under the law? Now, if they can devise a theory, let them, that will make all this consistent with innocence. If you can devise a theory by which there could be applied the law of expedition to this contract or these contracts so as to bring out these results in any way, give them the benefit of it. But do not be lachrymose about it. Calculate with a clear head and an unclouded understanding.

Now let us take another—Eugene City to Bridge Creek. John M. Peck was the original contractor; original contract price \$2,468, which he, or his copartners or coconspirators—the gentlemen have forced me into the expression, and now I take it up—let for \$2,700, giving a clear loss on that contract of \$232. Now, what was to come? After expedition the contractor's pay was \$21,460.89; the subcontractor's pay was \$7,400. What was Peck's profit? What were the profits of that conspiracy, of which Peck was a member and for which he was swearing? \$14,060.89, AS A SUBSTITUTE FOR A LOSS OF \$232. A loss of \$232 sustained by these men upon that contract is converted in a brief period of time—a year or a little over—into a clear profit, after paying all expenses of carrying the mail, paying the subcontractor, and satisfying

all the obligations arising out of the performance of the contract, of \$14,060.89.

Now, gentlemen, these are not tropes, not metaphors. These are figures, but not figures of speech. They are facts, and not figments of the imagination.

Now, let us take another route. It is my duty, as I said to you, to spread this case before you on my theory, so that you will all understand it. I will take the route from Redding to Alturas. John M. Peck is the contractor again—Peck, the sick man; Peck, that never was here in Washington, and never had apparently anything to do with this business on the face of this earth except to swear to blank affidavits for Miner and Rerdell and the rest of them to fill up. The original contract price on this route was \$5,988, sublet to subcontractor at \$5,500, giving to the combination a profit of \$488. You see from the price of the original contract that that was a pretty heavy and well-paying route, and gave to them a profit of \$488 after they had let it to the men who did the work and paid all the expenses. For the subcontractor has to pay all expenses, you understand; he pays all the expenses of running the mail route. And not only that, but he has to pay all the fines and penalties, you recollect. The subcontractor stipulates or covenants with the contractor that he is to pay all the fines and penalties that may be imposed. All those burdens are upon the subcontractor. The subcontractor has to pay for his horses, to hire his men, to do all the work in carrying the mail on a schedule prescribed by the Post-Office Department; and if he does not do it, then by his covenant in his subcontract with the contractor he has to pay all the fines and forfeitures imposed for any failure to comply with the requirements of the office. He gave sureties in this case, Brother Bliss informs me, to do all that. [To Mr. Bliss.] Have you the contract before you?

Mr. BLISS. Yes.

Mr. MERRICK. Read me the covenant there as to paying fines and penalties.

Mr. BLISS. There is only a portion of it stated here.

Mr. MERRICK. Then refer to the original contract.

Mr. BLISS. It is 6 G.

Mr. MERRICK. There is something else about 6 G that I want to say, too. I think 6 G is one of Boone's contracts.

Mr. BLISS. No; it is one of Moore's.

Mr. MERRICK. No; Mr. Moore made the contract on the Pacific coast and Boone wrote it and S. W. Dorsey dictated it. Mr. Ingersoll said to you that 65 per cent. on expedition was printed in the subcontract made by Boone at Dorsey's dictation. I want to show you that that is not so. Here is the very paper (6 G) that Boone identified, and the 65 per cent. is not printed in.

Mr. BLISS. Here are the fines and penalties.

Mr. MERRICK. Read it.

Mr. BLISS. (Reading:)

The said party of the second part further agrees and covenants with the party of the first part that if fines or deductions be made by the Post-Office Department, because the mails between the aforesaid places have not been carried promptly and securely as per agreement, they will pay the said party of the first part all loss and damage which he may sustain in consequence thereof.

The clause as to expedition, which you referred to, is:

It is further mutually agreed by the parties hereto——

Mr. MERRICK. [Interposing.] I do not care for that.

Now, gentlemen of the jury, you have heard the covenant in regard to these penalties. These gentlemen in this combination, in every single one I think of their subcontracts, required the subcontractor to pay the fines and penalties imposed by the office out of the subcontractor's pay, so that their profits should not be disturbed.

And I will show you something very interesting about this gentleman, Stephen W. Dorsey, upon the Ojo Caliente route, where Joseph was subcontractor, and poor Joseph as subcontractor was ruined by the fines and penalties; Dorsey got them remitted and put the money in his pocket in August of 1879 or 1880, and told Joseph that he had never received one cent. But Joseph found out afterwards that there had been remitted of those fines and paid to Mr. Dorsey some \$1,400, which Dorsey kept in his pocket until the last trial, when he paid Joseph at the time he came here as a witness. He never paid it to Joseph until two years after he had put it in his pocket. You can draw your own inferences as to what he intended to do with the money. But I will not depart from my line of argument to comment upon subjects I shall encounter as I go along.

I say to you, and you must bear in mind, that all these subcontractors were required to pay every fine, every penalty that might be imposed by the department, out of the money coming to the subcontractor, as well as to do all the work; so that whatever was over and above the subcontract pay was clear profit to the ingenious politicians who had organized this scheme and were sitting here in Washington to see its workings.

Mr. Ingersoll told you that 65 per cent. was printed in the Boone contract. Now, here is the contract that Boone swore was the form he wrote. Look at it, Mr. Crane, and see whether 65 per cent. was put in there. They handled Boone very gingerly, very tenderly, very carefully. We made him tell all we could, but whether we got all he knew or not, the powers above alone can tell. For he was hand in glove with them, and he had scarcely left the witness-stand before he was in harmonious accord with S. W. Dorsey, looking over papers. This is the paper he identified, and you see that 65 per cent. was not printed in. Now, a gentleman who undertakes to criticise counsel on the other side with so much severity as Mr. Ingersoll undertook to criticise my distinguished associates ought to be very sure that he himself has made no mistakes. He ought to be very sure that he does not err in what he tells the jury when he assumes to take up the speeches of two such men as Bliss and Ker and show where they have made erroneous statements of the testimony and criticises those statements with acrimony and severity. I shall not criticise what he said with either acrimony, severity, or unkindness. I shall simply say, gentlemen of the jury, "he said this and so about the paper; there is the paper, look at it and judge ye."

And let me remark in this connection, for it will not break the line of thought, that I think the two speeches of my learned brothers, covering over five hundred closely printed pages, are such condensed, clear, and compact arguments as I never heard in a court of justice. There was no flourish, no rhetoric, no imagination, no ornament or decoration, but simply fact and logic on fact, and hardly as much logic on fact as there might have been, because the multiplicity of facts required them to be brought within a narrow compass. There were over five hundred pages of a narrative condensing nearly five thousand pages of a record, and yet a counsel who has gone all over it cannot find more

than some eight or ten slight and unimportant variations from that record, all occurring through accident. Gentlemen, my associates, I congratulate you from the bottom of my heart upon so high a tribute as Mr. Ingersoll has paid to you in the acknowledgment of his inability to find a greater number of errors, though assisted by all his cohorts that sit behind, associate counsel and parties, who piled their notes in his lap, that he might have the benefit of the research and labor of all of them.

Are you done with that paper, gentlemen of the jury? Are you satisfied? If you are not, take it home, and ask your wives about it. [Laughter.] Did you see the sureties? They required them to give sureties for the performance of the work. That 6 G is a useful paper.

The original contract price upon this route, Redding to Alturas, was \$5,988; original subcontract pay, \$5,500; profit, \$488. The contract pay after expedition was \$41,916.66; subcontract pay after expedition, \$23,000. What is the profit? \$18,916.66 a year. The subcontractor had to do the work, pay all the fines, take all the consequences of failure; and yet the profit to the man here in Washington, doing nothing, sitting in quiet repose, without peril, with sureties between him and danger, as well as the covenant of the subcontract, is changed from \$488 into \$18,916 a year. Would you not like to have some contract like that? [Addressing Mr. Davidge.] Would it not be better than practicing law?

Mr. DAVIDGE. It would depend upon what kind of pay I got.

Mr. MERRICK. The pay was \$488 and it was increased to \$18,916.

Mr. DAVIDGE. What pay I got in the law I meant.

Mr. MERRICK. I say in that proportion; that is half as much as you make in a year.

Mr. CHANDLER. If your honor please, I would like to call Mr. Merrick's attention to this matter he speaks of, on page 1525, where Mr. Boone says—

Mr. MERRICK. [Interposing.] I object, unless I have misstated the evidence. I have presented the contract to the jury, so that they could see for themselves.

Mr. CHANDLER. I claim that he has made an error about this paper.

Mr. MERRICK. Go on then, if I have.

Mr. CHANDLER. [Reading:]

That was the clause prepared by myself, and my clause was stricken out by three black lines, and a new clause inserted.

Q. Let us have the new clause.—A. [Reading:]

"It is further mutually agreed by the parties hereto, that in case said service is expedited, that the party of the first part shall pay to the party of the second part sixty-five per centum of the amount received by said first party from the Post-Office Department on account of said expedition, in addition to the sums hereinbefore agreed to be paid."

Q. Who directed the insertion of the second clause?—A. Mr. Dorsey wrote that, I believe.

By the COURT:

Q. Which Dorsey?—A. Stephen W. Dorsey.

Mr. MERRICK. Mr. Chandler is interrupting me unnecessarily. Here is the paper; Boone swears that this is the form; he identifies it. Read it, Mr. Bliss.

Mr. BLISS. [Reading:]

Q. [Submitting paper marked 6 G.] State whether or not that is one of the forms prepared by you.—A. Yes, sir; that is one of the forms of Miner, Peck & Co. John W. Dorsey had the same, excepting that his name was at the head. There were two

forms of subcontract blanks printed both exactly the same, except that one was headed Miner, Peck & Co. and the other John W. Dorsey & Co. [Page 1524.]

Mr. MERRICK. [To the jury.] There is what Boone first wrote struck out with that black line. Then Dorsey dictated that part, and Mr. Ingersoll said he had 65 per cent. printed in. You see it is not so. Has he corrected that?

Mr. GREENE (a juror.) According to my recollection, Boone said something about it.

Mr. MERRICK. Boone did say something about it. He said he wrote in 65 per cent., but at the same time he identified the paper as a paper he wrote about that time, and it shows that the 65 per cent. he spoke of was not in there. Either he was mistaken as to having been told to put it in or the purpose was changed after it was spoken of.

Now, then, gentlemen, these routes that I have been going over are the routes which were divided in that partition they talk of which took place on the 1st day of April, 1879, when they professed to have divided up the proceeds of the robberies that had been committed and to have distributed the burglars' tools among the respective parties after the safe and sure accomplishment of their purpose, as I will hereafter make plain to you.

Now, what is the recapitulation? These routes to which I have called your attention are seven in number, and there are others, but I have only taken those where the testimony is complete and unequivocal. The original contract pay on these routes was \$13,748; subcontractors' pay originally \$15,355. The contractors' pay after expedition, as against \$13,748 originally, was \$143,276; the subcontractors' pay after expedition \$75,677. And on those seven routes what was the clean net profit per annum? \$67,598 for sitting here in Washington and not doing a single thing.

The subcontractors did the work for them at a cost of \$75,677, while the contractors were realizing from what they received from the Treasury enough to pay that \$75,677 and then to pocket \$67,598. And yet Mr. Ingersoll says, withdraw Moore and Rerdell from this case and there is no case. You might dispense with Moore and Rerdell and their testimony in the case, and read this law by the light of a clear reason and with an unclouded comprehension, and take Brady's papers, and those papers and the law alone make a case, without a solitary witness, to the entire satisfaction of any sensible man.

When the question came up before the court in reference to the responsibility of one of these co-conspirators for the declarations and acts of another co-conspirator, that question being predicated of the inquiry whether we had established a sufficiently close relation between them to make the declarations of one evidence as to anybody except the declarant himself, the court, in deciding that question—and I suppose I may read it—said, at page 2053:

As to the official acts of Brady, we have in evidence the appropriation made by Congress, the extravagant expenditures in regard to star-route expenses by which those appropriations were exhausted; application made to Congress for new appropriations, and the expenditure of those appropriations; the character of these different acts; these sudden orders for increase of service and increase of expedition which the jury have a right to pass upon and compare with the necessities that existed, or with the requirements of the service, and for myself, as I have to decide this question upon the effect of these acts upon my mind, I must acknowledge that they have made a very deep impression of an adverse character to the *bona fides* of those orders.

So spoke that venerable and learned man from the seat of law when the question was before him as to how far we had brought these parties into relation with each other as co-conspirators. He stood back startled

and amazed by these enormous and extraordinary increases, and no doubt waited with the patient and earnest desire of a charitable heart to hear from the other side the reason why such things were done; to listen to the proof of the exigency that existed calling forth these large expenses; to hear the testimony that would show such an exceptional state of case as to make requisite the exercise of this exceptional and extraordinary power in so extraordinary a manner. But that testimony did not come; the evidence was not here; silence prevailed; and the case stands before you upon the bald facts presented by the prosecution, without an attempt to prove that there were any exceptional conditions or emergencies such as the statute contemplated to justify or excuse the acts of the Second Assistant Postmaster-General.

Let us go on a little further. Let us see what this festive mail contractor and farmer from Independence, Missouri, did in regard to these contracts. John M. Peck was the contractor on the route from Kearney to Kent; \$868 was the original contract pay; \$700 paid to the subcontractor; profit, \$168. That is a small profit. This was both before and after Vaile came in, and all along. Brady paid for expedition \$4,302; the subcontractor was paid \$1,587; profit, \$2,715. After the big figures we have been talking about we cannot consider that. It is too small.

On the route from Canyon City to Camp McDermitt we come to some more large figures. The original contract pay was \$2,888; original subcontract, \$2,976; a clear loss of \$88. They bore it; they bore it with patience; they bore it with hope. There was a loss of \$88 apparently, and \$88 donated to the Government. But, with patience they hoped for brighter days, and they came to brighter days. The cloud that o'ershadowed them as a cloud of loss turned, and they beheld with grateful feelings and thankful hearts its silver lining, giving assurance of much coveted gains.

After expedition, the contract pay was \$50,166.66; the subcontract pay, \$20,000; net profit, \$30,166.66—\$30,000 profit for doing nothing; the route subcontracted under iron-bound covenants for performance of duty and payment of fines, forfeitures, and penalties—original loss on the route, \$88, converted by the alchemy of perjury into a profit of \$30,166.66. Gentlemen, the man who on Hounslow Heath bravely demands your money or your life at the muzzle of the pistol deserves more mercy than he who, by the insidious arts of a perjurer, aided by the corruption and low instincts of a trusted public official, enters the people's treasury and robs it of the people's money. The affidavit was the lever, and Brady was the man to use the lever to pry open the door. I am coming to these affidavits presently and will take them up one by one and one after another.

The next route to which I ask your attention is the route from Julian to Colton. J. M. Peck was the contractor. The original contract price was \$1,188 and the subcontract price \$1,069 leaving a profit of \$119 a year. How did it go? Oh, the figures are small. I almost hate to tell you. They only amount to a profit of \$4,455 a year. That was not enough to pay for one of Miner's breakfasts in the days of his prosperity, although he has grown rather thin of late.

Let us have a little recapitulation on these routes. Original contract pay, \$18,692. Original subcontractors' pay, \$20,100. Original loss on all these routes of which I have spoken to you, \$1,408. Put that on one side. That was in the day of darkness. Now let us come to the day of light. Contract pay after expedition, \$206,555.32. Subcontractors' pay after expedition, \$101,719.83. Clear profit to the conspiracy per annum, \$104,935.49, and this does not cover all the routes in the indict-

ment. Gentlemen, my mind may be unable to see what other minds can see; my vision may not be as clear as yours, nor my genius as quick to devise means of accounting for extraordinary events, but in all candor and sincerity I assure you that after earnest thought, careful consideration, and profound deliberation upon this subject I can find no means, scheme, or way by which this extraordinary result could have been produced except by wanton perjury in the affidavits, and as I have shown you, by perjury known to Mr. Brady.

Mr. BLISS. Before Mr. Merrick goes to the affidavits I think probably it would be well to take our recess, if your honor would consent.

The COURT. I will consult his wish.

Mr. MERRICK. I desire it, your honor. I should be obliged to you.

The COURT. Then we will take our recess now, gentlemen.

At this point (12 o'clock and 45 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. MERRICK. [Resuming.] At this point of the argument, gentlemen of the jury, I desire to recur to section 3961 R. S. for a little while in order that we may see what were the duties to be performed in regard to expedition by the Second Assistant Postmaster-General prior to determining the amount of the expedition, or the amount that was to be paid therefor, to speak more accurately. You will recollect that the statute provides that no extra allowance shall be made for carrying the mail *unless thereby the employment of additional stock and carriers is made necessary*. You will also understand and bear in mind that the groundwork upon which I am building this argument is *the affidavits*. You will understand that I am endeavoring to show you that the groundwork of the fraud which accomplished so large a withdrawal of money from the Treasury of the United States is made up of the affidavits. The affidavits, as I said to you, constituted the lever which was to be furnished by the contractor, and Brady was the muscular official power to use that lever to pry open the doors of the Treasury. This statute, before proceeding to state what shall be the proportion of pay on the expedited schedule to pay on the original schedule, and before giving the rule by which the pay on the expedited schedule is to be ascertained, says that:

No extra allowance shall be made for increase of expedition in carrying the mail unless thereby the employment of additional stock and carriers is made necessary, and in such case, the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

You will see, therefore, gentlemen, that, as a condition precedent to entering on any calculation as to the amount to be paid for the expedition, the Second Assistant Postmaster-General was required to determine whether or not on the expedited schedule the employment of additional stock and carriers would be necessary. It was a part of his official duty to determine that question, and it was not a mere routine matter such as his counsel would have you believe he could turn over to any clerk. It was a matter intrusted to him in his official capacity, a power vested in him, quasi-judicial in its character, if you choose so to speak, and he was on the particular case before him required to determine pri-

marily and in the first instance whether on the proposed expedited schedule any additional stock and carriers would be required. We cannot, of course, go into the operations of his secret mind and ascertain whether he attempted to exercise his mental capacity upon that question or not. We cannot look inside and see what was done inside. The only way that we can in any case understand the movements of a man's mind is by the development of its motions in physical and visible actions. When you get at physical and visible actions you may reason back to the motions of the mind which stimulated and caused the action. Now, I propose in this matter, as in others hereafter, to take a few sample cases and ask you to consider them and judge by them. The first case which I propose to submit to you in this view is the expedition on the Tongue River route—his favorite route. The original contract on the Tongue River route was for one trip a week. That one trip was to be run at the rate of three miles an hour.

The COURT. Two and sixty-three one-hundredths miles, I think.

Mr. MERRICK. I have it here three miles. It may be a mistake.

Mr. BLISS. The route was let as two hundred and fifty miles, and eighty-four hours was the time at which it was let.

The COURT. It proved to be more.

Mr. BLISS. It proved to be three hundred and ten, and the time was extended to one hundred and eight hours.

The COURT. It proved to be three hundred and three by General Rosser, but afterwards, in consequence of certain orders, it was recognized as three hundred and ten.

Mr. BLISS. The question being whether it should be treated as terminating at Fort Keogh or Tongue River. That would make the difference between the two.

Mr. MERRICK. What was the time?

Mr. BLISS. The time was eighty-four hours, and the distance two hundred and fifty miles. That was the contract time and contract length.

The COURT. That would be three miles an hour.

Mr. BLISS. Just three miles an hour.

Mr. MERRICK. Three miles an hour.

Mr. BLISS. It was extended to three hundred and ten miles; and then there was an order which recites that the time had been extended to one hundred and eight hours, but we failed to find any such order.

The COURT. It was an unexplored country, and the route never had been measured, and according to my recollection Rosser was appealed to, and he had the route measured, and he made it three hundred and three miles.

Mr. BLISS. Mr. S. W. Dorsey wrote to General Rosser, and upon that letter Mr. Brady did what he called restating the distance at three hundred and ten miles, which was undoubtedly the correct distance, and then the time is alleged to have been extended to one hundred and eight hours.

The COURT. From Bismark to Tongue River was three hundred and three miles, and to Fort Keogh three hundred and ten.

Mr. BLISS. Yes, sir. Then the time is alleged also to have been extended coincidently from eighty-four hours to one hundred and eight hours, but no order to that effect appeared. It does in a subsequent order appear that it had been so changed. In either case it would be about three miles an hour.

Mr. WILSON. A little less than three miles an hour.

Mr. MERRICK. A little less than three miles an hour. Now, on the

subject I am submitting to your consideration the time per hour is material. On October 4, 1878, two trips were added, and expedition from three miles to three and eighty-four one hundredths per hour. Less than a mile an hour was added.

Mr. WILSON. I suggest that you are mistaken.

Mr. BLISS. In what respect?

Mr. WILSON. It was sixty-five hours and three hundred and ten miles.

Mr. MERRICK. On the same basis of calculation in regard to time and distance by which I obtained the three miles per hour I obtain the amount of expedition. If the one is correct the other is.

Mr. WILSON. You are mistaken in both.

Mr. INGERSOLL. Allow me to state what I understand to be the fact.

Mr. MERRICK. Certainly, sir.

Mr. INGERSOLL. On the contract after it was restated, the time and distance come to two and eighty-seven one-hundredths per hour. After the expedition to sixty-five hours, the speed then was four and sixty-two one-hundredths per hour; so that it was the difference between two and eighty-seven one-hundredths and four and sixty-two one-hundredths, lacking twenty-five one hundredths of two miles; that is to say, one and seventy-five one-hundredths per hour.

Mr. MERRICK. I am satisfied your calculations are erroneous. I have gone over it with great care. I have gone over it with the assistance of another also, who understands this record perfectly.

Mr. INGERSOLL. I will show you the figures. The distance is three hundred and ten miles, and the time one hundred and eight hours. If you want to get at the rate divide three hundred and ten by one hundred and eight.

Mr. BLISS. The difficulty is this: It is a misstatement to say that the time is one hundred and eight hours.

Mr. INGERSOLL. I say it is not a misstatement.

Mr. MERRICK. Very well; there is the difference——

Mr. INGERSOLL. [Interposing.] Wait a moment.

Mr. MERRICK. I will.

Mr. INGERSOLL. I wish to show that my calculation is not erroneous. I only want to be right.

Mr. MERRICK. Unquestionably. Proceed.

Mr. INGERSOLL. I do not wish to interrupt you.

Mr. MERRICK. I know you do not.

Mr. INGERSOLL. By dividing the miles by the hours you will get at the number of miles per hour, and that is two and eighty-seven one-hundredths. The expedited schedule is sixty-five hours, and sixty-five in three hundred and ten goes four and sixty-two one-hundredths times. So that the difference between the first time and the last time is the difference between two and eighty-seven one-hundredths miles an hour and four and sixty-two one-hundredths miles an hour. If there is a mistake I do not see it.

Mr. BLISS. Your honor, I merely desire to say that the difficulty arises from this point solely: That the contract says that there shall be no authority to extend the time, as Mr. Brady himself said on the Vermillion and Sioux Falls route. Mr. Ingersoll's calculation proceeds upon the allegation that the time was extended to one hundred and eight hours in violation of law, though we could find no order, and there is no order in the case extending it to one hundred and eight hours. There is somewhere in the back of the jacket a recital that it has been so extended. Your honor will remember that during Mr. Wilson's remarks I suggested to him that if he would consent we would have the

order book on that route brought in, and see if in fact there had been any order extending the time. This Mr. Wilson did not care to accede to.

Mr. WILSON. I did not say so at all.

The COURT. The proceedings of the office, as shown by the indorsements upon the jackets, amounted in fact to an order recognizing the distance as three hundred and ten miles.

Mr. BLISS. There is no question about restating the distance. That is in evidence. As to the extension of time, the difference between Mr. Ingersoll and Mr. Merrick, I think, arises from the fact that one treats the alleged extension of time on the original schedule to one hundred and eight hours as having been made and as being a legal and proper extension, and the other calculation treats it as confining it to the contract, and not therefore having been made.

The COURT. Strictly, according to the law, the contractor was bound to run the three hundred and ten miles of actual distance in the same time that he contracted to run the two hundred and fifty miles.

Mr. BLISS. Yes, sir.

Mr. INGERSOLL. This was an unexplored country.

The COURT. It was an awful country; a wild country.

Mr. INGERSOLL. There is one other little matter where I think you made a misstatement. You said October 4, 1878.

Mr. BLISS. The jacket is indorsed at the head October 4, 1878. The order was originally to take effect on the 1st of January, 1879, and it did take effect on the 1st of January, 1879, although the jacket is indorsed at the head the 4th of October, 1878. The order was not actually made until a later period. That is unimportant.

Mr. INGERSOLL. I only wish to be correct. That is all. The order was made in December.

Mr. BLISS. I think so. That is unimportant.

The COURT. The 23d of December was the date of the order. I remember that.

Mr. MERRICK. As there seems to be some misapprehension in reference to the amount of expedition upon the Tongue River route I will revise the calculations I have made and recur to this route upon some future occasion.

In the case of the route from Mineral Park to Pioche, there was originally one trip at two and seventy-six one-hundredths miles per hour for \$2,982. On December 24, 1878, two trips were added and expedition was given from two and seventy-six one-hundredths miles per hour to three and eighty-six one-hundredths miles per hour, *a little over a mile an hour of increase and under four miles an hour altogether, at a cost of \$19,318.* This order has the trips and the expedition consolidated, and therefore to get what was paid for expedition we must deduct the cost of two trips from the gross amount of the consolidated order. The gross amount of the cost of two trips was \$5,964. Subtract that from the principal sum in the consolidated order and you have a result for expedition of \$13,354. On July 23, 1879, four trips were added at a cost of \$29,733.33, which, added to the original sum on the original contract, \$2,982, plus \$19,318, being the amount on the two trips and the expedition first granted, make \$22,300. Add \$29,733.33, and you have a gross amount of \$52,033.33 paid on that route after the order of July, 1879. Deduct the amount for trips, which is \$2,982, multiplied by seven, making \$20,817—

Mr. WILSON. [Interposing.] No.

Mr. MERRICK. Yes, sir; and I will refer to your record and show you

that the inspection division of the Post-Office Department kept trips and expedition perpetually separate. You probably have not read those orders since they were introduced in evidence, and may not then have appreciated their full force. There is a great deal in this case you do not know and will never find out, although you did find out how to use language unbecoming an advocate.

Mr. WILSON. Give me five minutes to answer and I will show you.

Mr. MERRICK. I will read now from page 2944 in reply to the unexpressed but indicated view of the counsel. This paper was introduced by them :

Division of inspection, office of the Sec'd Ass't P. M. Gen'l.

State, Arizona. Route No. 40104. Year, 1880. Quarter ended 31 March. Termini of route, Mineral Park, Pioche. Contractor, J. W. Dorsey. Account, M. C. Rerdell, Box 706, Wash'n, D. C. Miles, two hundred and thirty-two. Trips per week, seven. Pay, \$52,033.33; one-half trip, \$71.27. Exp., \$31,159.33; one-half trip, \$42.68. Expedited from 84 to 60 hours=twenty-four hours. Mail bills show entire loss of expedition in January.

So that from this order of the department, introduced by the defendants themselves, it appears that the cost of expedition was \$31,159.33. I wanted your honor to hear that and to note the fact. They kept the expedition and the trips separate, and possibly for the reason that there were privileges in reference to remissions where there was a failure of expedition, which privileges did not extend to failure of trips. That order was signed by French, and I shall in the course of my remarks have occasion to recur to several similar orders that were signed by Brady, showing that the expedition and the trips were kept separate, may it please your honor, all the way down. You carry along with the newly added trips the old expedition, but even in that case you keep separate the expedition thus carried along from the trips thus added. Here in this order it declares the expedition to be \$31,159.33, precisely the same result I reached by the calculation which I made. To get at the amount of expedition deduct the amount for trips, which is \$2,982, original price multiplied by seven, making \$20,874, which deducted from the gross price of \$52,033.33 leaves \$31,159.33 for expedition. Now, you have on that route \$31,159.33 for expedition. How much was the time expedited? It was expedited from *two and seventy-six one-hundredths miles to three and eighty-six one-hundredths miles per hour—a little over a mile an hour, a fraction over one mile, and under four miles altogether.* A little more than one mile is added by way of expedition on a route on which the mail is being carried at the time in two and seventy-six one-hundredths miles per hour *and for that one mile per hour of expedition over that route there is paid \$31,159.* The first question that was presented to this august personage who was too busy to attend to it himself, but had to hand it over to his clerk—the first question in the proper discharge of his official duty was, “Will such an expedition as that, of a fraction over a mile an hour on a route where the mail is being carried at the rate of two and seventy-six one-hundredths miles per hour, require additional horses and carriers?” I appeal to you, gentlemen, would it? It was expedited so to a rate of speed very little faster than an ordinary horse can walk, and the Government was required to pay for that expedition \$31,159 a year. Originally, the rate of speed was under the walking time of a good horse. Some of you gentlemen on the jury know something about horses and what they can do and what they ought to do. Mr. Greene and Mr. Horigan both know. In considering these facts you have got to apply to them your practical knowledge drawn from your knowledge of the laws of nature.

In passing it will not divert us at all from the main point under consideration to call your attention to the fact that this \$31,159.33 for expedition and this gross sum of \$52,033.33 a year was paid for expediting and increasing what? The Mineral Park and Pioche route? Yes. But, what was going over the Mineral Park and Pioche route? *An empty mail pouch.* \$52,033 paid for carrying an empty mail pouch, and of that sum \$31,159 paid for expediting the time at which that empty mail pouch was carried. Where is the proof? The tables of revenue show it. They deny that those tables are entirely safe guides. What else show the emptiness of the mail pouch? We have the mail bills on that route. For thirty-nine days in 1879, according to these mail bills, less than a through letter a day passed over this \$50,000 route.

Mr. INGERSOLL. How many days?

Mr. MERRICK. Thirty-nine days in 1879, if I mistake not.

Mr. INGERSOLL. I only remember nineteen.

Mr. MERRICK. I am coming to your nineteen. For thirty-nine days less than one letter, AND FOR NINETEEN OF THOSE DAYS NOT A SINGLE LETTER. They were betting at the termini that no letters would come. I read from page 1620, of Caldwell Wright's examination:

Q. Do you know the quantity of mail matter in the latter part of 1878?—A. It was very small, sir.

Q. How small?—A. Sometimes there was nothing.

Q. In the early part of 1879 how was it?—A. About the same, sir.

Q. In the latter part of 1879?—A. About the same.

Q. How was it in 1880?—A. The same.

Q. Did you have occasion at any time to examine this mail in 1878 and 1879, along with the people there?—A. Yes, sir.

Q. How did you come to examine it?—A. I made a bet of the drinks how much it contained very often.

Q. What was the bet?—A. It was two to one there was nothing in the mail.

Two to one that there was nothing in the mail! The empty mail pouch had the advantage out there, but here at the Post-Office Department, with Mr. Brady in office and these contractors surrounding him, prepared to make their false affidavits and give him the leverage to pry open the doors of the Treasury, that empty mail pouch carried such valuable mail matter that it merited to be expedited a little more than a mile an hour at a cost of thirty-odd thousand dollars to the Federal Government.

Can such things be,
And overcome us like a summer cloud,
Without our special wonder?

Such things do not lie in the pathway of ordinarily honest men, and such things cannot occur under the administration of an honest official. All the possibilities are excluded by the plain reasoning of every sensible man.

Do you believe, gentlemen of the jury, that Brady exercised the power with which he was intrusted to determine whether additional stock and carriers were needed on expedition of a little over a mile an hour? Don't you believe that on such a small expedition as that Brady knew, when there was an affidavit before him giving propositions that would draw from the Treasury for that expedition \$31,159.33, that that affidavit was false? Had it been expedited to a reasonably rapid rate of speed there *might have been some apparent* justification; but when expedited from two and seventy-six one-hundredths miles to three and eighty-six one-hundredths miles there is not a man on that jury that believes that Brady acted honestly or that he was not in conspiracy with the men that got the money; no, not even the two or three hoped-for *deliverers* referred to by the counsel.

Now let us look at the Canyon City route, No. 44160. It was originally one trip a week and the time was one and ninety-nine one-hundredths miles an hour. How fast can a man walk; how many miles an hour? Certainly one and ninety one-hundredths. Any one of you could walk faster than that and make the time required even if you dallied along the path. The cost of one trip was \$2,888. On December 23, 1878, two trips were added and expedition from one and ninety one-hundredths miles to *two and fifty-three one-hundredths miles per hour; considerably less than a mile an hour*. The expedition did not put it up to three miles an hour. We will leave out the fractions. It did not reach three miles an hour after expedition. For requiring that mail to be carried *in less than three miles an hour and two trips they gave the contractor* \$18,612. This order was consolidated, and, therefore, to get what was paid for expedition we must deduct the cost of two trips from the principal sum, \$18,612, which leaves for the expedition \$12,836. That is only the beginning. Twelve thousand eight hundred and thirty-six dollars was paid for expediting the route up to a little over two and a half miles an hour. What would you charge any man who would condemn you to ride twelve miles at so slow a rate as two and a half miles an hour?

Mr. GREENE (a juror.) Let me ask you a question. This time was increased from one and ninety one hundredths to two and sixty one-hundredths miles an hour. Does that mean twelve hours of travel daily or twenty-four hours a day? If the man had to go through in twelve hours that would make a great deal of difference.

Mr. MERRICK. I do not know. I have not got the schedule.

Mr. BLISS. They have got to go through in a certain length of time. It is not a question of twelve hours or twenty-four hours.

Mr. MERRICK. They have got to go through in a certain length of time, and I am talking about miles per hour.

Mr. GREENE. If they had to make the trip in daylight instead of day and night, would it not take just double as many? What would be the difference?

Mr. MERRICK. There would not be any. Suppose you had to travel night and day. The point I make is this: Where originally you had to travel at the rate of one and ninety one-hundredths miles ought you to be paid anything extra for being required to go at the rate of two and fifty-three one-hundredths?

The COURT. The question is, Would it take any more men or horses?

Mr. MERRICK. Would it take any more men or horses? Do you think it would? [To Mr. Greene.] You know all about horses. [To Mr. Horigan.] You also know all about horses. Would it take any more horses to go over a route, regardless of length, in two and fifty-three-hundredths miles per hour than it would to go over the same route in one and ninety one-hundredths miles per hour? By the expedited schedule, in order to make the time and come within the schedule, it was necessary to go from one terminus to the other terminus at the rate of two and fifty-three one-hundredths miles per hour. Would it take any more horses to do the one than to do the other? If a horse was to walk the distance, could you restrain him so as to keep him from not going faster than two and a half miles an hour, unless you, Mr. Horigan, shod him with heavy shoes?

The FOREMAN (Mr. Crane). It would depend a good deal upon the roads out there.

Mr. MERRICK. It might depend somewhat upon the roads, but you are going over the same roads and under the same conditions in each

case. You are going over the same route, the same bridges, and the same mountains, and it would not make any difference! But I do not care if you were to climb the Alps at the Simplon Pass, I say you would climb them at a rate faster than two and a half miles an hour on any horse you would find in Switzerland or Italy. It is absurd on its face. It is ridiculous. And yet for this there was an order allowing \$12,836. Now we will see how profits grew under Brady's nurturing hand. In July, 1880, four trips were added at a cost of \$28,666.66. Let us see how much expedition amounted to in the end. The first additional trips cost \$18,612, and the second additional trips, \$28,666. Total, \$50,166.66. One trip cost \$2,888; seven trips cost \$20,216; \$20,216 from \$50,166 leave \$29,550 paid for expedition which was *a little over half a mile an hour*. Mr. Crane, can you stand that? Can any man stand that who lives in the city of Washington after the proof in this case of ring and combination, and who knows of the rings and the combinations that fatten in this city to its eternal disgrace, and that live and flourish in the very shadow of the Capitol? Can any man stand this who knows how the property of the people here has been burdened with taxes to pay a debt, of which one of these rings kept and wasted more than 66 per cent.? Rings flourish here everywhere, and after the proof in this case as to this combination, as to this route, and this route alone, I say there is not a man on that jury, not even the two or three hoped-for *deliverers*, that can doubt about the ring that existed in this case. I take these as sample routes, and I will revise my calculation as to the Tongue River route.

In this same connection, before I come to take up in broader shape the affidavits, I will call your attention to other extraordinary expeditions granted by Mr. Brady on affidavits which stood solitary and alone as *against* the petitions on file.

On route 41119, from Toquerville to Adairville, the petitions asked for forty-eight hours. Bear in mind that Brady protects himself behind petitions and Congressional solicitations, and that he says he did these acts because he was asked to do them by petitions. The eloquent counsel of Stephen W. Dorsey, echoing the language of Dorsey on the stand, asked, "Have not we, the people, the right of petition? Is not this a free country?" I answer, Yes; it is. The people have a right to petition; but, Mr. Brady, Mr. Dorsey, and these defendants all of them, if you value so highly that right of petition it is because you expect the petitions to be considered and answered. Let us see how Mr. Brady, in the discharge of his functions, and whilst this carnival of corruption was going on in the Post-Office Department, regarded petitions. Every petition on the route from Toquerville to Adairville asked for *forty-eight hours*. The oath of Peck, made January 22, 1879, was filed June 25, 1879, and I call your attention to the fact that Miner wrote the body of that oath and Rerdell filled up the figures. I shall have something further to say about that by and by. On July 8, 1879, there was an order of expedition (page 949) to reduce the time from sixty hours to what? To forty-eight hours as the petitions asked? No. To reduce the time from sixty hours to *thirty-three hours*, and to pay \$12,718.22, *being pro rata*. Pro rata on what? Pro rata on an affidavit asking for thirty-three hours; pro rata on an affidavit based upon a thirty-three hours schedule, and being the only paper in the case before Brady that asked for any such expedition.

Now, if the increase of men and animals depend upon the time, had Brady expedited this route to forty-eight hours instead of to thirty-three hours, there could not have been of course as many men and horses re-

quired on a route thus expedited on the long time of forty-eight hours as would be required on a route expedited to the shorter time of thirty-three hours. I will read to you the affidavit:

SIR: The number of men and animals which are necessary to carry the mail on route 41119, seven times a week on the present schedule, is three (3) men and six (6) animals. The number necessary to carry the mail on said route on a schedule of thirty-three hours, seven times a week, is five (5) men and eighteen (18) animals.

How many would it have been on a forty-eight hour schedule? The order was:

Reduce the time from sixty hours to thirty-three hours, and pay \$12,718, being pro rata.

Pro rata, according to the given quantities in this corrupt paper. The original cost of the route was \$1,168. The contractor was Peck. Nephi Johnson was the subcontractor, and received \$1,127. (Page 970.) The route was raised in all to \$19,311.33. Peck's oath was on the basis of thirty-three hours, and, as I have said to you, this is the only paper in the case that speaks of thirty-three hours. Why did not Brady give the people what they asked for? If petitions are so sacred, why should the official here in Washington, covered by petitions asking for forty-eight hours, break from under that covering, and tell the people to go to the winds and give them thirty-three hours, give them more than they wanted, more than they needed, and take from the Treasury more than the people asked to be taken or declared was necessary to be taken for that service? Don't come here and tell this jury that you respected the petitions so much, and attempt to shield yourself behind them, when you have scattered them to the winds, because if you had followed them you could not have taken from the Treasury as much money as you otherwise did. If they were the voice of the people, according to the theory advanced by the other side, they ought to have been obeyed. I do not myself, gentlemen, entertain that high respect for petitions that the counsel for the defendants seem to entertain. I believe, as one of the witnesses said, that unless it be a petition for the petitioners to pay money you can get a petition for anything. But I am speaking now of their regard for petitions, and their respect for petitions. Why did not Brady give the people what the people petitioned for? And why did he give them what they did not ask for when it cost so much more than what they did ask for would have cost? Why was this? Why was it done upon the affidavit of a contractor and upon that affidavit alone? Has Brady explained it? Has anybody explained it? If it has been explained I have not heard of it.

I heard from Brady one attempted explanation of his conduct in the administration of his duties that struck me with amazement, and that was that whilst he respected these affidavits he *did not mind them much*. He had a sort of notion that they might be right, but he had a rule of his own to pay for service, which was from \$25 to \$35 a mile. It struck me with amazement, for this reason: That every time Brady put that rule of his in operation he violated the law. The law had prescribed the rule of payment, and did not leave it for Brady to prescribe. The law had said, in behalf of the contractor, that if expedition is ordered and additional stock and carriers are necessary, or if the Second Assistant decides that they are necessary, you shall be paid, and the amount you shall be paid shall depend upon no arbitrary rule of the Second Assistant as to the cost per mile of the service, but shall depend upon the proportion between the stock and carriers required on the

original schedule and the stock and carriers required on the new schedule; that the proportion shall be preserved; that there shall be a flexible rule suited to all conditions and all cases; if you come in and show that on extraordinary expedition an extraordinary number of stock and carriers is required to perform the expedited service you shall be paid an extraordinary sum; but if a small number of stock and carriers are required to perform the expedited schedule, you shall receive only a small sum; there shall be no iron rule, but there shall be a sliding scale depending on the facts. When Brady undertakes to tell this court and the jury that he had a rule of his own, he undertakes to tell the court and the jury that he violated the law and trampled it under foot. And more than that: He had no such rule. He never mentioned it when examined by the committee of Congress in 1880, as he states, I think, in his testimony. It is a new device, a trumped-up experiment, and I wonder at the lack of wisdom of Brady in trumping up such an excuse, or at his counsel in consultation not advising him that it would not do to manufacture that sort of a thing for use before an intelligent court and jury.

The people asked expedition to forty-eight hours and he replied with thirty-three. His great love for the people has been expressed on the other side, and it has been claimed that he was looking out for the people. The people said forty-eight hours in a variety of petitions. If Brady was looking out for the good of the people, why did he not heed the voice of the people. Why did he turn a deaf ear to the voice of the people, and hearken to the contractor in the form of a serpent whispering in his ear and leading him to official delinquency? For the thirty-three hours was whispered by the contractor, and by the contractor alone. But oh, the magic of the thirty-three hours in comparison with the forty-eight hours! It was the *open sesame* to the door of the Treasury, and therefore Brady seized it, and the Treasury he was to guard for the people he loved so much was opened by his co-conspirators and himself. There is no other solution of this transaction.

But the worst remains. Who wrote that affidavit? Miner. Who filled up this affidavit? Rerdell. The affidavit, gentlemen, was signed in blank. By whose order did Rerdell fill it up? S. W. Dorsey's. So Rerdell says. I read from the cross-examination of S. W. Dorsey, on page 3945:

Q. Did you give Rerdell directions as to filling up one of these blank affidavits?—
A. Well, the only recollection I have about that is that he telegraphed me, or wrote me, when I was West, in 1879, that the department required a shorter schedule on two routes, I think, but what reply I made to him I don't remember.

"Don't remember!" You will have occasion to hear that phrase from my lips several times. You heard it from the witness-stand until you were tired of it, but I am obliged to repeat it. I never saw such an exhibition of bad memories in my life. Probably they were never equaled since the trial of Queen Caroline, your honor, when those Italian witnesses testified, and Lords Brougham and Denman, and the rest, put them through their cross-examinations. Whilst they testified on examination-in-chief promptly to whatever inquiries were addressed to them by the counsel prosecuting the Queen, when they came into the hands of the learned advocates of the Queen their answer was "*Non mi ricordo.*" Your honor remembers it. This answer was so frequently given that one of the witnesses came to be called throughout the trial Signior Non Mi Ricordo. It is well understood that in our professional literature the phrase *non mi ricordo* is derived from its frequent repetition at that trial. The witnesses for the defense in this case seem to have known and entered into the spirit of this famous answer and to have spoken it

with a vigor that showed them to have no compeers that have ever appeared in court for non-recollection, unless it was their prototypes in falsifying the Italian witnesses against the Queen.

Now, Dorsey says, first, "I don't remember whether I gave him instructions to fill up that affidavit or not."

Q. Did you not direct him to fill up a blank affidavit and preserve the proportion of 150 to 200 per cent. ?—A. Oh, I don't think I did.

Q. What is your recollection about giving him directions as to filling up the affidavit ?—A. My recollection is that I did not, but I don't know ; it is possible that I might have done it.

Possible that he might have done it ; possible that he might have given Rerdell directions to fill up a blank affidavit. First, he does not remember ; next, "I don't think I did ;" next, when pressed as to his recollection, "*Oh, I may have done it.*"

Mr. INGERSOLL. What page are you reading from ?

Mr. MERRICK. Page 3945, and then on page 3946 :

Q. I ask for your reason, why you are sure you did not if you have no recollection of it ?—A. Because—

Says he—

he [that is Rerdell] had charge of that business entirely, and attended to it entirely.

Q. Have you any recollection upon this subject ?

Still pressing him all along :

A. I have no recollection about it, but I am quite sure I did not direct him to do any such thing.

Q. You are quite sure you did not ?—A. Yes, sir.

Q. If you have no recollection, why are you sure you did not ?—A. I don't believe I did.

Q. I ask for your reason ; why you are sure you did not if you have no recollection of it ?—A. *Because he had charge of that business entirely and attended to it entirely.*

He does not give as his reason that he would not have done such a thing. He does not say, "I ordered him to do it," or, "I did not," but "My reason is that Rerdell had entire charge of that whole business."

Q. Rerdell got no benefit from it, did he ?—A. None that I know of.

Here then was Rerdell filling up this blank affidavit, serving a master that had taught him the ways of iniquity. Mr. Ingersoll complained of Mr. Bliss for saying that Dorsey had brought Rerdell up. Maybe Dorsey did not bring him up ; not in the ordinary acceptation of the term. But this is in the evidence : That Dorsey found him floating on the ocean of life, a needy young man, had him put in office here, made him serve him (Dorsey) for years whilst he was paid out of the treasury of the District in the office to which Dorsey had had him appointed, and then took him to his bosom in his service, carried him on through this conspiracy, nurtured him in the ways that he (Dorsey) had ; taught him the practices that he (Dorsey) had adopted for getting money ; and, when I come to that subject I will show you, gentlemen of the jury, that although Dorsey may not have brought him up from infancy he took him in the first years of his early manhood, and if Rerdell is corrupt and has done corrupt things, as he admits by his plea of guilty in this case, he did them skillfully according to the teaching of Dorsey, did them at Dorsey's bidding, and did them for Dorsey's benefit. I did not offer Rerdell as an angel. I did not offer him on the witness-stand as a man without stain. I offered him as Dorsey's co-conspirator. Rerdell had pleaded guilty. He was waiting for his sentence. I offered the man that had pleaded guilty and told you so, told you his stain, and I offered him because I knew that when Dorsey

came to strut before this jury in the white feathers of purity, Rerdell would help me pluck out the false decoration that he wore, and show you what he is and what he has been. I will come to that, and it will not take me two days to get through with it as it did the counsel for the defendants to discuss Rerdell.

Now Dorsey "Don't know;" "Don't recollect;" thinks "He might have," "Don't know whether he directed Rerdell to fill this up," "Thinks he did not," "Pretty sure he did not," "Don't recollect," thinks he "Might have done so." The only difference between him and the Italian witnesses is in multiplication of replies all circling around *non mi ricordo*. For whose benefit did Rerdell fill up the affidavit? S. W. Dorsey's. Dorsey says so himself.

Gentlemen, upon this affidavit I want to call your attention to one other thing—the absurdity that the affidavit leads to, and I want you to attend to this. Mr. Woodward, one of the most efficient agents of the Government I have ever known to be in the public service, under the Garfield administration went down to the roots of this matter and told the Government that the very core and heart of the civil service was being eaten by these worms. Mr. Woodward made these calculations which I hold in my hand in reference to these affidavits, showing their absurdity, and handed them to me. It almost made it necessary for me to go back and reconstruct my forgotten mathematical knowledge in order to comprehend them. But I have endeavored to reduce them to language so that you can readily understand them.

On the schedule of sixty hours, which was the original schedule, upon the route I am now discussing, each horse would have to make forty-four miles of daily travel. Brother Bliss developed that to you tully. Seven times a week, at sixty hours, says the affidavit, three men and six animals must necessarily be employed. Seven times a week at thirty-three hours, five men and eighteen animals must be necessarily employed.

Now, let us take the first statement and see whether that is true or not. For, bear in mind that it is to the interest of the contractor, and he gets more money the less the number he swears are required on the existing schedule and the greater the number he swears are required on the proposed schedule. The lower he reduces the number of men and animals on the existing schedule the better it is for him; the larger he makes the number of men and animals on the proposed schedule the better it is for him. He may cheat at one end by making the number of men and animals on the proposed schedule very large, or he may cheat at the other end by making the number of men and animals on the present schedule small; or he may cheat at both ends by making the number required on the present schedule very small and the number required on the proposed schedule very large. Now, let us see. The affidavit says it requires, for seven times a week at sixty hours, three men and six animals, equal to nine; that is the present schedule; for seven times a week on thirty three hours (that is the proposed schedule), five men and eighteen animals are required, equal to twenty-three. The route was one hundred and thirty-two miles long, and the affidavit therefore contemplated three hundred and sixty-five round trips each year, each round trip making two hundred and sixty-four miles traveled each day.

The COURT. Were there seven trips a week?

Mr. MERRICK. Seven trips a week; yes, sir. Now, I want your honor to help us along with this.

The COURT. Go on.

Mr. MERRICK. By asking me any questions, and if I cannot answer them, I will turn them over to Brother Bliss, and if he cannot answer them Mr. Woodward will help him.

The COURT. You will have to do all the answering now.

Mr. MERRICK. I am getting along in that direction pretty well.

The route was one hundred and thirty-two miles long. Twice one hundred and thirty-two is two hundred and sixty-four miles of travel each day. The carrier had to go both ways each day; that is, he had to start out from both ends each day. On a schedule of sixty hours there were but six horses, you recollect, to do the work. So each horse was required to travel each day one-sixth of two hundred and sixty-four miles, or forty-four miles per day, according to that original schedule. Is not that absurd? Have you any horse that can do it? Each horse had to travel forty-four miles a day for three hundred and sixty-five days in the year. But three men only were required; hence, each man was compelled to travel twice as far as a horse, or eighty-eight miles a day. According to that affidavit each horse had to travel forty-four miles a day, and each man, according to that affidavit, had to travel eighty-eight miles a day. Moreover, the schedule was sixty hours a day, making one hundred and twenty hours of daily travel—*forty hours of travel daily for each man.*

Mr. CRANE (foreman of the jury.) What route is that?

Mr. MERRICK. Toquerville to Adairville.

Mr. CRANE. Do you mean to say that those men cheated themselves?

Mr. MERRICK. They did not cheat themselves; they told a lie. The less the number required on the original schedule the more money they would get.

The COURT. I think the foreman does not distinguish between the affidavit and the actual number performing the service.

Mr. MERRICK. The affidavit is false.

Mr. CRANE. No doubt about it.

Mr. MERRICK. I am showing you that what they swore to was absurd; that if it only took six horses and three men, as they swore, each horse would have to travel forty-four miles daily and each man eighty-eight miles daily. Therefore the man that swore to that swore to a manifest and palpable falsehood; that is all there is of that. It is absurd. And Brady, with that affidavit before him, must have known its statement to be false, if he gave the subject that judicial examination which the counsel says belongs to his character as a quasi-judicial officer; or if he gave it any examination at all, and, under the law, he was required to give it thought and inquiry, he must have known it to be willful and deliberate perjury. I presume he did not give these affidavits much examination. He said to his co-conspirators, "Preserve your proportions and whack away at the Treasury; only just put in some petitions here, and don't make a fool of me on the record; give me something to stand on, so that if any of these investigating committees come along it will look as if it was all right. Do that, my friends, and give me the lever, and open shall fly the doors." That is about the way Brady talked. Of course, he wanted to keep his record clear. I think if he had examined this affidavit, probably he might have said, "We don't want this on the record; just make up another, but preserve the proportions." Through cold and heat, through snow and sleet, over hill and dale, through the woods, across the streams, beyond the plains, the sleepless carrier rode forty hours in each and every twenty-four marked by the circuit of the sun. It must be so, for John M. Peck

swears it is, and by that oath Brady measured the cost of expedition and took from the Treasury of the United States \$12,718.22. Poor Peck! Peck swore to the statements in that affidavit. No, gentlemen, Peck did not swear to that. As a member of that conspiracy Peck had little to do, because his sun was setting; he was descending on the other side of life's hill, and was soon to see the light no more. He was beguiled into swearing to affidavits in blank that his co-conspirators might have them in stock; and the recorded lie, when the books are opened on the last day, will be a lie not against Peck, but against Stephen W. Dorsey, who ordered it to be written above Peck's name.

The COURT. How was it at the other end of the same affidavit?

Mr. MERRICK. I did not make that calculation. I only wanted to show the falsehood of the first statement as to the existing schedule. I think probably at the other end it was also false.

Mr. BLISS. As your honor has asked the question, I think I stated in my summing up that on the other end each horse would have to travel one and forty-one hundredths miles a day, or something like that.

Mr. INGERSOLL. Mr. Bliss has made a statement, and now I will state it;

Mr. BLISS. I am corrected. It was fourteen miles.

Mr. MERRICK. Fourteen miles. I was going to make the statement.

Mr. INGERSOLL. I think Mr. Bliss had better keep his seat after that.

Mr. WILSON. There is a good deal of difference between one and forty-one hundredths and fourteen.

The COURT. That is a moderate performance.

Mr. INGERSOLL. There is a vast difference between fourteen miles and a mile and a quarter.

Mr. MERRICK. The other end of the affidavit is all right; the number required on the expedited schedule is all right; the cheating was in putting down the number on the present schedule, because the smaller you make that the more money you get. If the other end was all right, but this end was all wrong, it added infinitely to the amount of money you drew.

Mr. INGERSOLL. Not quite infinitely.

Mr. MERRICK. Well, I take that word from Mr. Ingersoll, who used it so frequently: "It sounds well." Think how the women's hearts must have throbbed in response to his "infinitely untrue," "infinitely sacred." I do not disparage the gentleman's eloquence; I acknowledge it.

Mr. DAVIDGE. He was not speaking of figures.

Mr. INGERSOLL. Figures of speech.

Mr. MERRICK. His figures of speech were so flowery and became so charming, so sweet, and were so heartily appreciated that his wonderful words were metamorphosed, and I saw them, after they had fallen from his lips, blooming upon his table [alluding to a bouquet of flowers that was on Mr. Ingersoll's table when making his argument to the jury].

There was a remarkable order on this route to which I desire to call your attention. On July 8, 1879, Brady passed an order to increase four trips from August 1, 1879, and expedite from sixty hours to thirty-three hours (page 949). This was on the whole route. On that very date there was in the office of Brady a notice that Adairville had been discontinued as a post-office. This notice appears to have been filed in Brady's office June 19, 1879. Adairville was one of the termini of the route.

The COURT. What do you say was the length of the route?

Mr. BLISS. One hundred and thirty-two miles, sir.

Mr. MERRICK. Bear in mind there was in his office a notice that Adairville had ceased to be a post-office. On the 14th of July an order was passed to curtail the route to end at Pahreah, and allow the contractor one month's extra pay; that is, pay not only on his original contract, but also on increase and expedition, when, in fact, on the very date of the order of increase no mail went over that part of the route, or could go, because the office had been discontinued. Brady's offense was in granting increase and expedition on part of the route over which the mail could not run, and he knew it could not run, because of the discontinuance of the post-office at a time prior to the time that he made the order for expedition; and when French granted the order for extra pay he was granting it on Brady's fraudulent order allowing expedition on a route which he knew had been discontinued.

I come now, gentlemen, to another route, and as it is approaching the hour of adjournment, and to-morrow is a day upon which some of you may desire to be absent from the court, I am frank to say that my own wish is that if the court should wish to adjourn I will be glad if it will accommodate you.

The COURT. Well, gentlemen, to-morrow, I think, is a legal holiday. But whether legal or not, the court has the power to make it so, so far as his jurisdiction is concerned, and we will adjourn until Thursday morning.

Thereupon (at 3 o'clock and 45 minutes p. m.) the court adjourned until Thursday morning, May 31, 1883, at 11 o'clock.

THURSDAY, MAY 31, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen of the jury: At this point of the argument I think I may as well diverge a little from its proper direction to explain briefly a condition of fact to which I have heretofore called your attention, and which seems to be questioned by indications from the other side. I desire not only to call it to your attention, but also to call it to the attention of the court, by reason, may it please your honor, of its possible application to a proposition of law brought forward by my associates as to the limitations upon the power of the Second Assistant Postmaster-General under the act of the 7th of April, 1880.

I stated to the jury that in the department, although Brady in passing his orders had confounded expedition and trips in one order, in my humble opinion, contrary to the law, which required him to keep them separate, yet that nevertheless in the consolidated order there enters the manifestation of the exercise of his power with regard to expedition as well as with regard to trips, and that notwithstanding he had made these consolidated orders the department had all the way through kept the expedition and the trips separate as far as they possibly could, and that this fact had been made apparent by the records in the Inspection Division of the department. To be a little more specific; Brady, for instance, where he passed one order on a route upon which the mail was being carried once a week, would sometimes treble or quadruple the number of trips per week, for which additional service under the law he could pay for each additional trip an amount equivalent to the original price of

one trip, and at the same time order expedition upon the new service, and then having made it three trips a week, say, on an expedited schedule, he would thereafter pass another order making it six trips a week and double the amount for which it was being carried at three trips a week, thus doubling the price of the expedition and doubling also the price of the trips. The other side have contended that in this operation he was exercising a power under that provision of law which authorized him to increase the trips. I submit that he was not only exercising the power under the provision of law which authorized him to increase the trips, but he was exercising an extraordinary and exceptional power under that provision of law which authorized him to grant expedition, for the reason that when he multiplied the trips, the sum being paid for the trips thus multiplied, being a sum made up of a previous multiplication of trips and expedition, the expedition by the multiplication was carried forward and entered into and became part of the compensation to be paid for the service on a new and increased schedule.

Were those trips and expeditions kept separate in the department? The following orders will show: On route 35051, from Bismarck to Tongue River, the original pay was \$2,350. On December 23, 1878, it was increased to three trips at a cost of \$4,700, and on the same date was expedited to sixty-five hours at a cost of \$27,950. On August 2, 1879, it was increased three trips at a cost of \$35,000. Total pay, \$70,000. The order of Brady of July, 1880, 134 T, defense, page 2908, shows that \$55,900 of the above amount was for expedition. If counsel will consult that page of the record to which I refer they will find that by Brady's order he there set forth over his official signature that of the \$70,000 paid for service on the Tongue River route \$55,900 was for expedition. I want you, gentlemen, to bear that specially in mind. I want you to bear it in mind with a view to what I shall presently say to you in reference to the different condition that required expedition and trips. I want you to bear it in mind with a view to its application to the theory that Brady has announced here from the witness-stand, *that there ought to be a daily mail over every star route*; to the theory which he announced here as the rule of his action by which he was desiring to accomplish the end of having a daily mail over every route; for I will show you, gentlemen of the jury, that, had he been practically honest in the administration of his functions, and the discharge of his duties with the view that he now swears that he then had, he could have put a daily mail on every route in this indictment and have saved the Government thousands of dollars that he expended for useless expedition. I will show you that a daily mail would have given greater facilities to the people than expedition; and I will show you that on routes running through the wilderness, where the mail was in fact the pioneer of civilization, if instead of being expedited when no one on the face of the earth cared whether they got their letters and papers in the morning or at noon, or at night, he could by increasing the number of trips have given the sparse and scattered population at either end of the route and along its course their letters and papers *every day* at a greatly less cost than he was paying to transmit these letters and papers three times a week. I shall ask you to infer from that fact two things: First, that Brady in stating his opinion on the stand, under oath, condemned his own practice. Second, realizing that what he has said in reference to that particular need of the service as true, and not having accounted for his failure to adopt practically his own theory, I claim that the abandonment of that theory must have been from causes of corruption, because as he said in reference to Tongue River, there was no process by which that

route, taken so low, could be raised in its price to an amount that would justify the carriers in continuing it simply by adding trips; that something else had to be done; and that on these other routes, as on that route, he added expedition to rob the Treasury for the benefit of his co-conspirators.

Again, on route 40104, from Mineral Park to Pioche, the original pay was \$2,982. December 24, 1878, there was an increase of two trips and expedition to sixty hours at a cost of \$19,318. July 13, 1879, it was increased four trips at a cost of \$29,000. Total pay, \$52,933.33. How they bloomed and how they developed under his genial smile. In the morning but a bud, the dew falls upon it, the kiss and the rays of the sun come on it, and at noonday it is a full-blown rose. The smile and the kiss of Brady came upon these fraudulent buds and behold they bloomed and blossomed like the rose. The order of Brady of April 22, 1880, 155 K, defense, page 2944, shows that of this \$52,033.33, \$31,159.33 of the amount was *for expedition only*.

On route 38145, from Garland to Parrott City, curtailed to end at Ojo Caliente, you recollect the pay was for one trip \$1,658.40. On April 29, 1879, it was increased two trips, at a cost of \$3,316.80; the same day it was expedited to fifty hours, at a cost of \$8,457.84. On February 26, 1881, it was increased four trips, expedition having previously been added. These trips cost \$17,910. Total pay, \$31,343.76. Now, look at the order passed by Brady in April, 1881, 374 F, defense, page 3056, and you will find that over his sign-manual, as Second Assistant Postmaster-General, he says \$19,739 of the total pay was for expedition. I take these, gentlemen, as sample routes. I can only deal in this argument that I am making to you with sample routes and specimens.

Mr. WILSON. What is the page to which you refer?

Mr. MERRICK. I am glad to hear the learned counsel inquire the page, for it is a partial assurance that he will now learn something about this record. Probably after having diligently searched it, if he should again come before the jury by any possibility to argue the case, he would not commit so many errors as he did in his argument. The page is 3056 and the exhibit is 374 F, defense.

Mr. WILSON. Turning to page 3056, I find something there signed by French, and no remissions made.

Mr. MERRICK. Look at 374 F, and see how it is. If I have made a mistake, I will correct it.

Mr. WILSON. I have examined page 3056.

Mr. BLISS. It is a recital on a jacket of deductions by French.

Mr. MERRICK. Is it signed by French?

Mr. BLISS. Yes.

Mr. MERRICK. That order was not signed by Brady, then, but by Brady's immediate subordinate in Brady's office, in conformity with the rule Brady had prescribed in signing the orders.

Mr. WILSON. French was acting as Second Assistant.

Mr. HENKLE. That is not taking it back.

Mr. MERRICK. It is taking it back.

Mr. WILSON. I simply wanted to call attention to it.

Mr. MERRICK. [To Mr. Bliss.] Look at the jacket and see what it is.

Mr. BLISS. It is signed by French.

Mr. MERRICK. It is an error on my notes, then. I am glad the counsel has found out something in this way. He found out that that order is signed by French. I am glad he has found out something, even though that something may correct a passing and unimportant error of mine.

I am glad he has made one statement to the jury that is beyond the reach of criticism.

Mr. WILSON. I know you want to be right, and so I will call your attention to another matter. The paper on page 3056 is an application for remissions, and no remissions were made.

Mr. MERRICK. I did not say there were any made.

Mr. WILSON. All right.

Mr. MERRICK. But what is recited there? Do you want to deceive the jury?

Mr. WILSON. All right.

Mr. MERRICK. Is it recited there, sir, that so much was given for expedition?

Mr. WILSON. Read it and see.

Mr. MERRICK. \$19,739 for expedition, according to that order. What did I say about remissions? I said that Brady had put that sum in the order.

Mr. WILSON. You say now it was French.

Mr. MERRICK. No. The first one I spoke of was French's—the one to which you referred. Brady's are the others.

Mr. BLISS. Here is one of Brady's. [Indicating order.]

Mr. WILSON. What is the page?

Mr. MERRICK. 2908. Take it home and study it, and correct me tomorrow if I am wrong. It will take me a week to get through at this rate.

As I said, gentlemen, I can only deal with specimens, for I am classifying this evidence in order that I may not too much trespass upon your time and patience, or weary you in the giving of that considerate attention which you have thus far bestowed upon me, and for which I am so much obliged.

Recurring now to the regular line of my argument, I call your attention to the route from Rawlins to White River, in order that you may see more fully developed how much respect Brady paid to these petitions which he now holds up as a shield against the lance of justice. The schedule was one hundred and eight hours; the route was one hundred and sixty-five miles in length, and there was one trip a week. The time was equal to a mile and a half an hour, which was subsequently expedited to a little over three and a half miles an hour at a cost of \$8,600! The public, stimulated by the contractors, according to the proof in this case, had asked for a schedule of eighty-four hours. It is in proof in this case that the agents of the contractors were along that route, and I believe that one of the co-conspirators himself, Mr. Rerdell, was on that route. Am I right?

Mr. BLISS. Yes.

Mr. MERRICK. He went out there to get up petitions. Bear in mind that although Rerdell is a witness for the Government, he is still a defendant, having pleaded guilty as indicted, and I treat him both as defendant and witness. Rerdell was on this route with other agents of these contractors, seeking to get petitions from the people for increase and expedition. Stimulated then by one of these co-conspirators, namely, Mr. Rerdell, and stimulated by the agencies employed by the united band of defendants, the people along that route asked Brady to give them expedition, and to reduce the running time from one hundred and eight to eighty-four hours. There was not a single paper in the case, if I am not mistaken. I speak now of the papers upon which Brady acted and the papers filed in his office prior to 1881. There was not a paper, gentlemen, not a petition, not the scrape of a pen, asking for anything but

eighty-four hours. Now, consider this, gentlemen of the jury, and, Mr. Foreman, I want your attention to it. Consider that a reduction of schedule from one hundred and eight to eighty-four hours would have involved a very slight increase in stock and carriers, if any at all. The time could have been reduced to eighty-four hours from one hundred and eight, and probably no additional stock and carriers would have been needed at all, or, if any were needed, the number would have been very small indeed. But if the number of stock and carriers were not increased, according to the section giving this exceptional power to Brady which I explained to you, there could have been no additional pay, and the additional pay, if any was allowed, would depend upon the number of stock and carriers necessary on the new schedule, and consequently the additional pay would depend upon the shortness of the time of the new schedule, because the stock and carriers had to be multiplied and increased, according to the diminution of the time. What does Brady do? The only paper suggesting forty-five hours, as I have stated, was the affidavit of John W. Dorsey, filed April 26, 1879. On that affidavit an order was made May 1, 1879, increasing the service to two trips, at a cost of \$3,400, and expediting it to what? To eighty-four hours, as the people asked? To eighty-four hours, as the petitions declared the wish and desire of the people to be, and up to the full measure of their needs and requirements? No. The schedule was changed and reduction was made from one hundred and eight hours, not to eighty-four hours, but to *forty-five hours*, and for that reduction \$8,600 was paid to the contractor, whereas if Brady had granted the requests of that great people whose right of petition is so lauded, and behind whose petitions Brady now cowers from the piercing eye of justice, there would have been no money withdrawn from the public Treasury, or, if any, an exceedingly small sum. But these men were not dealing in small sums. They were acting under the sense of that security which comes to those who in safety perpetrate iniquity through a series of years, and stimulated by the prospect of the accumulation of wealth which they hoped robbery might bring without being followed by that retributive justice you are here to administer. My Brother Bliss calls my attention to a point to illustrate what I say. Perkins writes—to whom, to Rerdell or to Brady?

Mr. BLISS. To Rerdell.

Mr. MERRICK. The same thing. He is a better man, but he is one of the conspirators. He says:

DEAR SIR: I have the tri-weekly mail started and in running order and will run on *eighty-four hours as per agreement at increased speed*.

This is what Perkins, the subcontractor, said:

I want increased pay according to contract. In running in forty-five hours it would take double the men and stock, and I expect if I run it that way to get \$10,200.

He says it would take *twice* the number of men and horses to perform service on the route in forty-five hours, and he wants, if he has to perform it in that time, ten thousand and odd dollars. We do not need any Perkins, Mr. Foreman, to tell us such a thing as that. We need only to put in operation the common understanding of men.

Mr. HORIGAN (a juror). Forty-five miles an hour is pretty fast time.

Mr. MERRICK. Forty-five hours.

Mr. HORIGAN. You said forty-five miles an hour.

Mr. MERRICK. Pardon me. I am much obliged to you for correcting me.

The COURT. You did make that slip.

Mr. MERRICK. Of course I concede it. I admit it. I am glad to have you correct me, gentlemen, it shows you are attending to what I am talking about, and that your minds are going along with mine. Correct me whenever I err, and you will oblige me greatly, each one of you. First, I ask that your minds will act with mine. Criticise carefully all I say. If I make a slip, correct me. If I state a wrong proposition do not agree with me. But where I state a right proposition, do not agree with anybody else.

For the apparel oft proclaims the man.

Says Shakespeare.

On this jacket (22 S), in connection with the suggestions I have made to you, there is a peculiar feature, to which I desire your attention. The "forty-five" is written over an erasure. They first thought they would make it eighty-four, according to the petition, but when they came to figure up and found that they could not make any money at that they scratched out the "eighty-four" and put in "forty-five."

Before I go any farther there is one peculiarity in this affidavit to which I wish to call your attention. I shall be brief about it, as I may have occasion to recur to it. This affidavit of John W. Dorsey's was filed April 26, 1879. It was filed in by S. W. Dorsey; so says Boone in his testimony, and so says Rerdell. I suppose the defendants claim that Rerdell filled in that affidavit, as he is the only man mentioned outside of the case or introduced in the case who is supposed to be capable of imitating Dorsey's handwriting. Now, the question is, did Rerdell fill in that affidavit, or did S. W. Dorsey fill it in? They say that Rerdell filled in that affidavit. I want you to just look at it and see the handwriting, and also the handwriting of the letter inclosing it. [Submitting to the jury 24 S and 25 S.]

The COURT. What is the date of that affidavit?

Mr. MERRICK. It is dated on the 26th of April, 1879. It is one of that batch that went up to John Dorsey, in Vermont. It was sworn to here. Now, I want you, gentlemen of the jury, to look at the "three," "four," "twelve," and "forty-five."

Mr. BLISS. What is the exhibit number?

Mr. MERRICK. 25 S.

Mr. BLISS. It was written by Kellogg.

Mr. MERRICK. The body was written by Kellogg, and the 3, 12, 45, and 32 are filled in by S. W. Dorsey, according to the testimony.

The COURT. When was it filed?

Mr. MERRICK. That is the point. It was filed on the 26th of April, 1879, when Rerdell was two thousand miles away from here. When that affidavit was filed Rerdell was in the far West, having left here, according to Mr. Ingersoll's analysis of the testimony, on the 17th or 18th of April. You recollect how he berated Colonel Bliss for having said he left here on the 15th. He did not get back until the 5th of May, which is conceded and admitted, I believe, all through the case.

Mr. CRANE (foreman of the jury). If Kellogg wrote the body of that he must have disguised his handwriting either in that or in the signature, for they are evidently different.

Mr. MERRICK. The signature is all right.

Mr. CRANE. I understood you to say that Mr. Kellogg wrote the body of that.

Mr. MERRICK. He wrote the body of it, according to the evidence.

Mr. CRANE. It is entirely different from the signature.

Mr. INGERSOLL. What is the file mark ?

Mr. MERRICK. 25 S.

Mr. INGERSOLL. The date of filing ?

Mr. MERRICK. April 26, 1879. I think on that very identical day Rerdell was proved to be at some particular spot in the West, I forget what place. The signature does look different from the body of the writing, and it is in a different ink. Boone swears that the body of it was written by Mr. Kellogg, and—

The figures 38113 and the words "three," "four," and "twelve," and figures "45," the word "three," and figures "11" and "32"—with the circumstances attending it—I should say were filled in by Stephen W. Dorsey. [Page 2701.]

That oath was administered on the 26th of April and the paper filed on the 26th of April, and on the 26th of April Rerdell was in the far West at some place, as to which Mr. Bliss will remind me.

Mr. BLISS. I think he was at Denver on the morning of the 25th.

The COURT. He left there on the morning of the 25th.

Mr. MERRICK. We had the hotel register here showing him there on the 25th.

Mr. BLISS. We did not fix him later than that.

Mr. MERRICK. That affidavit was sworn to when Rerdell was not here, was filed when Rerdell was not here, and Boone says the filling in is in Dorsey's handwriting; Rerdell says so, too; and it bears on its face the evidence of its being in Dorsey's handwriting, from its similarity to the handwriting in this case admitted to be his. It was transmitted by this letter, which is also in Dorsey's handwriting, and is dated the 26th. As we go along we might as well bear these interesting little points in mind. As to the letter transmitting the affidavit, Mr. Boone says, at page 2702:

Q. [By Mr. Bliss.] I hand you 30 S.—A. This is in the handwriting of Stephen W. Dorsey.

By Mr. INGERSOLL:

Q. What is it?—A. It is transmitting a sworn statement on route 38113.

I did not intend to go so fully into this, but the temptation is strong. For these men, although they were very cautious, left their tracks. Guilt is cautious, always cautious; but guilt sometimes becomes so bold that it exhibits recklessness instead of caution.

Mr. GREENE (a juror). If the affidavit was written by Kellogg it was not written on the 26th of April.

Mr. MERRICK. Why not ?

Mr. GREENE. Because it is in an entirely different ink and different handwriting from the signature.

Mr. CRANE (foreman of the jury). May it not be one of those affidavits that Rerdell filled out in blank ?

Mr. MERRICK. No; it could not have been of those, because you see it was sworn to on the 26th.

Mr. INGERSOLL. [To Mr. Merrick.] Do you claim that John W. Dorsey was not here on the 26th ?

Mr. MERRICK. No.

Mr. INGERSOLL. Do you claim that this was filled up after it was sworn to ?

Mr. MERRICK. I did not say anything about it. I have not come to that part.

Mr. CRANE. It might have been filled out before and left here for months, and then sworn to on that day.

Mr. MERRICK. Yes, certainly that might be; that is a possibility,

but it is so remote a possibility that I do not think any one would consider it, especially in view of the proof and the letter of transmittal. According to all the testimony in the case, as it runs down from the beginning, you find that they took out these papers only as they wanted them, and the letter of transmittal generally bears date just before the order.

Dorsey did not come back here again in 1879 from his visit to the far West until some time in the spring, and Rerdell went out pretty soon after he got back. We might have a great many speculative theories, but we are not allowed to speculate. We have to confine our imaginations to the testimony in the case. Rerdell did not leave any of these affidavits filled up, but left blanks. Kellogg may have written that at any time, I do not know when; it does not make any odds, either, when he wrote it. It certainly is written with different ink from that with which he signed his name. The blanks in stock, which constituted the burglars' tools, were used when they wanted to make a burglarious entrance, and not until then. They were filled up and sharpened at that time.

The Perkins affidavit was made, I think, for eighty-four hours. Bear that in mind, Mr. Crane. That had already been filed on the 16th of April. That was on the theory of expedition to eighty-four hours. Turner testified, I believe, that that did not suit. So they concluded to put it down to forty-five hours for the purpose of realizing the profit I have mentioned to you, and to do that they must have a forty-five-hour affidavit. Now, looking at all the facts and circumstances surrounding the parties, my theory about it is this: That Brady sent for Dorsey, who was here—for I will show you that nearly all of these expeditions were made when Dorsey was here, and nearly all of these successive orders were made when Dorsey was here—and told him, "It won't do to put this down to eighty-four hours only, because it will be too flagrant a manifestation of misuse of authority; but get me an affidavit for forty-five hours and you can have your money." Dorsey goes and gets one of John W. Dorsey's affidavits that had been sworn to before Kellogg, fills that up with forty-five hours and puts it in, and in three or four days afterwards the order comes. Rerdell was not here. He could not have had anything to do with that transaction.

But I have been led too far away from my main point and I must come back to it. Nevertheless, I cannot say too much nor dwell too long on these affidavits for, gentlemen of the jury, they are the roots of the tree of whose fruit these sinners ate.

Mr. CRANE (foreman of the jury). I notice that Dorsey's letter says "fifty hours," and the affidavit "forty-five."

Mr. MERRICK. I have not examined the letter particularly. I was about to say that there was no time wasted in dealing with these affidavits, for I have taken you down to the roots of this tree. These affidavits are its roots. Those roots, watered with crime, nourished and fed with iniquity, could bring forth nothing but guilt and sin. I have not dealt with the leaves, nor with the boughs nor the bark. That has been done before. I have taken you down to the very roots, and if you find these affidavits to be founded in perjury, filled up by these different conspirators for the benefit of one another, the crime of conspiracy is proved, and we cannot escape it. It is from these affidavits that all the iniquitous profits on the several routes were derived.

Or, to liken these affidavits to something else, they are the fountain; and instead of judging of the waters by going down the stream and between the banks where they flow in a bad current, I take you up to the very fountain itself, and I show you the poison in that fountain. If

it is not there, the Government surrenders its case. If it is there, in the name of the whole people of the United States I demand that retributive justice be visited upon the men that poisoned that fountain.

Now, gentlemen, why did Brady make this order expediting the time to forty-five hours? I will tell you why he made it—from his own testimony in part (page 3406):

Q. I will ask you why, when the contract price for one trip was \$1,700 a year, and you could at that rate have made the route six trips for \$10,200, you instead of that added two trips and expedited the time to forty-five hours at a cost of \$13,606.25, thereby costing the Government \$3,406.25 a year more than would have been necessary for six trips a week upon that route?—A. This seems to have been a route one hundred and sixty-five miles long and a very slow schedule, and they wanted three trips a week and expedition. It seems by the jacket that Mr. Teller and Senator Chaffee and others recommended it. Three trips a week upon a forty-five-hour schedule would be a far better service than seven trips a week upon a very long schedule. Anybody can see that without even a microscope. That was the reason that was done.

Q. Yes; but Senator Teller and the other people did not recommend a forty-five-hour schedule. Why did you take that?—A. Simply because we would not expedite it without making it fast.

Q. How did you happen to light upon a forty-five-hour schedule?—A. To make the running time, I think, about four miles an hour.

Q. Then you did not in that case follow either the petitions or the recommendations of the Senators and Members you have referred to, did you?—A. No. *It looks a little as if in that case I had done as I pleased about it, just as I had a right to do, without petition or recommendation of anybody, under the law.*

“I did as I pleased and as I had a right to do, without petition or recommendation of anybody, under the law.” And yet you are aware, from the explanations I have already made to you, that the law requires the exercise of this power only in an extraordinary emergency; and he not only did not have before him any evidence that the route needed to be expedited to forty-five hours, but he had before him the evidence of the people along the route that it needed expedition only to eighty-four hours. He not only failed to have before him the affirmative evidence, which according to law he ought to have had, but he had before him negative evidence showing that what he was about to do he ought not to do. In order to do what he did he should have had the proof that it was necessary to do it, in view of the exigencies of the country and the imperative needs of the people in the neighborhood of the route. Instead, however, of having evidence that it was needed by the exigencies of the case and the condition of the people along the route, he had the positive evidence that it was not needed; and having this positive evidence that it was not needed, he now says that he did *as he pleased*. Gentlemen of the jury, is official authority to assume autocratic powers in this country? Why did he make such an answer? Because under the searching and pressing cross-examination he was driven to a corner where he had to leap or die. He is a bold and reckless man. And these defendants have shown their recklessness in the conduct of this case from the beginning to the end, as well as in their transactions at the department. It has been one unceasing attempt to browbeat both court and counsel from the beginning of the last trial down to the present time.

But let us see something further of this. I have explained to you that the power to order expedition should be exercised only where certain conditions arise, as, for instance, where it becomes important to make connections with a railroad. You have a star route and that star route goes to a place which is on a railroad; if you can make connection by a slight expedition it is well enough to make it, so as to reach that office in time to receive the mails from the railroad and to give the mails from the star route to the railroad. What was the fact in this case? By Rawlins ran a railroad. White River, I believe, was the jumping-off

place, where the pioneer caught sight of the red man and pushed him westward. The expedition was made (page 2059) without regard to the connection with that road, and according to the expedition the mail would have to lie over when it got to Rawlins twenty-two hours to go east, and to go west it had to lie over twelve hours. Would it not have been better and wiser, and more in accordance with the honest discharge of official duty, to allow that mail, instead of sleeping at Rawlins for twenty-two hours if bound east, and twelve hours if bound west to spend a part of those hours along the route, and thus have saved the United States this \$8,600? It was a wild region of country, with but little enterprise, hopeful of the future, but practically not very active in the present, inhabited by a population engaged in pursuits that made it quite immaterial whether they got a letter at 8 o'clock in the morning, 12 o'clock noon, or at 5 in the evening. If they had any mail that needed to be rapidly carried it was the through mail, which contained the most important part of their correspondence. For the enterprise of the people of the West depends for the most part upon their connection with capital, and the materials for the development of that country are in the East, and not with their neighbors. Each pioneer is neighbor to every other, each striking his own tree, clearing up the forest which he has purchased; but each is clearing it up, in nine cases out of ten, with capital that he has brought from the East. And if expedition of communication is needed at all it is needed with the East. Expedition of communication in the various localities, of neighbor with neighbor, is not important. Do you not see that? Do you not know it? What was there on White River that needed to be sent with great rapidity to Rawlins? Or what was there at Rawlins that needed to be sent with great rapidity to White River? What was there between those two points that needed to be carried with such immense rapidity and at such heavy cost? And there was only one office between them. The local offices were surrounded by cattlemen and those engaged in the occupations of pioneer life. Why, gentlemen, it is plain to each one of you that there could be no possibility of any necessity for extremely rapid communication between people engaged in those pursuits. Their business was to develop the new country. Their music was the sound of the ax in the tree. Their daily occupation and their daily entertainment was to plant and see the plant grow. What cared they for the variations of the market of Wall street? What cared they for the changing prices and values in speculative matters that men deal with and by which they get rich and get ruined in half an hour? To them all that was nothing. They were pioneers and a primitive people, and the communication of one with another, in point of time, was utterly immaterial. The only importance of rapidity of communication was to get to the East, to get to Boston, to New York, to Philadelphia, to Baltimore. And yet this beneficent Government, acting through its Second Assistant Postmaster-General, expedites their mail at a cost of over \$8,600, and then requires that mail to lie over twenty-two hours at Rawlins before it can be started East, and twelve hours at Rawlins before it can be started West. [Map handed to Mr. Horigan, a juror.] Look at that map.

Mr. HORIGAN. I have seen it before.

Mr. MERRICK. See where the railroad is. Here is Rawlins. [Indicating.] Drive a nail in there. The mail is nailed there for twenty-two hours going East and twelve going West.

Another route to which I will call your attention, and which manifests, by the orders Brady passed, what regard Brady had for petitions, is No. 44140, Eugene City to Bridge Creek. The service was

once a week ; length of route, two hundred and seven miles ; contract price, \$2,468. Twelve miles were cut off April 21, 1878, reducing the length to one hundred and ninety five miles ; pay, \$2,324 93 per annum. The time was one hundred and thirty hours, but when they cut off twelve miles the time was made one hundred and twenty-one hours, I think, being a mile and six-tenths per hour. The oath was made January 22, 1879. Order for expedition was made June 26, 1879. The oath is the only paper on file which suggests a fifty-hour schedule. The only other paper which specifies any particular time is a letter from J. H. Mitchell (page 1336), and this asks for one hundred hours.

The COURT. What is the date of that oath ?

Mr. MERRICK. January 22, 1879.

The COURT. When was the order made ?

Mr. MERRICK. The order was made June 26, 1879, and the oath was filed May 24, 1879. This is one of the Peck oaths ; one of the stock in trade.

Mr. GREENE (a juror). Who fixes the schedule of time, in the first place ? It is done in the advertisement, I understand, but who fixes it ?

Mr. MERRICK. The advertisement fixes it.

Mr. GREENE. I understand that.

Mr. MERRICK. It is done in the office of the Second Assistant Postmaster-General, under the statute which I have read to you.

The COURT. It is in the regulations. Postmasters fix the time subject to the control of the department.

Mr. MERRICK. No ; they fix the schedule.

Mr. GREENE. I mean the original schedule of time.

Mr. BLISS. Section 3841 of the Revised Statutes.

Mr. MERRICK. That is not it.

Mr. BLISS. That fixes the schedule, does it not ?

Mr. MERRICK. No ; that says that the Postmaster-General shall furnish to the postmasters at the termination of each route a schedule of arrivals and departures of mails at those post-offices respectively.

Mr. BLISS. That fixes the time.

Mr. MERRICK. I know it does, but I want the rule requiring the time to be fixed before the advertisement and put in the advertisement.

The COURT. This order, however, changed the original time.

Mr. MERRICK. Yes ; I wanted to explain it all to him. Here it is :

Provided, That the Postmaster-General shall cause advertisements of all general mail lettings of each State and Territory to be conspicuously posted up in each post-office in the State and Territory embraced in said advertisements, for at least sixty days before the time of such general letting ; and no other advertisement of such letting shall be required ; but this provision shall not apply to any other than the general mail lettings.—Richardson's Supplement to Revised Statutes, 177.

That is the act of 1880. Section 3941, Revised Statutes (page 769), is :

Before making any contract for carrying the mail, other than those hereinafter excepted, the Postmaster-General shall give public notice—

And so forth. That is section 3941 modified by the later law—
and such notice shall describe the route,—

That is, at the original letting.

Mr. GREENE. I understand.

Mr. MERRICK. [Continuing to read:]

the time at which the mail is to be made up, the time at which it is to be delivered, and the frequency of the service.

Do you see ?

Mr. GREENE. I understand ; that is exactly what I wanted to get at.

Mr. MERRICK. The time is fixed by the Second Assistant Postmaster-General, to whom, under the law, is assigned all matters relating to the mail contracts. The duties of the office are distributed. They are given by the statute to the Postmaster-General generally, and then the law provides that he may by regulations distribute them, and they are distributed among the different offices; and the office of the Second Assistant Postmaster-General is the contract office in which everything relating to the contracts is done. Do you understand it?

Mr. GREENE. Yes, sir; I understand it. It seems to be an arbitrary rule as to the time.

Mr. MERRICK. Now, as I have shown you, that is the provision for the original advertisement. When a contract is taken by bid under that advertisement, the Postmaster-General has the right to expedite the time, as I have explained, and expedite the schedule.

Mr. GREENE. I understand that perfectly well. I only wanted to get at the one single point, how the original time was fixed by the advertisement.

Mr. INGERSOLL. Is it claimed that Mr. Brady fixed it?

Mr. MERRICK. It was fixed in his office.

Mr. INGERSOLL. Is it claimed that he fixed it?

Mr. MERRICK. It was fixed under his supervision. But I am answering the juror. I do not attack it at all.

The COURT. The indictment does not attack it.

Mr. WILSON. I do not know exactly what the drift of this argument is.

Mr. MERRICK. I am sorry that counsel cannot find out what it is about.

Mr. WILSON. I simply want to call attention to the fact——

Mr. MERRICK. [Interposing.] I object to any interruption from the counsel, because he understands perfectly well that what I was saying was only in response to Mr. Greene's inquiry about the original advertisement.

The COURT. The interruption is unnecessary.

Mr. MERRICK. I think it is quite unnecessary. Mr. Greene wanted to know how it was done, and who did it.

Mr. GREENE. I simply wanted to know how the original time was fixed.

Mr. MERRICK. That being fixed in the advertisement, they proposed to change it, and this affidavit changed it.

Mr. INGERSOLL. Will Mr. Merrick allow me to ask the court one question?

Mr. MERRICK. No; I would prefer, your honor, not to be interrupted.

Mr. INGERSOLL. I want to ask the court——

The COURT. You cannot ask any questions now, without his permission.

Mr. INGERSOLL. When a paper is produced to the jury hereafter, would I have the right to ask them to look——

Mr. MERRICK. [Interposing.] I object to any interruption.

The COURT. [To Mr. Ingersoll.] No, you have no right to interfere in that way. He is making his argument. Whatever rights you have on your prayers are, of course, unaffected.

Mr. MERRICK. Of course, the court will hear all the prayers.

Mr. INGERSOLL. The point is whether I have the right——

Mr. MERRICK. [Interposing.] I object. Your honor has decided it.

The COURT. The court has not allowed it.

Mr. MERRICK. Very well, let the counsel drop it.

The COURT. The counsel has dropped it.

Mr. MERRICK. As I have stated, gentlemen, the affidavit upon this route was the only paper that suggested a schedule of fifty hours. The only other paper filed upon the route which specified any particular time was a letter from J. H. Mitchell, which asked for one hundred hours. And I respectfully submit that that being the condition of the record on this route, it shows conclusively to the jury that Brady did just as he pleased; that Brady granted what the contractor asked, as against the petitions of the people, as against what the people said was needed, and in derogation of economy in the administration of his office; because what the people said was needed cost nothing, or very little, whilst what the contractor said they desired to have cost a large sum.

Why should he have done so? When a jury is considering the evidence produced before them they must bear in mind that outside of the testimony there is but one other piece of evidence properly subject to their consideration, and that is the immutable law of nature—the rules by which men ordinarily regulate their conduct, the impulses that propel men into an action. You must call that law to your aid in considering why Brady should have done these things when the people on the route asked for something inexpensive, when the people testified to Brady that the inexpensive service was all that was needed, when that testimony was uniform and unquestioned, and when the only testimony as to something else being needed than what they asked was *in the oath of the contractor*. Why should he grant what the contractor asked when it would involve the expenditure of thousands, while to grant what the people asked would save to the Government those thousands? Why did Brady respond to the request of the contractor and disregard the wishes of the people? Trace it to any motive that you can, gentlemen, to any reason that is consistent with innocence. Exercise your ingenuity and your judgment; give him the benefit of the doubt; consult yourself, Mr. Crane, and ask what you would have done under the same circumstances; give to him the benefit of every doubt, and I think after you have done that, and reasoned fairly upon what you know of the laws of human nature and the impulses of the human heart, you cannot, on this record, come to any other conclusion than that Brady must have been instigated by a corrupt motive—a corrupt motive known to and participated in by the contractor who made the oath.

The time for running the mails is not specified in any petition or paper. These affidavits, which were the only papers that speak of the time, indicate that they were matters of consultation and deliberation between Brady and some one or more of his co-conspirators, and were adopted as a part of the conspiracy in execution of the common design and common understanding to rob the Treasury of the United States. And I am impelled to a belief that the learned counsel upon the other side, at least one of them, felt the pressure of these circumstances, felt the pressure of the surrounding facts, felt the pressure of the conclusions to which all these facts tend. I cannot help but believe it when a learned gentleman like Mr. Ingersoll stands up before a jury and asks for the mercy of a verdict of acquittal——

Mr. INGERSOLL. [Interposing.] I asked for the mercy of an honest verdict.

Mr. MERRICK. The mercy of a verdict of acquittal or an honest verdict—for mercy, mercy! This place, under the Constitution of the United States, is not the seat of mercy. It is here that the scales are held up and the balance struck, and when the balance is struck and

Justice raises the sword of retribution to strike the blow in accordance with the judgment pronounced, then sweet Mercy, who has until that hour had her back turned, falls at the feet of the executioner, and stays the descending blow. This court-room is the place for law and justice. Conscious of coming doom, mercy is what the gentleman seeks even before that doom is pronounced. Let him ask for mercy at the seat of mercy, and not here.

Allow me gentlemen to call your attention to one other route as a specimen route in this connection, and ask for it your patient consideration. It is No. 45155, Dalles to Baker City, Oregon. There are several interesting features upon this route, and they may lead me to two or three digressions from the direct line of my argument, which is on the affidavits.

Length of route, two hundred and seventy-five miles; service, twice a week; schedule, one hundred and twenty hours; annual pay, \$8,288; oath by John M. Peck. This oath (14 L) has some peculiar features about it. The number of trips is not mentioned in the oath. The oath reads as follows:

CHICO SPRINGS, N. MEX., *September 18, 1878.*

HON. THOMAS J. BRADY,
Second Assistant Postmaster-General:

The number of men and animals necessary to carry the mail on route 44155, from The Dalles to Baker City, is eight men and ten animals, and the number necessary to carry the mail on said route with a schedule of seventy-two hours will be twenty-six men and sixty-six animals.

JOHN M. PECK.

You see how the original affidavit is filled in—blank trips, one hundred and twenty hours, eight men and ten animals; blank trips, seventy-two hours, twenty-six men and sixty-six animals, making ninety-two. The oath was administered and taken September 18, 1878, your honor. This remarkable paper does not specify the number of trips on either the present schedule or the proposed schedule. It is intended by the beneficiaries to measure the cost of expedition which would take from the Government annually many thousand dollars; yet in its incomplete form it was filed, and accepted by Brady. Perhaps some of you know how difficult it is to collect, ordinarily, even a just claim against the Government; with how much care, with how much explicitness the papers must be prepared. But this imperfect paper shows with what ease the autocratic Brady and his fellow-conspirators managed their business. In their haste to grow rich and in their fancied sense of security they often forgot even the externals of prudence.

October 2, 1878, Miner wrote in the name of Peck (page 1671) offering to carry the mails three times a week on a schedule of seventy-two hours for \$18,648 per annum for increased speed.

Mr. BLISS. Three times a week.

Mr. MERRICK. Three times a week. Hence we may infer that three trips a week were intended in the affidavit of Peck on page 2344. This affidavit was sworn to in blank by Peck and filled up by Miner. Three round trips a week over a route two hundred and seventy-five miles long would make one thousand six hundred and fifty miles of travel each week, or over two hundred and thirty-five miles on an average each day. (Page 1682.) The evidence shows that double teams were used, hence, each one of Miner's ten horses was compelled to travel forty-eight miles a day. There were eight men and ten horses

on the original schedule, and each one of those ten horses, according to his oath, would have to travel forty-eight miles a day. The proof is, at page 1682, that they had to carry it by double teams. After expedition we come to a singular antithesis. The thirty-three double teams were only required to make seven miles a day. Before expedition, each double team had to make forty-seven miles a day according to that oath. After expedition the double teams made only seven miles a day. In other words, they went at the rate of two and twenty nine one-hundredths miles per hour, for that was the time of the original schedule, a very little over two and a quarter miles per hour in going forty-seven miles a day for three hundred and sixty five days in the year. The oath says so. That is the result that comes from it, and nothing else can be derived from it. At first a span could make forty-seven miles a day, three hundred and sixty-five days in the year; but when the same span was lashed up to a speed of three and eighty-two one-hundredths miles an hour, less than four miles, a speed below that at which S. W. Dorsey wrote Anthony Joseph an ordinary horse could walk, the poor animals were exhausted at the end of seven miles. Seven miles per day was all they would have to go. Fisk and Madison, two practical drivers on the route, testified that forty-four horses were used for three trips a week before expedition was actually put on. Before I go further, I omitted a little piece of literature that I ought to have read the other day and will read it now. These horses had to go three and eighty-two one-hundredths miles an hour on the expedited schedule and on the original schedule two and a quarter miles an hour. I will now read you, from page 1104, a letter from S. W. Dorsey addressed to Anthony Joseph. When I was showing you the speed at which the horses had to go on the routes referred to heretofore, I omitted to give proof of the capacity of a horse for travel per hour, taking it for granted that the jury knew something about that matter themselves. I did not then think of this piece of literature:

ANTHONY JOSEPH, Esq.,
Taos, N. Mexico:

DEAR SIR:

So begins S. W. Dorsey, and then continues:

Your two letters to Mr. Rerdell have just come to my attention, and I make haste to answer them.

In regard to the schedule time of fifty hours from Ojo Caliente to Animas City being too fast, I have to say that you are evidently laboring under a singular misapprehension. Fifty hours' time is about *three and a half miles an hour, which is slow walking time for a horse or man.*

And yet I have shown you routes that were expedited and thousands of dollars paid for expedition where the speed did not reach three miles an hour; for instance, the Canyon City and Camp McDermitt route, where the time was expedited from one and ninety-one one-hundredths to two and fifty-three one-hundredths miles per hour, at a cost of \$29,950.

Dorsey further says in this letter:

Fifty hours' time is about three and a half miles an hour, which is slow walking time for a horse or man; *a good horse will walk four miles an hour for eight hours every day in the year.*

A good horse will walk four miles an hour for eight hours every day in the year, and yet the expedition upon this route was from two and twenty-nine one-hundredths miles per hour to three and eighty-two one-hundredths miles per hour, and according to the proof that was given by S. W. Dorsey *a good horse should walk that every day in the year.*

As I said, two practical drivers on the route testified that forty-four

horses were used for three trips a week before the expedition was actually put on, though it had been ordered. Their testimony is corroborated and confirmed by the absurdity of the conclusion necessarily drawn from the affidavit, which is that on that affidavit on the original schedule each horse had to travel forty-seven miles every day. Perfectly absurd! Perfectly and manifestly absurd!

Mr. Foreman, you asked me a question the other day, to which I wish to refer now. Perhaps some of the jury do not understand the matter, although I think you do. I see from the report that you inquired whether they did not cheat themselves by swearing to too small a number as the number of men and horses required to be used on an existing schedule. That is the way it is reported. I want now to explain right here how the thing was done. According to the section of the law that I read to you, the expedition shall not be in excess of the exact proportion that the stock and carriers on the existing schedule bears to the stock and carriers on the proposed schedule. For instance, suppose you have twenty stock and carriers on the present schedule, and you swear that thirty will be required in the new schedule, and \$5,000 is the amount paid for the old service. As the stock and carriers on the existing schedule are to the stock and carriers on the proposed schedule so is compensation on the existing schedule to the compensation to be paid on the proposed schedule. It is the simple rule of three. Therefore where you reduce the stock and carriers on the present schedule below what is the truth you defraud the Government, for you make your compensation on the proposed schedule larger than it otherwise would be. Wherever you reduce your divisor you necessarily increase the sum you are to receive on the proportion that I have given you. To reduce the number of stock and carriers on the present schedule is one mode of fraud; to increase beyond necessity the number of stock and carriers required on the proposed schedule is another mode of fraud. You can cheat at either end, but the cheating is in a little different way. It is done by making the *present* required number of stock and carriers less than they ought to be, and it is done by making the number of stock and carriers on the proposed schedule more than will really be required. For convenience of illustration, we will assume that twenty horses and carriers are required on a route before expedition, and that on increase thirty are necessary. The legal proportion would then be: twenty is to thirty as the original compensation is to the allowance. You multiply the original compensation by thirty, and you divide by twenty, and the smaller you make the figure you have to divide by the larger comes out your new compensation. I thought possibly, Mr. Foreman, you did not appreciate that the other day.

The FOREMAN (Mr. Crane). The other day the way it struck me was that the contractor, making oath that he required a less number of men and animals than he did actually require, was cheating himself.

Mr. MERRICK. I thought you were under that impression, and that would be a very natural impression for almost anybody. I thought possibly that some of the other jurors might have that idea, and therefore I deemed it best to call attention to it. It is just the other way. The smaller the number that is stated as being the number required on the present schedule, the more you cheat the Government. The larger you make the number on the proposed schedule the more you cheat the Government. You see here is what he has on the present schedule, twenty. [Exhibiting calculation.] He needs on the new schedule thirty. As twenty is to thirty so is the original compensation to the new compensation. You have to multiply thirty by the original com-

compensation and divide by twenty, and the smaller the divisor the larger the quotient will be. In order to cheat the Government, as to the first sum, he must lie down by diminution. In order to cheat the Government in the second sum he must lie up. Generally they lied both ways. Under Brady's auspicious care they lied securely; but now I think we will, as he has manifested so much desire to enjoy the benefit of Governmental funds, take care of him for a few years at the expense of the Government.

But let us return to our sum. As twenty is to thirty so is the original compensation to the new compensation. Suppose that in an affidavit the contractor should state the number actually in use on the original schedule at ten instead of twenty. The false proportion then would be as ten is to thirty, so is the original compensation to the new compensation. Then you would multiply thirty by the original compensation, and divide it by only ten, and that would double or treble your compensation.

The COURT. It would give you more than three times as much.

Mr. MERRICK. It would go from 50 per cent. to 200 per cent.

The COURT. It would be the difference between ten and thirty.

Mr. MERRICK. With the permission of the court I will hand this paper to Mr. Crane and let him look at it and let him put it in his pocket.

Mr. INGERSOLL. I have no objection to that, provided the court will allow all the papers in this case to go to the jury.

Mr. MERRICK. Give it back then, I do not want any confusion caused. I have read the paper, and it is simply a stated sum.

Mr. WILSON. We are willing that everything should go to the jury in this case.

The COURT. I think that would probably lead to a good deal of trouble in making up a verdict.

Mr. MERRICK. I do not think the jury would like to have all the papers. The proposition is, of course, preposterous to take all these papers and give them to the jury and let them look at them. They do not want them.

The COURT. Counsel addressing the jury has a right to exhibit any calculation he thinks proper in the course of his argument; but the jury will not take his papers with them.

Mr. MERRICK. Take the paper and look at it, Mr. Crane, I want you to see it, and get the idea. When you once get the idea you are all right.

The FOREMAN (Mr. Crane). I am not enough of a mathematician to figure on it here, and have not the time.

Mr. MERRICK. You have had some figuring to do before.

The COURT. It is the simplest thing in the world. I think there cannot be any difference of opinion on either side.

Mr. MERRICK. There is no difference of opinion. We all agree, and that is why I want to let the jury have the paper.

Mr. WILSON. If the court please, we have not objected to Mr. Merrick's paper; not at all.

The COURT. I do not understand you to object.

Mr. WILSON. Mr. Merrick has done a very extraordinary thing, to which I do not take any exception: Handing a juror a paper and asking him to put it in his pocket.

The COURT. The court will not allow that.

Mr. WILSON. I am not objecting. I want to say here now that so far as we are concerned the jury can have every one of these papers.

Mr. MERRICK. I would have never handed the paper to the jury in the world unless all sides had agreed to the paper. I did not suppose

there was a man in the court-room that did not agree with this paper. It is simply a statement in the rule of three.

Mr. WILSON. If your honor please, nobody has seen it but Mr. Merrick and the jurors.

Mr. MERRICK. I have read it.

The COURT. It is a part of his argument.

Mr. WILSON. I understand that, and do not want to be understood as objecting, for I have not. I consent now that Mr. Merrick may give the paper to the jury. If the jury want it, they may take it and examine it at their convenience, that there may be no misapprehension.

Mr. INGERSOLL. I object to it. It is a very dangerous paper.

Mr. MERRICK. The gentleman is right. It is a very dangerous paper.

Mr. INGERSOLL. Wonderfully dangerous!

Mr. MERRICK. It shows the way the sum was done, and it shows that unless perjury gives the quantities, a losing route can never become a gaining one. Mr. Ingersoll cannot sneer it away. He cannot laugh it away. He may smile his blindest smile, and shake his round red head and fat cheeks to the end of time, but this calculation justly and honestly made by arithmetic shows the foundation of this case to be in falsehood, in perjury, and in corruption.

Mr. INGERSOLL. Then you do not blame me for objecting to it.

Mr. MERRICK. Indeed I do not. Indeed I do not. I do not blame the counsel for any of his efforts to keep light from the jury. I do not blame the counsel for any of the things he said to the jury which are not in entire conformity to the record, through errors I will explain when I come to them, for I have references to them. I do not blame the counsel for his appeals to your hearts and his tear-stirring and pathetic addresses, for the simple reason that he was required to do his best for his clients, and as your judgments on the facts are beyond his reach, he went for the part which his efforts could enable him to touch.

Mr. INGERSOLL. I object to his statement of the record. I have said again and again that I wanted from this jury an honest verdict according to the evidence; that they had no right to be governed by prejudice or by fear, but that they must be governed by the evidence. I have never asked of this jury any mercy except the mercy of honesty, the mercy of courage, and that is all I ever shall ask. I do not like to have it said that we have asked this jury to disregard the evidence and give a verdict on account of mercy. We have asked no such thing.

Mr. MERRICK. Counsel takes back his speech.

Mr. INGERSOLL. I do not. I will read it now.

Mr. MERRICK. I understood the counsel to state what he now says in brief. If the pathetic appeals were not in the evidence, and that was all he wanted, and wanted to reach it by the facts, why these pathetic appeals? Was the home of Dorsey in the record? Were his wife and children in the record? Was his standing as a man heretofore and his standing now in the record? I admit that counsel asked for an honest verdict, and only an honest verdict, and asked it repeatedly on the evidence. I admit that. It is in his speech. But the other also is in his speech, and whilst with one word he asks for an honest verdict founded on the evidence, which verdict should be reached by judgment, he addressed the jury a pathetic appeal, that tears might moisten and obscure the vision of the jury.

Mr. INGERSOLL. Just let me read exactly what I did say upon that point:

You have no right to be guided or influenced by prejudice. You have no right to

act from fear. You must act with absolute and perfect honesty. You must beware of prejudice. You must beware of taking anything into consideration except the sworn testimony in this case. You must not be controlled by the last word instead of by the last argument! You must not be controlled by the last epithet instead of by the last fact. You must——

Mr. MERRICK. [Interposing.] Allow me to interrupt the counsel a single moment.

Mr. INGERSOLL. Wait until I have finished.

Mr. MERRICK. I ask to interrupt him.

The COURT. That is his speech.

Mr. MERRICK. I object. I want to say to your honor after what I have said, am I to be corrected? Have I not stated truly? Is the counsel to read his appeal to the jury over again?

Mr. INGERSOLL. I just want to read one line more.

Mr. MERRICK. I object.

Mr. INGERSOLL. I do not want——

Mr. MERRICK. [Interposing.] I object.

Mr. INGERSOLL. I do not want it said that I have asked for mercy.

The COURT. You had a right to interrupt Mr. Merrick on that ground and the court would sustain your interruption. The regulation of the court was with you. I know that your appeal was for the mercy of an honest verdict, as you said.

Mr. MERRICK. Certainly.

Mr. INGERSOLL. I said they must give it.

The COURT. I understand that. These appeals to the sensibility of the jury are in place always on the part of counsel.

Mr. MERRICK. Certainly. I do not deny that.

The COURT. If appeals on the one side are made to the prejudice of the jury, appeals are made on the other side to their sensibilities, and the one is just about a set-off to the other on the subject. After all, the jury will have to decide the case according to their consciences and according to the law and the evidence.

Mr. MERRICK. Unquestionably.

Mr. INGERSOLL. That is all I ever asked.

Mr. MERRICK. Let us take a recess now.

The COURT. We will take our recess.

At this point (1 o'clock p. m.) the court took its usual recess.

AFTER RECESS.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen of the jury: There are some interesting features connected with the route known as the route from The Dalles to Baker City, besides those to which I have already called your attention, and I will reach them directly when I complete a few more observations that I think ought to be made in reference to the subject already considered. At page 1682, and also at page 1700, it will be found that Fiske and Madison, practical drivers on the route, testified that forty-four horses were used for three trips a week before expedition was actually put on the route, although it had been previously ordered. The evidence therefore of these men refers to the number of horses required to carry that mail over that route upon the original schedule, and they who were the practical drivers upon the route testified that forty-four horses were necessary for that purpose. You will bear in mind that the oath of Peck, which was filled up by Miner, states that on the original schedule

ten horses only were necessary and used, thereby diminishing the divisor at least three-fourths. In filling up the blank affidavit Miner was guilty of a falsehood when he stated the number of animals required on the original schedule at less than one-quarter the number actually used. In other words, perjury reduced the first term of the proportion from forty-four to ten. The evidence does not show how much he enlarged the other term for his own benefit. It suffices however, for the purpose of showing the wrong perpetrated on the Government to prove the falsehood of one of the terms of the proportion. He may possibly have enlarged the other term as greatly beyond the truth, as the evidence shows he diminished the first term. The original pay on that route was \$8,288. This route is one of the routes, I believe it was conceded, upon which Mr. Stephen W. Dorsey received the original pay. On October 29, 1878, Brady added one trip from November 15, at a cost of \$4,144. In the same order he expedited the time from one hundred and twenty to seventy-two hours, at a cost of \$18,648. From July 14, 1879, he added four trips, at a cost of \$41,440, carrying forward in that addition the expedition, and making the total pay upon that route \$72,520. Seven trips alone cost at that rate an aggregate of \$29,008 per annum, and the expedition cost \$43,512, every cent of which was the criminal fruit of the perjury in that affidavit. Here is the interesting feature to which I referred. Though this costly expedition was ordered to be put on from November 15, 1878, it was not started or actually put on until a year later, or very nearly a year. Bear this in mind. The expedition which was originally provided and ordered at a cost of \$18,648, and which under Brady's fostering care finally grew to \$43,512, ordered from October 29, 1878, was not actually put on for one year. Vaile and Miner during that period walked coolly up to the Treasury at the end of every quarter and drew and pocketed the full amount of this theft. I can call it by no other name. Whilst I am not disposed to deal in harsh terms, I think plain English is best suited to forensic discussion, and I prefer to call things by their right names when I know what the right names are. They pocketed this amount every quarter, barring, of course, deductions suffered on account of the percentage due to Mr. T. J. B.; for however careless he may have been in percentages in other instances, in an instance where he so manifestly sold out his personal and his official honor, I think you cannot fail to appreciate that he was careful to get his $33\frac{1}{3}$ per cent. It was not until the investigation leading to this trial was begun that this fraud was discovered. During the year that the Government was paying for an expedition which it did not get, not a murmur came from the people who had petitioned under the stimulating appeals of the contractor for further trips and faster time. They did not seem to care. Now, gentlemen, do not allow that single incident to pass unchallenged, nor the fact to drop upon your ear without being recorded in your memory. I will tell you the reason why. The fact is that the people had petitioned for faster time under the stimulant of the contractors and through the energetic efforts of their agencies, and Brady passed his order for faster time, but for one year from the date when that order was to go into effect no faster time was put upon the route, and yet the people along the route, so anxious for faster time apparently, petitioning the authorities of the department to grant them faster time, made no sound, gave no sign, uttered no complaint, sent forward a repetition of petitions. Their voice was silent during the year, although they had no expedition—the thing they had prayed for and desired. Why? Because the agencies of the contractors had accomplished the

fraud for the contractors, and their voice in sending forward the petitions had been the voice of the people which they had recorded on the petitions signed by the people. I want you to keep this fact in your memory, because it is one of the means by which we may estimate the value of these petitions. By this means you may learn whence these petitions came, and in this fact you will see that the petitions came from the contractors, they throwing their voices into the stomachs of the people and causing the people to utter their wish. For one year after the order there was no expedition of service, and yet no murmur. For one year after the order, expedition was not put on and was not performed, but the price of the expedition was paid to the contractors by him who thus faithlessly trod upon his trust—Thomas J. Brady.

I desire by this map, gentlemen [exhibiting map of route], to show you that the through mail, instead of going across the route from The Dalles to Baker City, went around by Pendleton, a route upon which there was a railroad, part of the way at least. The proof in the case is that the route from The Dalles to Baker City carried no through mail, but that it went around the other way. Even where a letter was started near either of the termini of The Dalles and Baker City route, it was taken to the nearest termini and from the nearest termini went around upon the other route. Yet upon this route, thus purely local, running among a purely agricultural people, through a sparsely settled country, with a few local post-offices along it, the pay was run up to \$72,520, of which \$43,512 was paid for expediting the mail to a class of people whose habits, pursuits, and occupations made it utterly indifferent to them whether they received their mails in the morning, at noon or at night.

Gentlemen, these things must strike you with amazement. The facts show that Brady, upon certain routes to which I have referred disregarded the petitions of the people and allowed money to the contractors upon their affidavits, and their affidavits alone, as to the time that was required. They show to you how highly Brady appreciated the petitions of the people, and come in as strong corroboration of the testimony of Mr. Walsh, to which I shall have occasion to refer hereafter, but part of which I deem it proper to read to you in this connection. What does Brady say to Walsh, at page 2207?

Q. You held that contract?—A. Yes, sir; at that time. He informed me that he had expedited that very largely, had increased the service; the pay had been largely increased as the result, and that he did not really think that he owed me anything; that he did not see how I thought he could possibly owe me. I reminded him of the fact, as I had repeatedly told him, that the contract, even viewed from that standpoint, was unremunerative; that it had been a source of no profit to me; on the contrary, a loss; that he himself was largely instrumental in my ever having entered into it, and that I felt that such increase and expedition as had been accorded me was made under the law. He smiled at that, and asked me if I had not seen cases where petitions, &c., very numerous and largely signed, had not effected any result whatever. He then referred to the fact that after he had cut my trips down from 1876, that all the petitions that had come from that country had not succeeded. He said, in brief, that the matter of petitions was simply to enable him to act within the law, and that any man might have understood that, not seeing half as much as I had.

Further on, at page 2211:

Q. You have already stated that, and in a connection where it is appreciable, I think. Did he say anything about what you may have supposed to have been his reason for making these expeditions?—A. Oh, well, he said that he didn't think for a moment that I thought it afforded him any amusement to make expedition. I told him that I didn't know that I did, but I supposed the law directed him. He said that petitions simply enabled him to act within the law; that the petitions were matter of form. The petitions worked all right if it was all right; and when it was not, they didn't.

These gentlemen undertake to protect Brady behind the paper wall of his petitions when a witness on the stand testifies that Brady told him they were only used to serve as a hiding-place for his villainy. That witness is corroborated not by the word that goes out on the air and is lost, but corroborated by Brady's own record, by his official acts which showed that petitions when they were right were *all right, and when they were not right* failed.

How was it, gentlemen, in reference to petitions and the recommendations of members of Congress on the route from Vermillion to Sioux Falls? Let us see in order to illustrate further and to further corroborate Walsh's testimony. Alexander Millie, a carrier, testifies, at page 1980, that on the route from Vermillion to Sioux Falls the mail was very light indeed. Sometimes he had a postal card, and sometimes three or four or five letters and two or three papers. He carried the mail from Kidder to Sioux Falls, half way. This route was advertised as fifty miles long. The actual distance was from seventy to seventy-five miles. Brady's attention was called to the error in the distance before the award was made by a letter of A. Boynton, referred to the department January 14, 1878, with J. P. Kidder's indorsement. Notwithstanding the fact that the route had been let at fifty miles and was seventy-five, and his attention was called to it, he expedited the route to ten hours, something over seven miles an hour, and afterwards refused to extend the schedule or revoke that order upon a petition of all the postmasters upon the route representing to him that the time was too fast and beyond the needs of the people, and in view of the character of the country beyond the power of the carrier to obey the order of expedition. Vaile himself on the stand testified when pressed that it was too fast.

Mr. HENKLE. He testified to it on the examination of his own counsel.

Mr. MERRICK. It is not worth while for me to trouble you by looking at the jacket as I want to get along rapidly. Bennett, upon whose recommendation Brady had granted expedition, appreciating that the Government was being wronged by paying for expedition where it was not needed and could not be performed, wrote Brady asking him to take off the expedition and extend the time for the carrying of the mail on that route. What was Brady's answer? Brady who respected so much the slightest breath from a member of Congress; Brady who heeded what the people's representatives asked for, said what to Bennett when Bennett asked him to take off part of this expedition? Taking off part of it would necessarily have involved taking off a portion of the contractor's pay. Let me read the petition of the postmasters:

SIR: We, the undersigned, postmasters on United States mail route No. 35015, from Vermillion to Sioux Falls, Dakota Territory, do respectfully represent that the mail on the above route is now carried between Vermillion and Sioux Falls—distance seventy miles—on ten hours' time between the two places.

In our opinion there is no reason why the time ought not to be extended. We therefore ask and petition that the time for carrying the mail on the above route between Vermillion and Sioux Falls be extended to sixteen hours.

That would reduce the contractor's pay and limit Brady's percentage. It seems that Bennett wrote on the back of that as follows:

Respectfully recommended.

GRANVILLE G. BENNETT.

He was the recommendation of their Representative in Congress. What does Brady say? He addresses a note to Brewer:

BREWER: Write Judge B. it cannot be done.

It could not be done. Why? Because it would limit the pay of the contractors and stop part of the theft. He was helping the contractor to plunder the Treasury of the United States. We then have this condition of things on the routes I have explained to you. Where the people asked for a schedule of eighty hours, and nothing in the record but the affidavit specified forty-five hours, Brady gave forty-five hours in order to increase the contractor's pay. This was upon a route advertised at a mistaken length of fifty miles. It turned out to be seventy-five, and that fact was brought to Brady's attention, and yet he expedited it to a fast time beyond the power of the carrier to execute the order. Then Judge Bennett indorsed the petition of the postmasters along the line asking that the time might be made longer and Brady refused. We have him there in both conditions, one granting the request of the contractors as against the people, and the other refusing the request of the Representative and the postmasters in order to benefit the contractors. I respectfully submit that these papers and these conditions corroborate and confirm Walsh, who stands before you unimpeached by a single witness, and was a witness whom they did not dare to cross-examine.

Now, gentlemen, I will briefly call your attention to peculiar circumstances upon another route, and on this route I shall introduce one or two additional actors with Mr. Brady. It is the route the transactions in respect of which were largely discussed by Mr. Ingersoll. It is the route, gentlemen of the jury, in reference to which were filed in the department those two affidavits of John W. Dorsey of the 21st of April, 1879, and in reference to which the foreman asked Mr. Ingersoll some questions. I beg your patient attention whilst I call your attention to some of the features of this route. The length of this route was forty-nine miles, and the schedule was one trip a week in fifteen hours. The first oath of John W. Dorsey was made in Addison County, Vermont, April 21, 1879. It contemplates seven trips a week, and declares as requisite on existing schedule of time three men and twelve animals, making fifteen; and on the expedited schedule, seven men and thirty-eight animals, making forty-five, an increase of 250 per cent. The letter sending the first affidavit to the Post-Office Department will be found on page 866, and the letter asking to withdraw it and correct the error will be found on page 868. I will refer to those letters. Now, Mr. Foreman, I am going to tell you how it was that these two affidavits were made. I have referred to the first affidavit. I will come to the second. It is obvious that some clerk in the contract office, or most probably Brady himself, objected to this affidavit because it led on its face to a plain and manifest absurdity. I will show you that that affidavit is of all the affidavits in this case one of the most absurd; that it led to calculations so grotesquely absurd that any one who saw it as the basis of an order would immediately conclude that the order was founded in corruption. Thirty-eight animals on a route forty-nine miles in length, seven times a week, and the trip to be made in ten hours! The ten hours would make the speed at the rate of about five miles an hour.

The COURT. Not quite.

Mr. MERRICK. About that.

The COURT. A little short of that.

Mr. MERRICK. A little short of it. I will give them the benefit of what there is. They are welcome to it. Thirty-eight animals and

forty-nine miles! Thirty-eight animals on a route forty-nine miles in length provides a horse for every one and one-third miles. As there are but ninety-eight miles of daily travel each horse would be required to travel each day *but two and fifty-seven one-hundredths miles—about two and a half miles*. Each horse would have that task and that task only, gentlemen. I am sure that you [addressing Mr. Horigan] will appreciate that at that rate the horse would never wear out his shoes. As the speed was five miles an hour the carrier would have the privilege of changing teams every thirty-one minutes. Ninety-eight miles divided by thirty-eight horses equals two and fifty-seven one-hundredths miles of daily travel for each horse. How was it that such an absurd affidavit was written? Rerdell was following general instructions. “Mr. Dorsey, how many horses shall I say?” “Oh, that does not make any difference. Preserve the proportion. Get 250 per cent. That is all you need do. Preserve the proportion,” says Dorsey to Rerdell, and Rerdell was doing it when he filled up this affidavit. This absurdity was too palpable and monstrous for even the officials then in charge. It endangered Brady’s record too plainly, should that record ever be examined. It never would do to found an order taking money out of the Treasury on an affidavit like that. To have made an order on it would have left the official who made the order no alternative but to surrender all claims to common sense or admit the truth of the charge that corruption was his only motive. This paper was filed May 6, 1879, having been sworn to April 21. On May 8, 1879, a second affidavit from John W. Dorsey, on the same route, for the same service, and sworn to on the same day, was filed; this, like the other, being sworn to in Addison County, Vermont. It provided for seven times a week on a schedule of fifteen hours, two men and six animals—eight. On the reduction to ten hours it provided for six men and eighteen animals.

The FOREMAN. He swore to nothing.

Mr. MERRICK. He swore to that.

The FOREMAN. Was the affidavit sworn to in blank?

Mr. MERRICK. I think so. That is just what I am coming to.

The FOREMAN. He swore to nothing.

Mr. MERRICK. He swore to nothing. The record of that oath is not as against John W. Dorsey on the books of heaven’s chancery, except in so far as he was a member of the conspiracy that filled up the blank he swore to. But to prove that it was in blank is the point. Whilst Mr. Ingersoll denied at first that any of these oaths were sworn to in blank, he afterwards, in the course of his speech, ingenuously glided into a vindication of swearing to blank affidavits and filling them up afterwards. Among the things of which I want to convince this jury, and one of the most important things for me to convince them of, is that these affidavits were made out in blank and filled up afterwards to meet the exigencies of any case as those exigencies might arise; in other words, that these swearers, that these “good affidavit men,” as Miner called them, were ready to swear in blank and let anybody put in anything. I desire to show to the jury that these blank affidavits were kept in stock and were used when required; that the conspirators prepared and manufactured the burglars’ tools and handed them over to those who were to be actively engaged in the burglarious operations for the benefit of the common fund. The percentage of increase on this second affidavit is precisely the percentage of increase on the first affidavit. Suppose, for an instant, that John W. Dorsey did swear to them, both of them, and that they were filled in and complete when sworn to;

then it follows that, although they preserve the same proportion, one or the other of them must be a lie. He swears in one affidavit on the proposed schedule of ten hours that it will require thirty-eight animals, and in the other affidavit he swears that on the same schedule it will require eighteen. Both cannot be true. One must be false. If you recollect, gentlemen, when I handed him the affidavits and told him to pick out whichever he chose and tell me which was true and which was false, he could not do it. I will go on with the narrative and reach the point. The only difference between them is that the second affidavit looks more reasonable, and hence is less liable to provoke adverse criticism than the first one. Why? Because it calls for eighteen animals for a ten-hour schedule on a route of fifty miles. The first was absurd on its face because it required thirty-eight animals. The second oath was filed to take the place of the first for the reason that the second was not such a manifest absurdity as the first. It is perfectly plain, gentlemen, that the change in the affidavit was suggested in the department. The affidavit was filed but could not be acted on, as I have told you, because of its absurdity. I suppose that Brady saw that an order on such a manifestly absurd paper would disclose guilt in the record to the most casual observer, and he probably said to Rerdell, or S. W. Dorsey most likely, who was then here, and who was here whenever any one of these important orders was passed, "You may have the full amount of money you want, of course, but for Heaven's sake give me another affidavit that will be in reason." He did give him another affidavit preserving the precise relative proportions as the first, but which on its face did not disclose the criminality of the order that was to be made. Why was not the first affidavit withdrawn from the files? Brady could not put himself in the power of his clerks by thus mutilating his records. In this he was sensible, for crime is more frequently detected by an attempt to conceal truth and suppress evidence than in any other way. Before I get through this argument I will show you how the defense have suppressed evidence through their witnesses on the stand when called for and demanded; how they have sought the darkness when we had a right to see the light, and how they have kept concealed from the jury what it was the jury's right and privilege to see. I will show you how guilt has sheltered itself behind a refusal to testify to what might convict, although the defendants stood ready to testify to anything that tended to acquit. Had he not already known it, these two oaths should have shown General Brady the utter worthlessness of such papers. Both emanated from the same source, were sworn to on the same day, and came through the same channel, and yet in all their elements were so widely apart as to notify Brady that at best they were but wild and random guesses, or manifest and reckless perjury, and that any honest man could swear to two such widely variant statements on the same day was impossible.

The FOREMAN. You seem to lose sight of the fact that he did not swear to them; that they were filled up here in Washington.

Mr. MERRICK. If you are satisfied of that then I am done.

The FOREMAN. That is your evidence.

Mr. MERRICK. That is my evidence and that is the fact.

The FOREMAN. What troubles me is, that when they had the affidavits here in blank, and plenty of time to consider and consult with Brady, they should make that blunder and file one, and then two or three days after take it back and file another.

Mr. MERRICK. I am very glad you suggested that. That is true. That troubled me. I will show you now how it was. I am very glad

indeed that you made that suggestion. It shows you are thinking exactly in the line of what came across me. I solved the question to my satisfaction, and I am going to solve it to yours. I am not going to leave anything of these two affidavits. That any man should make them is proof of his guilt. I do not believe he did make them in their present shape. But if he did, if Mr. Ingersoll was right, and John W. Dorsey swore to those two affidavits, you have no more to do with John W. Dorsey. You can just drop him out of your calculations. If he swore to those two affidavits on that same day with those figures in them, it is a confession of his guilt. I do not say he did, and I do not believe he did. The first affidavit, gentlemen, called for thirty-eight animals on an expedited schedule, and the second for eighteen, or less than one-half. They were made to draw money from the Treasury of the United States, and one of them, as I have said, must have been false. Yet Brady accepted the second one with the first lying open there before him, and without inquiry, though it took from the Treasury just as much money as the first affidavit would have taken.

Brady is the character now, gentlemen, that is on the stage in this drama. He had those two affidavits both lying there before him when he made the order. He calculated the proportions, and he saw that the proportions were the same; that an order passed on either would give the same amount of money, and whilst he discarded the first he acted on the second, although the first gave him notice that the second was a lie, if the second did not give him notice that the first was a lie. There was a lie between them, and he never took the trouble to settle upon which the lie should rest, but quietly accepted the second as an instrumentality for drawing money from the Treasury of the United States. Can official delinquency go further in order to make it criminal?

Rerdell testified that Peck and John W. Dorsey swore to packages of oaths in blank.

The COURT. Mr. Merrick, before you go to that, be kind enough to explain how it is that those two affidavits, if acted upon, would produce the same amount of money. The first affidavit called for thirty-eight horses; that was a very liberal supply of horses for a fifty-mile route. Now, the second affidavit avoided that but produced the same result. How?

Mr. MERRICK. Let me show you how that was done, gentlemen of the jury. The first affidavit called for three men and twelve animals; that makes fifteen men and animals, on the existing schedule, and it specifies as required on the proposed schedule seven men and thirty-eight animals, making in all forty-five—and the sum would be stated as follows:

Mr. BLISS. As fifteen is to forty-five.

Mr. MERRICK. Yes; thirty-eight animals and seven men make forty-five.

Mr. BLISS. The original compensation was \$388.

Mr. MERRICK. Give it to me on paper.

Mr. BLISS. Work it out, do you mean?

Mr. MERRICK. No; not fully. As the number of men and animals required on the original schedule, is to the number of men and animals required on the new schedule so is the compensation on the original schedule to the compensation to be paid on the new schedule; that is, as fifteen is to forty-five so is three hundred and eighty-eight to what you are to allow for the new service. You multiply the three hundred and eighty-eight by forty-five and divide by fifteen, and you get the

result. Now, as eight is to twenty-four in the other case, so is three hundred and eighty-eight to the compensation. If you multiply three hundred and eighty-eight by twenty-four and divide by eight it amounts to precisely the same result as if you multiply three hundred and eighty-eight by forty-five and divide by fifteen.

The COURT. In the second affidavit the original number was reduced to eight from fifteen.

Mr. MERRICK. Fifteen will go into forty-five three times, and eight will go into twenty-four three times.

Mr. CRANE. All this shows the importance of what I asked for in the beginning. There are about five thousand pages of testimony, which it has taken six months to lay before us, and the counsel have talked to us and explained their figures. If we had had the volumes to refer to ourselves, and could turn to the evidence at any time and figure it out to our satisfaction, I think it would have been much better.

Mr. MERRICK. As a general rule, juries analyze speeches that are delivered much more closely without papers than they would with. If you find that my conclusions will be reached by a process of reasoning with which you find no fault, and you retain that in your memories, it will be less troublesome, probably, than to go over these pages.

Mr. CRANE. We should not want to go over them now; but if we had had them as we went along to refer to, it would have served to impress the testimony better upon our memories.

Mr. MERRICK. I will read anything to you with great pleasure that you may desire.

Mr. INGERSOLL. We are willing that the jury should have the printed testimony.

The COURT. That is a proposition which the court cannot entertain. If this evidence were tumbled into that jury-box, when should we have a verdict? How long would that jury take to examine these volumes of evidence which it has taken us six months to get before them, and with all the controversies we can imagine that would arise amongst them? Disputes would probably arise over each piece of evidence. The evidence would become separated. There could not be a device suggested that would be better calculated to mislead and confuse the minds of the jury than that.

Mr. MERRICK. I do not think, gentlemen, that you will care about it when I am done. Not that I claim any peculiar power, but I have been studying this evidence with some diligence and will explain it to you frankly and fairly. I have had trouble in solving many points, and one of them was the point suggested just now. If you are like me, you would thank anybody to unriddle the riddle for you rather than have the trouble of unriddling it yourself.

Your honor thought I was going to something else, but I am still on the affidavits, and do not intend to quit them until I have laid bare their character and exposed their falsity.

The COURT. My idea was this, in regard to those two affidavits: The proportion between the one and the other is exactly the same, and the result in money is the same, taking either one. The first is as fifteen is to forty-five. The forty-five is manifestly an exaggeration of the number of men and horses necessary to perform that work. The second corrected that error by diminishing the present number to a lower figure than the proposed number in the second affidavit, which was as eight is to twenty-four, which is the same as fifteen is to forty-five.

Mr. MERRICK. That is it.

The COURT. The question for the jury to pass upon as to the object

of this second affidavit is whether the present number necessary to perform that service was actually eight. If it was actually eight, and no more than eight, there was no harm there, because it was the truth. If eight was too small a number, though that leaves the question for the jury to pass upon as to the good faith of the parties using or filling up the affidavit, as the case might be—if the second affidavit had been filled up with the first number, fifteen, and the number of horses and men reduced to twenty-four, then the difference between fifteen and twenty-four would measure the increased compensation.

Mr. INGERSOLL. Decreased compensation?

The COURT. Would measure the increased compensation.

Mr. MERRICK. But would decrease that.

The COURT. The difference between fifteen and twenty-four would be only nine. But that seems not to have been the scheme upon which the affidavit was drawn. When the first affidavit was rejected, which stated the present number necessary as fifteen, and a second affidavit was prepared, the second affidavit reduced the fifteen to eight. Eight bears the same relation to twenty-four that fifteen does to forty-five, so that the compensation really is the same under one affidavit as the other. But that is not the question. The question is whether the second affidavit or the first was made in good faith; whether the party who made that affidavit, or filled up that affidavit, did it with an honest and fair purpose. That is the question which Mr. Merrick is arguing before you.

Mr. MERRICK. That is the question, and I am endeavoring to show you that as the same party made both affidavits, and the same party filled them up, both of them could not by any possibility have been made in good faith; one must have been in bad faith.

Rerdell testifies that Peck and John W. Dorsey swore to packages of oaths in blank, and these were then taken to the office of S. W. Dorsey, in Washington, to be filled up for such routes and at such times as the convenience of the contractor might demand. These two papers, therefore, furnish corroboration on that point of his evidence. I want you to bear in mind, in the remarks that I shall make, that one of the objects I have in view in this particular is to corroborate Rerdell, the "dead man" who was buried here before you with a rhetorical flourish. One of the other objects I have in view is to show you that John W. Dorsey, the living man, ought to be dead.

The COURT. Well, but, Mr. Merrick, if John W. Dorsey made these affidavits in blank, somebody else must have filled them up.

Mr. MERRICK. I am not going to talk of that—something else, your honor. I want your honor's kind attention, and you will see the most significant fact—fixing the time when the affidavits were filled in, and that they were blank when sworn to—remains. Now, I propose to show to you when they were filled in, and that they were blanks; and in that connection I propose to show you that John W. Dorsey on this stand committed perjury in this case—not in the affidavits; I am done with that now. The perjury was here, your honor. They were sworn to on the 21st of April, 1879; that is conceded. The first affidavit was filed May 6, 1879, sixteen days after it was sworn to. The second oath was filed May 8, 1879. When was the so-called or alleged mistake discovered in the first affidavit? Bear in mind that Rerdell left here on the 15th, 16th, 17th, or 18th of April, I do not care which; but the evidence shows, I think, that he left here on the 17th or 18th.

Mr. BLISS. The night of the 17th.

Mr. MERRICK. The night of the 17th. He left here on the night of

the 17th of April and returned here on the 5th of May. When was the so-called mistake in the first affidavit discovered? Manifestly after the first oath was filed, and it was sworn to on the 21st of April, and filed on the 6th of May. I say it is manifest that the mistake in that oath was not discovered until after it was filed. Why? These oaths were both filed by Rerdell (3 C, page 866; 6 C, page 868). If before filing the oath he had discovered any error to be corrected, why should he file it at all? Can you answer me that, gentlemen? He filed the oath on the 6th of May which had been sworn to on the 21st of April. On the 8th of May he asked to withdraw it and file another, stating that there was an error in the first. If he had discovered the error in the oath he filed on the 6th of May before that time why file it at all? Can you answer me that? No man in his senses would file a paper in a department of the Government, which he knew at the time would have to be corrected and could not be acted upon until corrected, and which he then intended to withdraw and correct. That would be the height of folly. No one but an absolute idiot would have done such a thing. It is therefore plain that Rerdell did not discover any error on the 21st of April, 1879, nor until after the filing of the affidavit in which it is said the error existed.

But John W. Dorsey says that he received a letter from Rerdell on the morning of the 21st of April, asking him to make another oath correcting the error and saying he would destroy the first oath. How reconcile these? On the 21st of April Rerdell had not discovered any mistake. On the 21st of April, and from that date down to the 6th of May, when he filed the paper, he regarded the paper as a valid and correct paper and the sufficient foundation of an order to draw money to put in his master's pocket. On the 21st of April he could not possibly, therefore, have known of any error or have seen any defect in the paper that would impair its usefulness in the Post-Office Department. John W. Dorsey says that on the 21st of April he got a letter from Rerdell; that Rerdell told him he had discovered the error; asked him to write another oath, and said he would destroy the first oath in which the error occurred. Did he destroy it? No. What did he do with it? He kept it. What more? He filed it as a valid paper. Did not John W. Dorsey lie when he detailed the contents of such a letter? I say, gentlemen, that he committed willful and deliberate perjury on this stand when he swore that he had such a letter from Rerdell, and that his perjury is made out, not by the oath of another man, but made out by those circumstances which constrain your belief, even as against your will, if you should have willed against it. Rerdell never wrote such a letter. It is plain, too plain to talk about further.

This shows not only that John W. Dorsey cannot be credited, even as against the statement of Rerdell, but shows Rerdell and S. W. Dorsey in close communion with the officers of the contract office, and together in that office manipulating these affidavits. I have already said to you that the alleged error could not have been discovered until after the affidavit was filed, for if it had been discovered before it was filed it never would have been filed at all. After it was filed it turns out, however, that they have another one put in as a substitute. Therefore, the character of the affidavit in its objectionable features first became apparent and were developed after it came into the department. These circumstances not only corroborate Rerdell on the identical point in controversy as to all these affidavits, but condemn and blacken the testimony of Mr. John W. Dorsey, by showing that he has devised and concocted a narrative of falsehood. They also clearly show the relation in

which these parties stood to Brady, and throw a flood of light upon the entire case. What did John W. Dorsey swear? Do you remember it? That on the morning of the 21st of April he made the first affidavit; that he then got a letter from Rerdell, telling him that there was an error in the first affidavit, and saying that he wanted him to swear to another to correct that first affidavit and send it on, and he would destroy the first. He concocted a whole consecutive narrative so plainly inconsistent with the circumstances in the natural order of the transaction that there can be left no doubt upon your minds that it was an ingeniously devised story told with the intent to delude and deceive the jury. I say Rerdell towers in character above that man, his co-conspirator, his confrere, the brother of Rerdell's teacher, tutor, master, and his leader in a life of iniquity.

To make it clearer that manifest perjury was committed by John W. Dorsey, I must recur to what he says in another part of his evidence as to these affidavits. You will observe that the affiant is designated as "subcontractor." Now, what does he say to that? [Two original affidavits handed to the jury.] You see the word "subcontractor" is written under John W. Dorsey's signature. I want to make this perjury of John W. Dorsey so plain to you that you will see it on the wall to-night after the candle is blown out. Let me read from page 4136:

Q. But you have no recollection of what he said to you when he sent you these affidavits, have you?—A. No, sir; nothing particularly.

Q. No independent recollection?—A. He wrote that word "subcontractor" in there. That is one of his tricks.

Open the affidavits and look at it.

The COURT. That is in the body of the affidavit, is it not?

Mr. MERRICK. No, sir; it is under Dorsey's name. Dorsey signed his name, and you see under his name is the word "subcontractor."

He wrote that word "subcontractor" in there. That is one of his tricks.

Q. How do you recollect it?—A. It is his handwriting.

The COURT. That is true.

Mr. MERRICK. That far it is true; now we will come to what is not true:

Q. He wrote that in there for you to swear to, and you swore to it like a man?—A. He wrote it in there *after I swore to it*. I never swore to any "subcontractor."

Q. You did not?—A. No, sir.

Q. Was there anything else written in there after you swore to it?—A. I don't know, sir.

That was written in there after John W. Dorsey swore to it, your honor. And yet John W. Dorsey testifies that he swore to that affidavit in the morning; that at the noon mail he got a letter from Rerdell saying that there was a mistake in it; asking him to make another and send it to him, and he would destroy the first; and yet he now says that the word "subcontractor" was written in there by Rerdell after the affidavit reached Washington City, and after Rerdell had written to him that there was a mistake in it, when there was no use in it, and he was going to destroy it.

Mr. CRANE. I do not see what the object was in writing the word "subcontractor" there.

Mr. MERRICK. He was neither contractor nor subcontractor, but the reason was this—

Mr. CRANE. [Interposing.] I remember now.

Mr. MERRICK. [Continuing]—that it required an oath from the contractor or subcontractor.

Mr. CRANE. Who was the contractor on that route?

Mr. MERRICK. Miner. The subcontract was on file, was it not?

Mr. BLISS. Not at that time.

Mr. MERRICK. No; it was S. W. Dorsey.

Mr. BLISS. Hanson's was the only subcontract on file, and that was not put on file until October, 1879.

Mr. MERRICK. Now, bear in mind that John W. Dorsey says that Rerdell wrote that word "subcontractor" after he swore to it; therefore that word must have been written in after the affidavit came back to Washington. You recollect, gentlemen, how I pressed him on that subject. You know I had him here on the stand for two or three days under a tolerably severe cross-examination. On page 4139, which I have already read, Dorsey gives his explanation. The theory of the other side is that Rerdell, on some day prior to the 21st of April, sent on one affidavit, and then on the morning of the same day Rerdell, finding that he had made a mistake in this first affidavit, sent on another in the same mail or the next mail of that same day. This must be so if both were received by Dorsey on the same day, as he says they were, one in the morning mail of the 21st, and the other in the afternoon mail of the same day. If they reached there on the same day, they started from here on the same day. Their theory is that Rerdell wrote the first affidavit, and sent it on in the morning mail of one day, then discovered his mistake, and then on that same day he wrote and sent on another. It may be asked, why did John W. Dorsey return both of these affidavits? He was mistaken in the first, and the first was to be destroyed. He swore to one in the morning, got his second letter at 12 o'clock, saying that there was an error in the first, and asking him to send on another. Why did he return both?

Mr. CRANE. He had already sent on the first affidavit.

Mr. MERRICK. That might have been the case.

The COURT. That is what he says.

Mr. MERRICK. Is that what he said? Well, he had sent on the first one as soon as he swore to it. But here is a somewhat peculiar circumstance: The word "subcontractor" was not on the paper when he swore to it. He mailed that paper on the 21st, say, and he could not have mailed it earlier, because he swore to it on that day. He states in his testimony, which I have read, that Rerdell wrote him that he would destroy the first affidavit, as useless, because of the mistake in it. A letter mailed in Vermont on the 21st would get here at a time when everybody on all sides concedes that Rerdell was in the far West. Rerdell was thousands of miles away, as conceded by everybody at that time.

The COURT. Mr. Merrick, I understand the explanation that John W. Dorsey made was this: That the 21st of April was Monday, and Rerdell left here on the 17th or 18th; the 17th would be Thursday, and the affidavits were probably prepared by Rerdell some time on the 17th; it might have been the night of the 17th.

Mr. MERRICK. Yes; I think that is so.

The COURT. And not put in the office until the 18th; that would be Friday; then, Sunday intervening, the affidavits would not reach him before Monday; one came before the other.

Mr. MERRICK. Reach Dorsey?

The COURT. Yes.

Mr. MERRICK. Yes, that is so. I do not think your honor caught my remark; my back being turned to you, I think a word must have escaped you.

The COURT. Perhaps.

Mr. MERRICK. It was not as to the time the affidavit reached Dorsey; it was as to the time that the letter inclosing the affidavit reached Rerdell.

The COURT. And Rerdell was back here by the 5th of May?

Mr. MERRICK. Oh, yes; I am coming to that.

The COURT. And the first of these affidavits was filed on the 6th of May, and the other on the 8th.

Mr. MERRICK. Yes, that is right.

The COURT. So that if the affidavits, as John W. Dorsey testified, were sent back by him on the 21st, they might have lain in the office until the return of Rerdell.

Mr. MERRICK. I suppose they did.

The COURT. And he would then have received them both at the same time.

Mr. MERRICK. He would then have received them both at the same time; but if he received them both at the same time, why, in the name of all that is good and bad, would he write "subcontractor" on the defective affidavit which he had determined to destroy, and proceed to file it, with a good one in his pocket? Why should he proceed to perfect that which was beyond the reach of being perfected, when he had the perfect thing in the same envelope that contained the imperfect one?

Mr. INGERSOLL. How could he have had them in the same envelope if they were sent at different times?

Mr. MERRICK. In another envelope, then, and both in his pocket at the same time.

Mr. INGERSOLL. There is no evidence that it was in his pocket.

Mr. MERRICK. No, sir; say in his office, then, on his table; and there on his table laid the erroneous affidavit by the side of the correct affidavit, and he sits down and attempts to perfect the erroneous affidavit, and then goes and files it.

Mr. INGERSOLL. That is the first one he picked up.

Mr. MERRICK. That is your theory.

Mr. INGERSOLL. That is my theory.

Mr. MERRICK. Wise, learned man! I again must use his term—"Infinitely" learned man! [Laughter.]

This case, Mr. Foreman, is not to be decided by accidental circumstances, but by facts, facts in their relation and connection with each other, and according to the logic of events, according to the logic which we know belongs to the course of human conduct under ordinary circumstances.

Rerdell was at Sidney, Nebraska, on the 21st of April; that is conceded; and at Greeley on the 23d or 24th. The letter written on the 21st, therefore, reached here when Rerdell was away, and lay here. The consequence follows, if John W. Dorsey is to be credited, that Rerdell, after his return on the 5th of May, wrote the word "subcontractor," having accidentally picked up that affidavit without reading it, and then, still without reading it, without knowing which one it was, took it up to the department and filed it.

Mr. INGERSOLL. He had two petitions.

Mr. MERRICK. He wrote the word "subcontractor" under Dorsey's signature. You see how they are disturbed, how in regard to perjury in this case they strain at gnats and yet swallow camels. He wrote the word "subcontractor" to complete and make available this paper which he had promised before the 21st of April to destroy as useless, and at the same time had asked for and had obtained a correct paper to

take its place. Gentlemen, do counsel suppose that you are thus to be played upon?

Mr. LOWERY (a juror). The word "subcontractor" was not written on both, was it?

Mr. MERRICK. Yes, written on both; that is the fact. Rerdell was a jolly boy. He served his master faithfully, profited by his instructions, and learned his lesson well.

Such subterfuges, gentlemen, from men of the ability of the counsel on the other side are only made in those desperate conditions when, overwhelmed by evidence, in their agony and in their despair, they substitute sophistry for logic, and strive by jeers, such as we have just seen, to push away stern facts. Mr. Ingersoll says that innocence is free and frank and careless, and makes no preparation for days of disaster. That is true. But let me say to you, gentlemen, that conscious guilt is apprehensive, cowardly, and given to the habit of endeavoring to escape the consequences of one crime by the commission of others oftener of greater magnitude. If a defendant, like John W. Dorsey, lies when on the witness-stand, it is from conscious guilt. He lies with the intent and the hope to escape conviction by his perjury. Better, far better, for a defendant, that one or more of his witnesses should tell a hundred falsehoods than that the defendant himself should tell upon the witness-stand a single lie. His lie is a confession of his guilt, and no human sophistry, no human reasoning, though the heart may swell to bursting with pity and sorrow at the admission, can deny this conclusion drawn from the immutable laws of nature.

I am now about to pass upon another subject, if the court please, which will occupy greatly more time than remains until the usual hour of adjournment. If agreeable to your honor, it would accommodate me if you would now adjourn the court.

The COURT. Adjourn the court.

Thereupon (at 3 o'clock and 47 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

FRIDAY, JUNE 1, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen of the jury: I am sure that you will pardon me if I recur to a subject already discussed and trouble you again for a few minutes with some further explanation of the process of calculation by which the result of additional compensation upon expedited routes is to be reached according to the rule laid down in the law. I do this, which you may suppose to be almost a work of supererogation, for the reason that I deem it important that each one of you should clearly comprehend this process in order to appreciate the manner in which this business was conducted, and because a great many persons would, upon a first statement of these propositions, almost naturally be led to suppose that where a contractor in making his affidavit swore to a less number of horses and carriers on the existing schedule than were really required, he would be seeming to cheat himself; whereas, in point of fact, the reduction of the number of horses and carriers in the affidavit below the number actually required on the

present schedule is the elementary and first fraudulent step in the transaction of getting wrongful compensation upon the expedited schedule. You will recollect that I read you the law, and I have no doubt that you bear that law pretty accurately in mind. It prescribes the process the department was required to adopt in such cases where, after examination, it might find additional horses and carriers necessary to execute the order for expedition. I will read it to you again:

No extra allowance shall be made for any increase of expedition in carrying the mail unless thereby the employment of additional stock and carriers is made necessary, and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation in the original contract bears to the stock and carriers necessarily employed in its execution.

Now, as this proportion must remain, as I have explained to you, through all changes and all conditions, therefore, as I have demonstrated, I am sure, to your satisfaction, under the law no losing contract can ever become a gaining contract by expedition. I showed you by the testimony of Brady and Vaile that my demonstration was correct. I now desire you to appreciate the rule more clearly as laid down in the law. The wider the difference between the present number of horses and carriers on the present schedule, which is taken by advertisement, and the number of men and horses to be required on an expedited schedule, the greater will be the pay on the expedited schedule. To make the difference wider you may adopt one of two processes, or you may adopt both. You may diminish the number required on the present schedule below what that number ought to be, or you may increase the number on the proposed schedule beyond what that number ought to be. If you give the number required on the increased schedule accurately, as it ought to be, and reduce the number required on the present schedule below what it ought to be, you increase the distance between the two numbers just by the amount that you reduce the number on the present schedule below what it ought to be. If you reduce the number on the present schedule below what it ought to be and increase the number on the proposed schedule beyond what it ought to be, you make the difference wider still by being faithless and false at both ends. There seemed to be some little trouble about understanding exactly how these proportions were preserved in the two affidavits of John W. Dorsey on the route from Pueblo to Rosita. I have just stated the sum here on paper so that you might understand it. The first oath was: fifteen hours, seven times a week, three men, and twelve animals, making fifteen in all; ten hours, seven times a week, seven men and thirty-eight animals, making forty-five. The second oath was: fifteen hours, seven times a week, two men and six animals—eight; on the proposed schedule, six men and eighteen animals—twenty-four. The animals differed in the two oaths by the difference between eighteen and thirty-eight, which is twenty.

These proportions were observed so as to make exactly the same result and to fill therefore the same amount of compensation. How that was done seemed to me to be somewhat of a perplexing question. The way was simply this: The original pay was, for one trip, \$388; for six additional trips, \$2,328; for seven trips, \$2,716; cost of expedition, \$5,432; making in all, \$8,148. Instead of regarding the \$8,148 as an unknown quantity we take it as a known quantity. Now for the first oath, as fifteen men and horses on the present schedule are to forty-five on the proposed schedule, so is the pay on the present schedule, \$2,716, to \$8,148. Now take the other oath. If you figure that in the same way you will find the result just the same.

But the plainest way to understand it, and I am surprised that I find some people outside who do not understand it, is to bear this in mind: That, according to the law, as the proportion must be observed, the wider the difference you make between the number of horses and carriers on the present schedule and the number of horses and carriers on the proposed schedule the larger will be the pay. Therefore in order to cheat, you may reduce the number required on the present schedule, or enlarge the number required on the new schedule, or do both. I shall show you further that on these affidavits they invariably did one or the other, and generally both. I have recurred to this subject for the reason that I observed that some of the jury did not seem fully to understand the matter.

There is another circumstance connected with John W. Dorsey's two affidavits on the Pueblo and Rosita route, which I explained to you yesterday in connection with his testimony. In that explanation I am satisfied I convinced you beyond the possibility of a doubt that John W. Dorsey had been guilty of deliberate perjury on this stand before this jury; not accidentally at all, but deliberate perjury, and that he had devised a consecutive narrative in order to protect himself from the peril of your verdict against him. He thus convicted himself, for when a defendant goes upon the stand under the privileges of the law that he may testify, and testifies to what the jury believe he knows to be a lie, it is equivalent to a confession of guilt.

The FOREMAN (Mr. Crane). There is one thing I cannot understand—how those affidavits of John W. Dorsey as subcontractor were ever allowed to be filed in the department. Only the contractor could file them.

Mr. MERRICK. Only the contractor.

The FOREMAN. I do not understand how they ever got on file.

Mr. MERRICK. Only the contractor under the regulations could make an affidavit for expedition, but according to the testimony I think Mr. Vaile asked to have some subcontractor's affidavit filed and Mr. Brady consented to accept the affidavit of the subcontractor, against the regulations.

The COURT. Mr. Brady said that he saw nothing in the way of accepting the affidavit of the subcontractor where the subcontractor had an assignment, in effect, of the whole interest.

Mr. MERRICK. Yes, sir; that was plain enough.

The COURT. That is, where the subcontract showed that 100 per cent. of the increase should be his. He had the contract, and if an increase of service or expedition was allowed he was by the terms of his contract entitled to the whole of it. I understood Mr. Brady to say that he regarded that as placing the subcontractor upon the same footing in regard to the affidavit as though he had been the original contractor, because he had a whole interest. That was his position as I understood it.

Mr. MERRICK. That was the position he took, and that was all the explanation he gave. There was some sense in that explanation, too, because where the subcontractor takes the route at full pay the original contractor has no further pecuniary interest in it, although he is still subject to a possible pecuniary liability. Having made his contract with the Government he can never release himself from the bond he has entered into to the effect that the work shall be performed according to the orders of the department. Although he may subcontract it at the full pay he still remains in subjection to the covenants of the bond. The only way of securing himself would be to take a bond of indemnity from the subcontractor. When he gives the contract to the subcon-

tractor and the subcontractor is to receive all the pay, then the contractor need not look further after the work except to see that he does not become liable on his bond by reason of the delinquency of the subcontractor; and as the subcontractor has assumed the burden of doing the work, then it is very reasonable that his affidavit should be as good as the affidavit of the contractor, and probably better, because he knows more about what is going on and is able to give a statement of greater accuracy, derived from greater intelligence and information. But your honor, in the case inquired of by Mr. Crane, as in the greater part of these cases, the subcontractor who filed the affidavit was not subcontractor at the full amount of the pay. The subcontractor only had part. In the particular case before us John W. Dorsey, whose name was designated as a subcontractor, was neither contractor nor subcontractor.

Mr. WILSON. Mr. Merrick, I dislike exceedingly to interrupt you, but if you will point out a case of that kind I will be very much obliged to you.

Mr. MERRICK. John W. Dorsey was neither contractor nor subcontractor on the Pueblo and Rosita route.

Mr. WILSON. You are mistaken.

Mr. MERRICK. How am I mistaken? Show me wherein I am mistaken. If I am mistaken I will take it back.

Mr. KER. You are not mistaken.

Mr. MERRICK (to Mr. Wilson.) You cannot do it. The record shows he was neither one nor the other, and you know it.

Mr. WILSON. Now, Mr. Merrick, you ought not to say that I know it.

The COURT. That is personal. A lawyer is not bound to speak of his own knowledge.

Mr. MERRICK. Pardon me, I did not want to say that.

Mr. WILSON. I do not object to Mr. Merrick's saying I know it.

Mr. MERRICK. I will say to Brother Wilson that the record does not show it.

Mr. WILSON. Before you get through I will point it out to you.

Mr. MERRICK. Do it now.

Mr. WILSON. I cannot do it now without the record before me. I must have a little opportunity to look it up.

The COURT. It would be a wise lawyer who knew this entire record.

Mr. MERRICK. I venture to say that there is no subcontract on file with John W. Dorsey on that route, and John W. Dorsey on the stand swore he did not know whether he was subcontractor or not. It was the "Don't know" and "Don't remember" that ran down the line of these defendants like the serpent trail of iniquity, to be followed by the lightning stroke of retribution.

Mr. WILSON. I know you will correct it when the record is shown.

Mr. MERRICK. I will correct it if it is in the record.

Mr. WILSON. I know you will, and at the proper time I will show it to you.

The COURT. I see on the record that John R. Miner was the contractor on this route and there was a subcontract to Eli Hansom.

Mr. MERRICK. And a subcontract to S. W. Dorsey, but not to John W. Dorsey. John W. Dorsey never was a subcontractor. I say this subject to correction. I will take it back if I am in error, for I intend to be as frank with you as I could you see through my bosom into my heart. I say, subject to correction if I am in error, that John W. Dorsey was neither contractor nor subcontractor. There are other routes of the same kind where affidavits were made by parties who were neither contractors nor subcontractors, and I will refer to them. Mr. Crane asks how

was it that that affidavit was accepted? How was it that all these things were done? How was it that routes taken at less than \$50,000 per annum in a short time paid the parties that took them at that small sum, nearly *half a million dollars per annum*? How did that thing happen? When you ask me how these things happen I say that you have marched far on the road to the ultimate conclusion to which I am endeavoring to lead you by the force of the facts in this case, endeavoring with sorrow and regret that I am obliged and constrained by the facts to lead you to that conclusion. I say, gentlemen, that when you ask that question you are far on the road and have passed a point beyond which you cannot turn back, unless the facts I state are erroneously stated. How could these marvelous things be? What said his honor when they were presented to him, as I read you the other day, and to which I will again in this connection call your attention. His mind was asking itself the same question you were asking me. What said he? I read from page 2052:

As to the official acts of Brady, we have in evidence the appropriation made by Congress, the extravagant expenditures in regard to star-route expenses by which those appropriations were exhausted; application made to Congress for new appropriations, and the expenditure of those appropriations; the character of these different acts; these sudden orders for increase of service and increase of expedition which the jury have a right to pass upon and compare with the necessities that existed, or with the requirements of the service; and for myself, as I have to decide this question upon the effect of these acts upon my mind, I must acknowledge that they have made a very deep impression of an adverse character to the *bona fides* of those orders.

The only answer to these inquiries, Mr. Foreman, is that these orders and these proceedings were not in good faith. In other words, the answer to your inquiry is the indictment found by the grand jury and now before the court, which you are trying, namely, the charge against these men that they were co-conspirators in these transactions, disregarding the obligations of law and trampling upon its forms and its substance in order that they might rob the Treasury and defraud the United States. The answer to your question, sir, is "guilty as charged in the indictment." The indictment answers the question. It says there was conspiracy and collusion in order to produce the criminal result of robbing the Government. Hence, Mr. Foreman, you cannot be surprised at anything done which to your mind ought not to have been done. You cannot be amazed at any act which shocks your sense of propriety. You cannot wonder at any proceeding which in your judgment is plainly contrary to law. The organization itself among these men shocks our sense of propriety. The proof shows that the proceedings of the organization in order to carry out its object were all in violation of the law. When you have determined that there was such an organization and that this was its object and this was the mode of prosecuting its design, you have answered all the inquiries that arise in the mind of an honest man as to why, whence, and wherefore these things were, and were done. It is an interesting circumstance in the case in connection with your inquiry that an affidavit written by one conspirator, Rerdell, sworn to in blank by another conspirator, J. W. Dorsey, was filled up in its material parts by Rerdell, and under the name of J. W. Dorsey was written by Rerdell the designation of his relation to the contract, namely, that he was the subcontractor. Then J. W. Dorsey came before you and swore that he never wrote that word, and did not know that he was subcontractor or had any relation whatever to that route. Does not this help you to answer, and have not you since you asked me the question moved still further on that road towards ultimate conviction and satisfied opinion?

Now, gentlemen, there is an interesting circumstance connected with the 21st day of April, 1879, in the history of John W. Dorsey. It seems by the evidence that we have been considering that he made two affidavits on that day in reference to the route known as the route from Pueblo to Rosita, but was that all the work he did in a moral way on that day? Was that all his moral mill ground out in the way of affidavits? No, gentlemen. On that day John W. Dorsey was much occupied in the affidavit business. He not only swore to those two affidavits on the Pueblo and Rosita route on April 21st, but he swore to another one equally false on the Silverton and Parrott City route, and on the same day another one equally false on the Tres Alamos and Clifton route—that is, if he swore to them at all. He made four affidavits on that day. I say he was making blank affidavits to go in stock, to be filled up as the emergency required by whoever was designated by the conspiracy to manipulate and fill them up, for he made four on that one day. That was enough; that exhausted his moral nerve, swearing to four blank affidavits in one day, leaving them to be filled up with he knew not what, nor cared he what. So he suspended, and he laid by for five days. Then he began again. On the 26th day of April, five days afterwards, he swore to a blank affidavit on White River to Rawlins; on the 26th of April he made a blank affidavit on Trinidad to Madison; on the 26th day of April he made a blank affidavit on the Ojo Caliente route. Then, fatigued with his burdens, he sank down. He made four blank affidavits on the 21st, and three blank affidavits on the 26th. By the 26th the stock was running a little short and had to be filled up. It was filled up in the same way. I shall consider now some of those affidavits of the 26th, as I go along.

I will first take the route from Trinidad to Madison, No. 38140. John R. Miner was the contractor; subcontractors, De Busk and Burgner; length of route, forty-five miles; service, one trip a week in thirteen hours (page 1026); original pay, \$338. November 13, 1878, Raton was added to the route (page 1028) and paid for at the rate of \$172.75. You will recollect, gentlemen, I may say in passing, how both Mr. Bliss and Mr. Ker explained to you the manner in which Raton was added to that route; and I will give it some little further explanation than they gave, in order that you may have it implanted in your minds, but not just at this moment; I am now on another matter. April 22, 1879, increased two trips; pay, \$1,021.50. May 19, 1879, expedited from nineteen and three-quarters to twelve hours; pay, \$2,758. Total pay, \$4,290.30. The oath of John W. Dorsey, in which he is designated as subcontractor, was sworn to before Kellogg, April 26, 1879, and filed April 30, 1879. (I will just remark, in passing, that you know Rerdell was not here then; he was out in the far West.) The oath was taken before Kellogg April 26, and filed April 30, 1879. Schedule for nineteen and three-quarter hours, three trips, one man and four animals. For twelve-hour schedule, three trips, three men and eleven animals.

Now, who filled that affidavit in; and was it blank when sworn to? These are the questions to which I shall now direct your attention upon those affidavits.

Boone swears (page 2692) that the figures "38140" and the words as written out, "three," "one," "four," "three," "three," "eleven," and "subcontractor," are in different handwritings, and that, to the best of his judgment, the oath was filled in by S. W. Dorsey, taking the circumstances in connection with it; that the word "twelve" is in another handwriting, and resembles Rerdell's. Now, there are three handwritings in that affidavit. (Follow me along closely, gentlemen,

and bear these things in mind.) That the body of the oath was written by Kellogg, but that he is doubtful as to whether the signature of John W. Dorsey is genuine. There are four handwritings. (We are getting these gentlemen pretty close together.) The body of the oath was written by Kellogg; that is conceded. Boone swears that, in his judgment, taking into consideration the circumstances, all the material parts of the oath were written by S. W. Dorsey—the number of men and animals, the time, and the name of the route; that the “twelve” he thinks was written by Rerdell; he does not think the signature of John W. Dorsey probably his. In that he is mistaken, as I will show you. The signature of John W. Dorsey is genuine. Rerdell did write the “twelve,” Kellogg wrote the body of the affidavit, and S. W. Dorsey wrote all the rest. Here are three of the conspirators and their agent, Kellogg, having a hand in this affidavit. And I will show you, gentlemen, that that word “twelve” written in there by Rerdell was written in the department after it was filed, when Rerdell scratched out another word and wrote the word “twelve” to suit Mr. Brady.

Rerdell's testimony (page 2336) is to the same effect as Boone's, except that he says that the signature of John W. Dorsey is genuine, and that, further, he (Rerdell) filled in the word “twelve” after the oath was filed, having previously erased the word “fifteen.” The oath on its face bears evidence of having been filled up in different colored inks and handwritings, and, gentlemen, I want to call your attention to the fact that this oath (6 E) says “one *men*,” and therefore that circumstance shows that that was written before the word “one,” and you will see the different hands. [6 E handed to the jury.] Just look at it and you will see where “twelve” is written over an erasure. I want you to examine it and see if that is not so, as Rerdell says it was. I know I am a little tedious about this business, gentlemen, but although I may fatigue you, I think I can flatter myself that you will be better satisfied that I take so much time, because I feel convinced that I am enlightening you.

The COURT. What is the date of that affidavit?

Mr. MERRICK. Twenty-sixth of April.

Do you suppose, gentlemen of the jury, that any man, educated as all these men are, and especially S. W. Dorsey, according to Mr. Ingersoll's description of him, would write “one men?”

Now, gentlemen, I will hand you, in connection with that affidavit, just in passing, as a matter of incidental interest to you, the letter transmitting it to the department. [5 E handed to the jury.] The letter of John W. Dorsey, dated April 28, 1879, transmitting the oath, was both written and signed by S. W. Dorsey. That looks like John W. Dorsey's handwriting. He tried to imitate it. This pure and high-minded statesman, so far above ordinary men that the law cannot reach him, in the opinion of his counsel, sits down to the small business of an attempted forgery. That is what Boone says.

Mr. CRANE (foreman of the jury). Was not John W. Dorsey here at the time?

Mr. MERRICK. At the time that letter was written?

Mr. CRANE. Yes, sir.

Mr. MERRICK. I cannot answer.

Mr. CRANE. I think there is some evidence on that point.

Mr. MERRICK. I think it is very likely he may have been, but I do not know of any evidence of the fact.

Mr. WILSON. I understand he says he was.

Mr. MERRICK. Very well, that is no evidence of that fact, but I think we will accept that for the moment, and suppose he was; he says he was.

Rerdell was not. Boone swears that that letter was written and signed by S. W. Dorsey, from his knowledge of Dorsey's handwriting; and so does Rerdell swear the same, and S. W. Dorsey went on the stand and does not deny it, and does not deny having filled in the affidavit. I will hereafter deal with S. W. Dorsey *in personam*. But suffice it for the present that both Boone and Rerdell testify that S. W. Dorsey wrote that letter and signed John W. Dorsey's name to it. My only reason for showing you the letter was to show you that S. W. Dorsey attempted to disguise his handwriting and make it look like John W. Dorsey's. And, according to his statement, S. W. Dorsey was himself the only man interested in the route at that time. Whether that be true, or not true, it is what he says, and for my purpose I will adopt it. No other man on earth had any motive in making an affidavit and in filling it up and manipulating papers, or in dealing with the matter of increase and expedition, according to his statement. This was one of the routes which, according to his statement, had been divided up the 1st of April, 1879; and I will show you that that division—when I reach that point of the case—was a division of the spoils of robbers, and that the taint which they bore on the 1st of April followed them, growing still worse and more noxious in the air through the sultry summer months, even on down to the time of this investigation. The division was a mere sham and a fraud. If honestly intended to be carried out and executed according to the contract, if the conspiracy existed at that time and these routes were tainted, no one of the conspirators could by such a division free himself from the body of the death of the crime that had attached to themselves.

The affidavit was made during Rerdell's absence in the West. That, I suppose, is a conceded fact; and if the testimony of Boone is correct, Rerdell wrote the word "twelve," which appears to have been written in after it was filed, as testified to by Rerdell. The oath was filed on the 30th of April. On the 5th of May the oath had been filed. It was sworn to after Rerdell left here, namely, on the 26th of April. The latest day that anybody fixes for his departure is the 18th of April. It was sworn to on the 26th, and filed on the 30th. It was therefore sworn to and filed during his absence from the city. If, then, the word "twelve" was written by Rerdell, that was written after he came back on the 5th of May, and consequently after the oath had been placed among the records of the department. That is plain. If that is so, gentlemen, is this not strong corroborative proof sustaining Rerdell—Boone swearing that Rerdell wrote the word "twelve?" Does not Boone's oath corroborate Rerdell's? And do not all the surrounding circumstances corroborate him—his absence at the time of the filing, his absence at the time of the swearing, and his presence subsequently? As I go along I shall accept the various incidents as they arise, connected with that fact, and use them for the purpose of corroborating Rerdell.

S. W. Dorsey filled in the oath and wrote and signed John W. Dorsey's name to the letter of transmittal on a route on which Miner was contractor. None of the papers name any specific time, except the letters of Chaffee and Belford, which ask to have the trip made in one day, and the oath of John W. Dorsey is erased so as to conform to a twelve-hour schedule. On this forged, erased, and altered oath by a man who was a total stranger to the route, so far as the records of the department are concerned, Brady allowed \$2,758.05 per annum. But my purpose in bringing it to your attention in connection with the line of argument I am pursuing is to satisfy you as to the manner in which these oaths were manip-

ulated, and incidentally that Brady was a party to such manipulation. At the same time these corroborations of Rerdell are calculated to give him such vitality as will presently cause him to make some noise in the coffin in which Mr. Ingersoll supposed he had so tightly nailed him.

I say, gentlemen, it proves that Brady was helping this manipulation. How and why? Rerdell, as I told you, swears that he wrote the word "twelve," and wrote it over an erasure. Boone swears that it is his handwriting. I have shown you that he could not have done it up to the 5th of May on account of absence, and that on the 5th of May it was in the department. How could Rerdell get access to a paper in the archives of the department, in the office of General Brady, without General Brady's consent? Who had the paper in custody? In whose charge was it? Who was its guardian, its protector? It belonged to the files of the department. It was the foundation, the groundwork upon which was to be built the order taking money from the Treasury of the United States. That order taking money from the Treasury of the United States was to be passed by Brady. To Brady, therefore, was given the custody of the papers that formed the conditions precedent of the order. In Brady's charge was this paper, in Brady's desk was this paper, and in his hand belonged this paper. Without disturbing that hand, and without knowledge to him, Rerdell could not have gone into the Post-Office Department and have obtained possession of this paper and erased one word and written in another.

Again, why was not the order passed on the paper as it had originally stood without the change? Because Brady wanted a change. Brady, gentlemen, did not choose to pass the order on the affidavit as it stood, and when Rerdell came, as the agent of S. W. Dorsey, to inquire into the condition of things, and to know why the order was not made, Brady tells him, I have no doubt, "I do not want to pass it on that affidavit; there is some objection to it; here, take it and have it fixed." So there in Brady's office Rerdell takes the affidavit, scratches out the objectionable word, whatever it may have been, and over the erasure writes a word that Brady wanted in order to pass the order the contractors desired.

You not only see, gentlemen, by this single paper how these affidavits were made, with what utter disregard of the truth, with what utter disregard of even the decencies of a respectable appearance in reference to the truth, but how these affidavits were made by the manipulation of all the conspirators. And you see enough here to bring these parties directly together—Brady in his office, Rerdell taking the paper from his custody in order to perpetrate a forgery and erasure, John W. Dorsey swearing to it, S. W. Dorsey filling it up, and Rerdell having no relation to it, except as the agent of Dorsey, and going there to see about it. With these simple facts you tie these four defendants up in one solid mass of conspiracy; you tie them up as combined conspirators mutually acting for the benefit of some one of them, and each one doing some co-ordinate act necessary for the consummation of the final fraud of which they, or some of them, were to become the beneficiaries.

What more need you to establish a conspiracy than evidence such as that? But upon the conspiracy itself I shall dwell more largely at another time. I am done with those papers (5 E and 6 E). Let them go, but bear them in mind, gentlemen.

Now, I am tempted to do what I regret to do, to digress a little from the line of my argument in order to call your attention to a most remarkable state of affairs on this route. There is a feature about the

route from Trinidad to Madison that is so peculiar that I must bring it to your attention. The route was let at forty-five miles over a direct road; the schedule was thirteen hours; that would be three and forty-six one-hundredths miles per hour. September 18, 1878, S. W. De Busk, a very intelligent witness—you probably recollect him; he was a bright-looking, tall, well-made man, with bushy, sandy hair, and was remarkably correct and fluent in his language, and I asked him how it came; he told me he was a preacher—a very intelligent witness, wrote to the department that in March, 1878, a post-office had been established at Raton, and asked to have it supplied from Pulaski, a railway station twelve miles distant, twice a week (page 1027). There was a railway coming around up north of Raton, and it was twelve miles distant.

Mr. WILSON. I think you state that inaccurately.

Mr. MERRICK. Look at page 1027. It was embraced on the route from Trinidad to Madison, and by an order dated June 6, 1878, and November 13, 1878, twenty-three miles were added to the distance, and \$175 per annum to the pay. Now, you will understand that it was desired that Raton should be put on the upper route, where there was a railroad, but this route from Trinidad to Madison was wrenched out of its way to embrace Raton, contrary to the wishes of the people.

The service once a week was bid off by John R. Miner, originally, at \$338 a year. But in the distribution it fell to S. W. Dorsey. When the twenty-three miles were added for Raton the schedule was elongated from thirteen to nineteen and three-fourths hours. The affair now was fixed and ready for manipulation. We have arrived at the interesting point: From May 1, 1879, Brady added two trips, \$1,021.50. From May 19, 1879, he reduced the running time from nineteen and three-fourths to twelve hours, allowing annually \$2,758.05. The pay for three trips was \$1,532.25; for expedition, \$2,758.05; total, \$4,290.30. The time between Trinidad and Madison was thirteen hours in the advertisement, and twelve hours under the expedition. The embracing of Raton lengthened the schedule to nineteen and three-fourths hours. If Raton had been supplied from the nearer office, at Pulaski on the railroad, as the postmaster asked, there would have been no excuse for expedition or for taking this \$2,758 from the Treasury. What was Raton, this little side post-office, made to cost? We have another simple sum in proportion. As sixty-eight miles is to twenty-three miles, so is \$4,290.30 to \$1,451. De Busk testifies that the salary of the office was about \$12 per annum. Thus Raton was put on that route contrary to the express wish of the postmaster, and was made to serve as a pretext for expedition at a cost of \$2,758, which otherwise would not have had the flimsiest pretext to defend it.

Mr. WILSON. May I interrupt you to correct you?

Mr. MERRICK. If I am wrong in what I have said.

Mr. WILSON. You have said now two or three times that the postmaster requested that Raton should be supplied with mail from Pulaski. I beg to call your attention to it and to say that I think you are in error. I know you will correct it as soon as you find you are wrong.

Mr. MERRICK. I was referring to the letter of September 18, 1878.

Mr. WILSON. You mean the letter of De Busk?

Mr. MERRICK. De Busk, the postmaster—

Mr. WILSON. [Interposing.] Please give me the page.

Mr. MERRICK. 1027; in which he says:

The newly finished branch of the Atchison, Topeka and Santa Fé Railroad passes within ten miles of Raton post-office. Pulaski post-office is twelve miles distant from Raton, and directly on this line of the railroad.

Mr. WILSON. The last paragraph in the letter is the one.

Mr. MERRICK. [Reading:]

The object of this communication is to petition for mail service twice a week, if not from any central point to Raton, at least from Pulaski post-office.

Am I not right?

Mr. WILSON. No.

Mr. MERRICK. "At least from Pulaski;" he tells you how near it is; he tells you that it is on the railroad; points it out, and gives reasons to show why that is the proper place. And yet you give him communication with a star-route on a slow schedule over a longer line from Raton to the route than from Raton to Pulaski, and you tell me he does not there say by implication or expressly that that is where he wanted the route.

Mr. WILSON. No, pardon me, Mr. Merrick; his request was "if not from any central point to Raton, at least from Pulaski."

Mr. MERRICK. "If not from any central point"—I have read it. If not from any central point, at least from this point, and this is the place, as I have shown you in the preceding paragraph, by telling you that it is on the railroad, and it is only so many miles distant. If my Brother Wilson had been Second Assistant Postmaster-General would he have done it? No, sir; not unless his conscience has undergone a metamorphosis by reason of the air of the contractors that he has been obliged to breathe. I have made no mistake there.

But the end is not yet. De Busk testifies that no mail was supplied to Raton by the contractor on this route until January, 1879, and that from January, 1879, until the following May it was supplied but once a week. Up to April 30, 1879, Harvey M. Vaile, assignee—of whom I shall have some pleasant things to say—drew full pay, with no deduction for the non-supply of Raton. And from April 1 until the supply became tri-weekly, in May, S. W. Dorsey drew the increased pay for two trips a week which were never performed. Correct me there, too, if you can. Vaile with his hand in, Dorsey with his hand in——

Mr. WILSON. [Interposing.] If you want me to correct you I will do so.

Mr. MERRICK. If I am wrong I want to be corrected.

Mr. WILSON. If you have any case where service was paid for that was not performed, I would be exceedingly obliged to you if you would present it.

Mr. MERRICK. The record shows that the service was paid for.

Mr. WILSON. Show me any case where the service was not performed and paid for.

Mr. MERRICK. Very well, I will do it.

Mr. WILSON. It will be greatly gratifying to me.

Mr. MERRICK. I will do it; it is in the record.

Mr. WILSON. All right.

Mr. MERRICK. The service was not performed and was paid for.

Mr. WILSON. Show it.

Mr. MERRICK. And I will bring in the record, although in an argument like this I cannot always be ready to put my finger on the page.

Mr. WILSON. If you find any case where anything of that kind was done and where the pay was not afterwards deducted from the contractor, I would be very happy to have you show it.

Mr. MERRICK. I will show the jury my whole case.

Mr. WILSON. All right.

Mr. MERRICK. I do not think your apprehension is——

Mr. WILSON. [Interposing.] Oh, not the slightest apprehension.

Mr. MERRICK. You seem to be disturbed. The pay was given, and it was recouped after this investigation began, sir, and not while your man Brady remained in office. Here is the record in the hands of my associate, Mr. Bliss; you can take it, with him, and look it over.

Mr. WILSON. I think I understand the circumstances.

Mr. MERRICK. I do not think you do.

The COURT. Mr. Merrick, this conversation between you and Judge Wilson is out of place.

Mr. MERRICK. Entirely out of place, but a proper respect requires that I should reply to him.

Mr. WILSON. If your honor please, I was only calling his attention to what I think is a mistake.

The COURT. Of course you have a right to call his attention to a matter of that kind.

Mr. BLISS. Mr. Merrick asks me to read the table of payments on the Trinidad and Madison route, on page 729.

November 12, 1878, for the third quarter of 1878, \$84.50 was paid to H. M. Vaile, assignee.

Mr. WILSON. How many trips?

Mr. BLISS. I am reading the record.

For the fourth quarter of 1878, \$170.88 was paid January 25, 1879, to H. M. Vaile, assignee.

For the first quarter of 1879, \$127.69 was paid to H. M. Vaile, assignee, May 10, 1879.

For the second quarter of 1879, \$624.68 was paid to S. W. Dorsey, July 25, 1879.

Mr. WILSON. How many trips?

Mr. BLISS. The order will show the trips.

Mr. WILSON. Certainly.

Mr. BLISS. That was the total pay as fixed by the schedule; the trips on which Mr. De Busk testifies were not made.

Mr. MERRICK. Now, gentlemen, I will call your attention to another route, showing when these affidavits were filled up and that they were blank when sworn to—Toquerville to Adairville. I have already had that route under consideration in reference to one or two matters connected with the case. Length of route, one hundred and thirty-two miles; one trip, sixty hours; original pay, \$1,168. (It is refreshing to see how these routes grow in value to contractors and cost to the Government.) October 10, 1878, increase of two trips, \$2,336. July 8, 1879, increase, four trips, \$4,672. Total pay for trips, \$8,176. The same date, July 8, expedited to thirty-three hours, \$12,718.22. Total pay for trips and expedition, \$20,894, on a route which twelve months before had paid \$1,168. We have discussed that before. Oath by John M. Peck, contractor, sworn to January 22, 1879, filed June 25, 1879. On that oath an order for expedition was made July 8, 1879.

And now let me call your attention to one circumstance applicable not only to this oath, but to a great many others, particularly to some of Dorsey's, but to all of Peck's, every one of them. I do not know whether your attention has been attracted to it heretofore or not. I refer to the long period of time elapsing between the date at which the oath was taken and the date at which it was filed. That applies to all of Peck's oaths without exception.

This was sworn to January 22, 1879, but was not filed until June 25, 1879. You will see, gentlemen, as I go along, that this oath was one of that batch of blank affidavits distributed at the time of the division of the routes on the 1st of April, 1879, as a burglar's tool previously provided

for the use of the conspiracy, and then given to the man who had charge of the safe that the burglar's tool was fashioned to break open. As Rerdell swears, at this distribution these affidavits were divided up and S. W. Dorsey took a lot of the blank affidavits. Here was one of Peck's sworn to January 22, 1879, and never filed until June 25, 1879. Boone swears (page 2688) that the body was written by Miner, and the number of the route and the figures relating to the men and animals by Rerdell; and Miner admits, in his examination, that he wrote it, which is probably a circumstance that might lead some of you to doubt whether he did or not. Rerdell corroborates Boone, and swears further that he did fill in the oath about June 25, 1879, the date upon which it was filed; that the signature of Peck is a genuine signature, and that the oath is one of the blanks turned over at the time of the alleged division of the routes, and that when a petition for increase arrived S. W. Dorsey instructed him to fill up one of Peck's affidavits for daily service and to preserve the proportion of 150 to 250 per cent. increase. Now, before I comment upon that, or say another word, let me state what S. W. Dorsey says about that increase.

On July 8, he remembers that there was an increase of pay from \$1,168 to \$17,390; he remembers that there was an increase, but not as to the time (page 3940). Referring to the affidavit of Peck (6 D, page 951), he does not think he directed Rerdell to fill up a blank affidavit and preserve the proportion of 150 to 250 per cent., but says *it is possible that he may have done so*; cannot say that he did not do that act, which, had you done, sir, you would have remembered to your dying day. Cannot say that he remembered of ever telling a man to fill up an affidavit sworn to by Peck, and to be regardless of what he put in it so that he preserved the proportions and got money enough! Cannot remember that! Would you ever forget it, Mr. Crane? Could time and incident and circumstance and all the infinite variety of the transactions of human life blot that memory from your mind if you had done so? No, sir; you never would forget it. And yet they want you to believe that S. W. Dorsey had forgotten it. He throws something out for his protection against an indictment for perjury when he says, "*I might have done it.*" When a man says he might have done so infamous and villainous a thing as that, I say, gentlemen, that it is nine-tenths proved; for the barrier against crime, which was his sense of moral obligation to duty, he admits is broken down, and that he was capable of the act, whether he did it or not.

Mr. INGERSOLL. What page did you cite, Mr. Merrick, as to him saying possibly he did it?

Mr. MERRICK. 3773 and 3945.

The COURT. Mr. Merrick, perhaps the jury would like to have you explain what was meant by Dorsey's instruction to Rerdell as to preserving the proportion of 150 to 250 per cent.

Mr. MERRICK. To preserve those proportions in the sum which I told you of this morning between the number employed on the present schedule and the number to be employed on the prospective schedule, so as to get an increase to that amount on the original compensation.

The COURT. That is from 150 to 250 on the original contract.

Mr. MERRICK. On the original contract; yes, sir.

The COURT. That proportion was very much exceeded sometimes.

Mr. MERRICK. That proportion was sometimes quadruply exceeded.

The COURT. That rule has a curious operation. You deduct 40 per cent. from the first quantity, the number now engaged, and it would give you a profit of 200 per cent.

Mr. MERRICK. Yes, sir.

Mr. INGERSOLL. It gives more than that; it gives over 250 per cent.

The COURT. Very well. Suppose the present schedule to call for ten men and horses actually and necessarily employed now, and it be proposed that the expedition shall be increased so as to require thirty.

Mr. INGERSOLL. That would be 300 per cent.

The COURT. Three hundred per cent. Now, see how this rule works. If the affidavit man is prepared to go his length of swearing that the present service requires not ten men but only six, and he leaves the proposed number thirty—

Mr. INGERSOLL. [Interposing.] That is 500 per cent.

The COURT. That gives him 500 per cent. Reducing from ten to six is a reduction of 40 per cent. So that by swearing to a reduction of 40 per cent. as to the present service, it makes an increase of 500 per cent.

Mr. MERRICK. That is what I was trying to explain this morning when I started out.

Mr. INGERSOLL. That is all very clear.

The COURT. Now, in regard to this instruction as to preserving the proportion for the increase of 150 to 250 per cent., I did not know whether it was entirely understood by the jury or not.

Mr. INGERSOLL. The first increase was from 150 to 200 per cent., and the second to 250 per cent.

Mr. MERRICK. That was a correction of a blunder.

Mr. INGERSOLL. You can call it a correction; it was made, though, from Friday till Monday.

Mr. MERRICK. I suppose you have found the reference?

Mr. INGERSOLL. Yes.

Mr. MERRICK. And have no correction to make?

Mr. INGERSOLL. Not unless you read the whole testimony.

Mr. MERRICK. I am going to read everything.

The indorsement that it was filed in the department June 25, 1879, is probably correct. Rerdell was here at that time (page 3946); is quite sure he did not tell Rerdell to take one of the blank affidavits and fill it up, for the reason that Rerdell had entire charge and attended to that business; is quite sure he did not. Why is he quite sure? Because Rerdell had charge of and attended to that business, and he is quite sure he did not give him any specific instructions as to this route for the reason that he had invested him with general power and gave him general instructions.

Mr. INGERSOLL. Did you ask him there if he ordered this filled up after it had been sworn to?

Mr. MERRICK. I don't remember.

Mr. INGERSOLL. That is the question—after it was sworn to.

Mr. MERRICK. Rerdell says that he did.

The COURT. It was sworn to in January.

Mr. BLISS. This is the testimony:

Q. Can you tell when that affidavit was filled up?—A. I cannot.

Q. Have you no recollection upon that subject?—A. None whatever.

Mr. MERRICK. "I cannot tell when it was filled up. I have no recollection." Why should he not remember? Ought he not to have remembered such a circumstance as that? Again, take in connection with that his other remark, "But it is possible I might have done so."

Mr. BLISS. That is page 3945.

Mr. MERRICK. He says it is possible he may have directed Rerdell to fill it up.

Mr. INGERSOLL. I do not want any mistake about it. The point is this——

Mr. MERRICK. [Interposing.] If your honor please, if Mr. Ingersoll will allow me, I scarcely think this is the time in the course of the argument to make points. I have a long road ahead of me, which I shall abridge as much as possible.

The COURT. Counsel can only correct misstatements.

Mr. INGERSOLL. I know Mr. Merrick's position——

Mr. MERRICK. [Interposing.] That has nothing to do with it. The question is as to the fact.

Mr. INGERSOLL. Yes; as to the testimony. Mr. Merrick says that Mr. Dorsey does not know whether he ordered this man to fill up these blanks after the affidavits was sworn to. I deny that there is any testimony tending in that direction.

Mr. MERRICK. I will ask Colonel Bliss to read it. It will relieve me.

Mr. INGERSOLL. I have no objection in the world to his reading it.

Mr. BLISS. I read from page 3945:

Q. Did you give Rerdell directions as to filling up one of these blank affidavits?—

A. Well, the only recollection I have about that is that he telegraphed me, or wrote me, when I was West, in 1879, that the department required a shorter schedule on two routes, I think, but what reply I made to him I don't remember.

Q. Did you not direct him to fill up a blank affidavit and preserve the proportion of 150 to 200 per cent.?—A. Oh, I don't think I did.

Q. What is your recollection about giving him directions as to filling up the affidavit?—A. My recollection is that I did not, but I don't know; it is possible that I might have done it.

Mr. MERRICK. Is it not just what I said? Is not the statement "*Possibly I may have done it?*" Does not that refer to a blank affidavit, and do not also the two questions before that to which this is in reply? Is not a *blank* affidavit the subject being talked of?

Q. Did you give Mr. Rerdell directions as to filling up one of these *blank affidavits*?—

A. Well, the only recollection I have about that is that he telegraphed me, or wrote me, when I was West in 1879, that the department required a shorter schedule on two routes, I think, but what reply I made to him I don't remember.

Q. What is your recollection about giving him directions as to filling up the affidavit?

It all refers to a blank affidavit.

Mr. INGERSOLL. The point is still not understood.

The COURT. That is a point of argument.

Mr. INGERSOLL. It is not argument. It is——

The COURT. [Interposing.] He has not misread the evidence?

Mr. INGERSOLL. Oh, no.

The COURT. Then you cannot correct him.

Mr. MERRICK. I have not misstated.

Mr. INGERSOLL. The point is as to the difference between an affidavit in blank and a blank affidavit!

Mr. MERRICK. The difference between an affidavit in blank and a blank affidavit!

Mr. INGERSOLL. That is just it exactly. There is a great deal of difference.

Mr. MERRICK. The difference between tweedle-de-dum and tweedle-de-de. What does he mean by saying the proportion must be preserved? Lying? "Yes; lie as much as you please; put into the affiant's mouth all the falsehoods you will. If one hundred horses are used upon the present schedule, make it one horse; and if five hundred horses are required upon the proposed schedule, make it a thousand. It makes no odds. Preserve the proportion. Money is the thing. Brady is the giver. Prepare the instrument and have it ready. Put

it in his office, so that it will be a seeming protection for his violation of law and dereliction of official duty. As to its truth, I scatter truth to the winds. Bring me the money. Preserve the proportion. That is the amount of money I want." Rerdell had entire charge. That was Dorsey's reason for thinking he did not give him specific instructions. It was because Rerdell had entire charge. In other words, why should he give him specific instructions? He had given him a plenitude of power, and with that gift of plenary power he had given him such general instructions that he need not longer trouble himself about specific instructions as to specific cases, to fill up an affidavit in blank, or to fill up a blank affidavit. Do you see the difference, gentlemen? I do not. I do not see the difference between filling up an affidavit in blank and filling up a blank affidavit. The affidavit was sworn to when? On the 22d day of January. That was the day it was sworn to. Counsel says there is a difference between an affidavit in blank and a blank affidavit. It was sworn to on the 22d day of January, 1879. When did Dorsey give instructions to fill it up? Before it was sworn to? That is a damaging admission by counsel. What was Dorsey doing with that affidavit on the 22d of January, 1879, when he was in the United States Senate? Can counsel tell me that if that affidavit was filled up before it was sworn to, it was not filled up before the 22d of January, 1879? And if it was filled up by Rerdell at Dorsey's direction, Dorsey gave those directions while he was in the Senate of the United States. What had he to do with that affidavit when he was a Senator of the United States? Counsel's explanation puts his client in a worse position than my argument. On the 22d of January, 1879, by the proof, Rerdell was not in Washington City. He was then serving Vaile and Miner away from here. Now, gentlemen, in order for you to conclude that that affidavit was filled up by Rerdell, under the direction of Dorsey, prior to the time it was sworn to, you have got to find that Dorsey had the paper in his possession; that he was dealing with it and manipulating it whilst he was in the Senate of the United States.

The COURT. You do not mean prior to the time it was sworn to.

Mr. MERRICK. At the time it was sworn to. It was sworn to in New Mexico. Rerdell was not here in Washington. S. W. Dorsey was here.

Mr. INGERSOLL. In whose handwriting is it?

Mr. MERRICK. Miner wrote the paper.

Mr. BLISS. He says the filling in is Rerdell's.

Mr. INGERSOLL. Do you say Rerdell was then working for Vaile and Miner?

Mr. MERRICK. My impression is that he was working for them.

Mr. INGERSOLL. Then, why would Dorsey advise him about this affidavit while he was working for Vaile and Miner?

Mr. MERRICK. Why did Dorsey do a great many things at that time? Dorsey had come out of the Senate on the 4th of March. Dorsey had taken this route on the 4th of March. Dorsey threw off the sheep's clothing that concealed his villainy on the 4th of March, and assumed his real character on that day as interested in these routes.

Mr. INGERSOLL. His letter shows what he did.

Mr. MERRICK. His letter shows what he did on that day, and I will show you what he did long before; I will show you the record evidence, and not depend upon word of mouth; I will prove out of the mouths of Vaile and Miner that they threatened Dorsey, and threatened him by letter long before, that they would disclose his relations to these transactions back in January, 1879, when he was in the Senate; I will show

you how he guided this conspiracy from the room in which he had conceived it, with Boone by his side to do this work, and how he gathered these tools around him; I will follow it on down and show him as the master spirit of thought and Brady as the master spirit of action to the very time of the commencement of this investigation. I will take care of Dorsey. Do not fear.

Again, gentlemen, do you suppose it is at all likely that on the 22d day of January, 1879, Peck or anybody else that may have filled up the affidavit knew what was to be the precise time subsequently to be designated on that route? Did Peck know when he swore to that affidavit in January that some time in the spring or summer it was to be expedited to thirty-three hours? Did anybody know it? If they did, how did they find it out? The time of the expedition, the time of carrying the mail, is to be determined according to the existing state and the condition of things. Could Peck have anticipated that the Second Assistant Postmaster-General was going to expedite the time to thirty-three hours? No, gentlemen. It does not stand to reason that Peck in January, 1879, should make an affidavit setting forth the number of men and horses required on a schedule of thirty-three hours, which affidavit should sleep until the following spring or summer and then come out in strange and prophetic realization of what the Second Assistant Postmaster-General actually wanted. That affidavit was in blank, and filled up when it was ascertained what time the conspirators had determined upon. You cannot doubt it. If Peck knew about the thirty-three hours, he was wise beyond his day and generation. There is not a man that lived along that route who knew that it was to be expedited, or dreamed in January that in the July following it would be expedited to thirty-three hours, nor in February did they think so, nor in March, nor in April, nor until the order was passed, for the petitions that came in asked for forty-eight hours.

The COURT. The order was made in June, was it not?

Mr. MERRICK. The affidavit was filed June 25, and the order for expedition was made July 8. The petitions asked for forty-eight hours. Am I not right?

Mr. BLISS. Yes.

Mr. MERRICK. Every one of them. Not another paper on the files designated the time of expedition. Not a paper on the files, except the affidavit, spoke of thirty-three hours. The petitions all asked for forty-eight hours. And yet counsel would have you believe that back in January Peck knew it was to be thirty-three hours. No, no. Your common sense rebels against a conclusion so perfectly preposterous and inconsistent with the facts. No one knew except Brady and Dorsey and Rerdell, and one or two of the other of these conspirators, that that order was to be for thirty-three hours until a short time before it was passed. These men dealt not generally with a view to the far future, except in a comprehensive way as to what they would do. They dealt with each specific case as it arose, and dealt with it according to the terms and needs of their combination. Brady was to give them all he could without exposing himself, and they were to build paper walls of petitions and affidavits to protect Brady's record from a too manifest disclosure of his official rascality. When they reached the time for expedition, as Rerdell says, then came up the question, "How much shall we expedite? How much money can we take without putting our feet certainly across the threshold of the penitentiary?" Rerdell says that when the petitions came he was directed to fill up the affidavits and preserve the proportion.

Now, gentlemen, I again ask, is not here a corroboration of Rerdell? Do not all the circumstances surrounding this transaction corroborate Rerdell? The main fact that Rerdell swears to is that these affidavits were in blank and were distributed. You cannot doubt the fact that this affidavit was in blank and was filled up by Rerdell. The surrounding circumstances; the date of the affidavit; the long period through which that affidavit slept without being filed in the department; the fact that the affidavit designated the time as thirty-three hours and that the petitions called for forty-eight hours (and the affidavit was the only paper on file mentioning thirty-three hours) the fact that S. W. Dorsey cannot recollect, don't remember whether he told Rerdell to fill up one of Peck's blank affidavits or not; the fact that S. W. Dorsey, guarding himself against the greater danger of another indictment, and at the same time as far as possible protecting himself against this indictment, says, "Possibly I may have done so,"—all these things rise up and tend to corroborate Rerdell upon the main facts in this case. As I said to you before, gentlemen, I shall ask credit to be given him where he is corroborated, and I will go on in the progress of this case and corroborate him in reference to every material fact that I think it is important that you should believe, and as I corroborate him I shall show you clearly that he and S. W. Dorsey walk and stand here in court on the same level, master and man, to receive whatever justice may mete out to the one who conceived and the other who helped to execute the mischief which is complained of.

Mr. BLISS. Before the adjournment I desire to say one word in order to make a correction in something I said, as to which my attention has been called. In a discussion, in the course of Judge Wilson's remark as to Mr. Turner and an attempt to bring Mr. Turner into the case, just at the close of it I referred to Mr. Turner as having indorsed the jacket upon the Bismarck and Fort Keogh route. This was one of those oversights that occurred, because I had talked with Mr. Brewer about it shortly before. I desire now simply to place upon the record the fact that the indorsement on the Bismarck and Fort Keogh route was the indorsement of Mr. Brewer, and was not that of Mr. Turner, and that I was in error in regard to it.

Mr. MERRICK. I am about to enter upon another route, and it is nearly 1 o'clock.

The COURT. We will take our recess now.

At this point (1 o'clock p. m.) the court took its usual recess.

AFTER RECESS.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen of the jury. The next route to which I propose to call your attention in further illustration by the transactions which occurred in relation to it of the proposition that I am discussing, that these affidavits were in blank, and in aid of the inquiry as to who filled them up, is the route from Garland to Parrott City, commonly known as the Ojo Caliente route. John W. Dorsey was the contractor upon this route. There were two oaths filed upon this route, but the oaths contemplated different schedules of time, and I shall not pause in the course of my remarks or digress to trouble you with any particular comparison at present of those two oaths. The first oath was for a schedule of eighty hours, and is marked in the case as Exhibit 20 F. It was sworn to

March 11, 1879, in Vermont. It was filed April 16, 1879. Boone swears, on page 2693, that it was all written by Rerdell except the signature of J. W. Dorsey, which is genuine, and the words "State of Vermont, Addison County," the "11," and the signature of the county clerk. Rerdell testified to the same effect, and in addition that the oath was filled up by direction of S. W. Dorsey after it was sworn to. The oath itself has the appearance of having been filled up by different handwritings, and there is a space left where the words were filled in. John W. Dorsey swears, on page 4141, that Vaile and Miner had charge of this route in March, and that Rerdell had nothing to do with it, and that it looks as if the affidavit was in two different kinds of ink. Now, you must recollect, in order to appreciate what I have to say as I go along, that this oath was sworn to on March 11, that it was not filed until April 6, and that John W. Dorsey says that Vaile and Miner had charge of the route in March, and Rerdell had nothing to do with it. You will recollect that between the time that the affidavit was made, namely, the 11th of March, and April 16, the day when it was filed, occurred the alleged division of routes, and that in that division on April 1, 1879, this route was taken by S. W. Dorsey. You will bear in mind in that connection that after that time S. W. Dorsey, as I read to you this morning, testified that Rerdell took charge of all these matters of his, so that whilst Rerdell had nothing to do with this route on the 11th of March, when the affidavit was made, he did have something to do with it on the 16th of April, when the affidavit was filed. The letter of John W. Dorsey transmitting the oath, 21 F, dated April 14, 1879, was written by Rerdell. So says Boone and so says Rerdell. Now, if Vaile and Miner had charge of this route in March, 1879, and Rerdell had nothing to do with it, as testified by John W. Dorsey, how did it come to be in his handwriting? That is a very simple inquiry. How did it come to be filled up in his handwriting as he had nothing to do with it prior to or at the time of the making of the affidavit on the 11th of March? It is, of course, not reasonable to suppose that he filled up the affidavit either prior to or at the time it was made. But after the 11th of March, a new condition of things arose, as stated by the defendants, in which Rerdell directly after the 1st of April did take charge of this route, and it is therefore the inevitable conclusion that he did not fill it up until he took charge of the route, which was after the 1st of April. If he did not fill it up until after the 1st of April, and it was sworn to on the 11th of March, it was a blank affidavit or an affidavit in blank, whichever you please. This conclusively establishes that the oath was sworn to in blank and turned over to S. W. Dorsey at the time of the alleged division and was filled up at the time it was filed, namely, April 16, 1879. Now, I may ask as I pass along, does not this corroborate Rerdell as to his statement in reference to that oath? Does it not, in corroborating Rerdell in reference to his statement as to that oath, corroborate him also upon that other material point that when the division took place on the 1st of April, 1879, these oaths sworn to in blank were divided between the parties according to the routes they took to be filled up and used as the occasion and the emergency might require? This is another corroboration of Rerdell on that material point, not by the testimony of another witness, but by better testimony, the conditions and circumstances.

The second oath was for a schedule of fifty hours, and is 22 F. This was the oath which was sworn to by John W. Dorsey, before Kellogg, on April 26, 1879, and filed April 26, 1879—the same day. The first oath was for eighty hours and the second oath was for fifty hours and

was sworn to before Kellogg, here in Washington, on the 26th and filed on the same day. That oath was made and filed at a time when Rerdell was not here. Bear that in mind.

Mr. WILSON. Will you allow me to call your attention to the fact that this first affidavit is in the handwriting of Mr. Rerdell?

Mr. BLISS. He stated that at the outset.

Mr. WILSON. I misunderstood him, then.

Mr. MERRICK. Boone swears that the body was written by Kellogg. I am speaking of the fifty-hour affidavit.

The COURT. Was any order made under the first of those affidavits?

Mr. MERRICK. No, sir.

The COURT. That affidavit was filed the 16th of April?

Mr. BLISS. Yes, sir.

The COURT. Before anything was done under that affidavit the second affidavit was filed on the 26th of the same month.

Mr. BLISS. Yes, sir.

The COURT. For fifty hours?

Mr. MERRICK. For fifty hours instead of eighty. Boone swears that the body of the affidavit of the 26th of April, was written by Kellogg except the number 38145 and the words "three," "five," "fifteen," "fifty," "three," "twelve," and "forty-two," which are in a handwriting similar to that of S. W. Dorsey. He does not think J. W. Dorsey wrote the signature. Rerdell testifies to the same effect, except that the signature of J. W. Dorsey is genuine. Now here are some singular figures. I do not know how to account for them. The letter of J. W. Dorsey, 19 F, inclosing the second oath, dated April 23, 1879, was filed April 24, 1879, two days before the oath was sworn to. Boone testifies that the signature and all is in a disguised hand which resembles that of S. W. Dorsey. There is the oath that was acted on [exhibiting it] made at a time when Rerdell was not here, and the body of it written by Kellogg. Boone says that the number 38145 and the words "three," "five," "fifteen," "fifty," "three," "twelve," and "forty-two" are in a handwriting similar to that of S. W. Dorsey. He does not think that J. W. Dorsey wrote the signature. Rerdell testifies that those same words which Boone testifies to as being in the handwriting of S. W. Dorsey are in S. W. Dorsey's handwriting, and he says further that he thinks the signature of John W. Dorsey is a genuine signature. He and Boone do not agree entirely about the signature. The letter of Dorsey inclosing the second oath, dated April 23, and filed April 24, two days before the oath was sworn to, Boone testified is, signature and all, in a disguised hand which resembles that of S. W. Dorsey. Rerdell testified that the signature and all in that letter were written by S. W. Dorsey. Now, if Rerdell had wanted to tell a story here was his chance. If he had been regardless of the truth, here was his opportunity to tell a story that according to the theory of Mr. Ingersoll, would have been something of a luxury to him. He might have sworn that S. W. Dorsey wrote the name of John W. Dorsey to the affidavit, but on the contrary, instead of saying that S. W. Dorsey wrote the name of John W. Dorsey to the affidavit, as Boone had sworn, Rerdell says that is John W. Dorsey's signature, but S. W. Dorsey did write the letter inclosing the affidavit, and did write John W. Dorsey's signature to the letter. That is not half as bad as if S. W. Dorsey had written John W. Dorsey's name to the affidavit. This little circumstance shows that Rerdell was not so very much disposed to tell an untruth as the uncharitable remarks of the other side are calculated to lead you to believe. You will see that Boone and Rerdell are evidently right in saying that S. W. Dorsey

filled up that affidavit and wrote that letter. You have already had occasion to examine some of the writing that was conceded to be his, and if you retain a recollection of its appearance in your mind, I am sure you can compare that with the image fixed upon your mind, and you will recognize the family resemblance of the words in the different papers, all the time recollecting that Rerdell was not here at that time. I said just now, by the way, that there was something peculiar about this matter that I did not understand. The oath was filed on the 26th and sworn to on the 26th. The letter inclosing it was dated the 23d, before the oath was made, and was filed the 24th. That letter inclosing that oath somehow or other got into the department before the oath was made.

The COURT. Does that letter identify this particular affidavit?

Mr. MERRICK. I will read the letter:

I have the honor to transmit herewith a statement of the number of men and animals it will require to run the route from Parrott City to Ojo Caliente, on a schedule of fifty hours and three trips a week. Considering the character of the country, the mountains to be crossed, and the streams to be forded, the time proposed of (50) fifty hours is equal to seven miles an hour on an ordinary route. It is an extraordinary undertaking to make this time, but believing that the interests of the public service, as well as that of the people of this section, demand it, I will undertake it.

Respectfully,

J. W. DORSEY.

If your honor will look at that signature you will see at once that John W. Dorsey never wrote it in the world. The affidavit is for fifty hours three times a week. How that happened I do not know, and I have been unable to find any satisfactory standpoint from which I can reason to such a conclusion as would be to me a satisfactory solution of the remarkable occurrence.

The COURT. This was after the alleged petition was made.

Mr. MERRICK. Oh, yes, sir.

The COURT. John W. Dorsey had sold out then.

Mr. MERRICK. Yes; he had not anything to do with it except that he was the nominal contractor. How an oath which was made on the 26th day of April could be inclosed in a letter which was dated two days before, and how that letter inclosing the oath could be filed two days before, I do not know. The date of the letter and the date of the filing served to corroborate each other as the correct dates, and show there was not a mistake. I had supposed there must have been a mistake, but the date of the filing and the date of the letter each corroborates the other as being correct. A letter written on the 23d here in Washington would get to the department naturally on the 24th, and it seems this was filed on the 24th, and it contained an oath which was not made until two days after the letter was filed.

The COURT. Will you let me see that oath? [Oath handed to court.]

Mr. MERRICK. Gentlemen, you will have to find out the answer to this the best way you can.

The COURT. The indorsement on this oath does not show the day it was filed.

Mr. MERRICK. Yes; I think it does.

Mr. BLISS. At the top, I think.

The COURT. The date, April 26, 1879, refers to the date of the affidavit.

Mr. BLISS. No, sir; the dates on the back are always the dates of filing.

Mr. MERRICK. The date is never put on the back until it reaches the office.

The COURT. There is nothing on this indorsement to show whether that was intended as the date of filing or the date of the oath.

Mr. MERRICK. Only the general evidence in the case of the office marks.

Mr. BLISS. At any rate, it is two days after the date of the letter.

The COURT. It seems to me that the word "April" is filled in after the certificate was written out, and it may have been that the word "twenty-six" was written in at the same time. I do not know. I should think they were.

Mr. MERRICK. The only point I am making upon it is the filling in of the number of the animals and men. Gentlemen, bear in mind that this second oath was made while Rerdell was not here. S. W. Dorsey testifies that he thinks that if J. W. Dorsey had any interest in the route and made an affidavit for expedition on April 26, 1879, it was because the department required the contractor to make the affidavit. (Page 3937.) Yet S. W. Dorsey knew perfectly well at that time that affidavits were received at that department when made by others than the contractor or the subcontractor. He has no recollection of having filled in the affidavits. (Pages 3771, 3772, and 3927.) He has no recollection of that important event. The order came pretty soon afterwards. It came on April 29, 1879, allowing \$8,457.84 on that affidavit, and Dorsey says the testimony of Boone does not refresh his recollection. The order does not refresh his recollection, and the testimony of Boone does not refresh his recollection.

Whilst I go on I must gather from either side of my path what I think may be useful in showing when and by whom these blank affidavits were filled up, and that they were blank. I want to call your attention to the character of the testimony of S. W. Dorsey.

The FOREMAN. Some of the jurors have asked me if Boone testified that those affidavits were sworn to in blank.

Mr. MERRICK. I do not think Boone testified to anything of that kind, because he could not. He had never seen those affidavits. He was testifying to the handwriting. He could not tell whether they were in blank or not. Now I read from page 3938 of the examination of S. W. Dorsey:

Q. On that affidavit—

That is, the affidavit I have just read to you—

there was an increase of \$11,774 on that route made under an order passed April 29, which went into effect May 12.

The WITNESS. What route is that?

Mr. MERRICK. That is Garland to Parrott City. Does that refresh your recollection at all?

A. No, sir; it does not, except that I think the increase ought to have been much greater.

Q. I have no doubt you do, Mr. Dorsey. You got all you could, did you not?—A. Yes; that is what I had the contracts for, to get all I could.

Q. You got all it was safe for the Second Assistant Postmaster-General to allow you, did you not?—A. I never thought he was in much danger.

Mr. WILSON. Is that a proper question?

Then the affidavit was read to him, and he was asked:

Q. Does that refresh your memory about having written those words?—A. I don't remember it; there is another party who can write a hand similar to mine.

Another party can write a hand similar to mine! He did not dare to deny that he wrote them. That he did write them is proved by Boone and is manifest by a comparison of the handwriting. He is not able to say whether he wrote them or not from his recollection, and yet he shows

the virus of his spirit by indicating in his remarks that there is another man who writes a hand like his, his pupil Rerdell. And yet Rerdell was not here to write it. The oath was sworn to April 26, 1879, when it is admitted Rerdell was away. It was filed April 26, 1879, when it is admitted Rerdell was away. The order on the oath granting an increase of \$8,457.84 was made I think I said April 29, 1879, when Rerdell was away! From the birth of the oath down to the day it bore its forbidden fruit Rerdell was thousands of miles away, in the western country, and yet this great man Dorsey, so described by his counsel, comes upon the stand, and whilst unable to say whether he wrote a paper or not, although the proof is that he did write it, attempts to cast a slur on his pupil, Rerdell, by saying that some one else can write a hand very much like his.

The testimony from the circumstances as to whether the second oath for fifty hours was in blank or not is meager. The testimony from the circumstances that the first oath filed April 16, 1879 was in blank is full and complete. S. W. Dorsey is further examined upon the subject:

Q. Are you willing to say that you did not write those words in that affidavit?—

A. I am willing to say that I do not believe I did.

Q. Are you willing to say you did not?—A. I will not say that I did not, but I don't believe I did. That is as far as I want to go.

Q. That is as far as you can go?—A. Yes.

Now for John W. Dorsey, although I deem it unnecessary to contradict him any more or treat him as a living factor in this case. When you have once proved that a party in a case availing himself of the privilege to become a witness takes the stand and commits perjury so manifestly as John W. Dorsey did in regard to the two affidavits on the Pueblo and Rosita route he cannot be regarded as of any practical utility in the case. His testimony is soiled and stained. He is not like an ordinary witness, for an ordinary witness may pervert the truth or falsify and still be entitled to credit. But when a party takes the stand and the jury is convinced that in one material particular he has deliberately and purposely committed perjury the only conclusion from is, that, conscious of guilt, he prefers to stain his soul and desecrate the court with the crime of perjury in order to escape the peril of a just conviction. It is an admission of guilt, as I have said before, and repeat, and will continue to repeat. But let us see what he says. I read from page 4125:

Q. Were you in the habit of swearing to affidavits in blank and allowing people to fill up whatever they wanted?—A. I do not think I was.

Q. Did you ever swear to any blank affidavit?—A. Not that I can recollect of.

Q. Was not this affidavit blank when you swore to it?—A. I could not say.

Q. Look at it and tell the court and jury whether that was not a blank affidavit when you swore to it?—A. All I know about it is that I was here at that time, at that date.

By the COURT:

Q. On the 26th?—A. Yes, sir.

Q. But look at the filling up, and see whether it was blank at that date or not?

This was by the court. The court says, "Just take it and look at it," and he answered:

I could not tell whether it was or not.

The man who swore to it, after having his memory refreshed and being called upon by counsel and by the court to look at it, examine it, and think about it, the man who swore he did not believe he had ever sworn to a blank affidavit, when handed a particular paper and asked by the court—for a question from the court comes with greater dignity

than it does from counsel—"Look at the filling up, Mr. Dorsey, and see whether it was blank at that date or not," replied "Oh, I could not tell whether it was or not."

Now, gentlemen of the jury, I desire to approach these affidavits from another point. I told you I regarded these affidavits as all-important. As the roots of this tree we are seeking for the sake of the nation and of the integrity of the people to cut down with the axe of justice. Mr. Foreman, I do not intend to leave these affidavits until you and I and all the rest of us understand them just alike. I now propose to show you, according to the evidence in the case, taking a few samples, for I cannot take them all, without wearying you too much, that they are dyed in perjury, and steeped in perjury. I will show you this by the evidence in the case, that is, supposing that the men whose names are signed to them swore to them after they were filled up, and not in blank. I have got through with the blank affidavits. I think I have shown that they were in blank. But suppose they were not in blank. What then? The first one I will take up is that on the Vermillion and Sioux Falls route. John W. Dorsey was the contractor. The length of the route was seventy-three miles. It was advertised at fifty miles, one trip, and fourteen hours. There was a mistake in the advertisement. The original pay was \$398. On December 23, 1878, it was increased to two trips. On July 10, 1879, it was increased to six trips, at a cost of \$1,635.60. On the same day it was expedited ten hours, and \$3,600 was allowed. The total pay was \$6,133.50. The oath of H. M. Vaile, of whom some pleasant things may be said, was for a fourteen-hour schedule, three trips, three men, and three animals—six. On the proposed schedule of ten hours, five men and ten animals—fifteen. The difference in men and carriers on the original and proposed schedules, according to the affidavit, was 150 per cent. What was the number necessary according to the testimony in the case? On a fourteen-hour schedule, three trips, according to the testimony it would require one man and eight animals, and on a ten-hour schedule, one man and ten animals. (See testimony of Leach, subcontractor, page 1910.) Difference in stock and carriers on present and proposed schedule, according to the facts and evidence, 22 per cent. Difference in stock and carriers, according to the affidavit, 150 per cent. That left 128 per cent. of perjury in that affidavit for the Western shepherd from Independence, Missouri. The allowance for expedition, according to the oath, was \$3,680.10. The allowance, according to the testimony, should have been \$545.19. The fraudulent allowance on Vaile's affidavit was, therefore, \$3,134.91, and that is on the testimony of the subcontractor, who knew what was the present need according to the present schedule, and what would be needed according to the proposed schedule. 128 per cent. of perjury is a very small affair when you come to compare it to some of these other affidavits. The oath is false in both branches. It understated the number of men and animals required on the slow schedule, and overstated the number necessary on the expedited schedule. Now let me call your attention to another fact. The expedited schedule missed the connection. This is for the benefit of Mr. Brady. The mail arrived at Sioux Falls at 5 p. m., and left Sioux Falls for the east at 1 p. m., and for the west at 7 a. m. The mail arrived at Vermillion at 5 p. m., and left for the west at 4 p. m., and for the east at 9.30 p. m. There were no connections at all after expedition. At Sioux Falls, going east, the mail laid over twenty hours, and going west it laid over fourteen hours. At Vermillion, going east, it laid over seventeen and one-half hours, and going west it laid

over twenty-three hours. And the mail, for carrying which this fraudulent allowance was made of 128 per cent. of perjury, consisted sometimes of a postal-card, and sometimes three or four letters and papers. (Page 1918.) The distance was seventy-three miles, but it was advertised at fifty, which made a schedule of about seven miles an hour. Brady disregarded the petitions of the postmasters for an extension of the schedule to sixteen hours, as I have already explained to you, although recommended by Judge Bennett, the Delegate in Congress. When Brady's attention was called to the indorsement of Judge Bennett asking that the time should be extended with a view, though not expressed, that connections might be made, and indicating that the people were satisfied without this large payment from the Treasury upon the 128 per cent. of perjury, he said:

Write Judge B. it cannot be done.

I say that on that testimony, gentlemen of the jury, Mr. Vaile is guilty of perjury—perjury whose practical fruit was to rob the Government, according to the calculation I have read you, of \$3,134.91 a year. Had he made a truthful statement in reference to the quantities which make up the sum of the proportion from which the Second Assistant Postmaster-General is obliged to determine the amount due for expedition, those truthful quantities would have paid him for the expedition only \$545, or 22 per cent. of the original cost, whereas he got 150 per cent. of the original cost. And, as he says himself, he swore to that affidavit, although he had never been on the route, and knew nothing about it. If he had never been there and knew nothing about it, it was perfectly manifest that he was swearing only with a view to the fruit, and not with a view to the facts.

Another route to which I will call your attention, to illustrate the perjury of which these affiants were guilty, is 38135, Saint Charles to Greenhorn. Length of route, thirty-five miles; two trips, twelve hours; original pay, \$548; August 30, 1878, include Pueblo, \$328.30; June 26, 1879, increase one trip, \$438.80; making a total pay for three trips, \$1,315.20. Same date an order was made for expedition from sixteen to seven hours, at a cost of \$2,630.40. The total pay for three trips and expedition was \$3,945.60. The oath of Mr. John R. Miner, contractor, made April 17, 1879 (5 B), says that on the present schedule (sixteen hours, three trips), "one men and one animals" are necessary. [5 B handed to the jury.] Look at it and see if the "s" is struck off of the word animals; is it?

Mr. RENSHAW (a juror). No, sir.

Mr. MERRICK. Then it is "one men and one animals." I think, perhaps, they did not do very much toward murdering the King's English, for they were too busy robbing the people's treasury. The affidavit then says that on the seven-hour schedule, three trips, two men and four animals would be necessary—making six—an increase of stock and carriers, according to the oath, of 200 per cent. What was the number actually used and required to do the work upon those two schedules? Upon a sixteen-hour schedule, two trips, one man and two animals—three. Miner swears that on the original schedule two were required; the truth is that on the original schedule three were required. The more you reduce the number needed on the original schedule below that which was actually required the more you cheat the Government, for the further apart you keep the number of men and animals needed on the present schedule and the number of men and animals needed on the new schedule the greater will be your pay.

Mr. CRANE (foreman of the jury). To get expedition.

Mr. MERRICK. Yes, that is it, Mr. Crane. They put down the number needed on the present schedule at two. The truth is that the number needed on the present schedule was three. They put down the number needed on the proposed schedule of seven hours as six; the proof is that the number needed on the schedule of seven hours was three; that there was no more needed and required on the reduced time than there was upon the original schedule. Who are the witnesses? Call them up. Mr. John R. Miner, you are arraigned for perjury upon an affidavit, in which the falsehood is your statement that there were two men and animals needed on the present schedule, whereas there were three needed; and you made the further statement that six men and animals would be needed on the schedule if reduced to seven hours, whereas in fact there would be needed only three on that reduced schedule. Call in the witnesses.

Mr. RENSCHAW (a juror). How long was that route?

Mr. MERRICK. Thirty-two miles. Only three times a week—plenty of time to do it in.

Call in the witnesses. George Sears (page 827); I do not care to read it; Farish, subcontractor, who did the work (page 835), swears to what I have said; Higgason (page 839), McDaniel (page 837), Withers (page 825)—all swore that the diminution of time made necessary no additional stock and carriers, and that to carry the mail on the original schedule of sixteen hours it needed three men and animals.

The COURT. One man and two animals.

Mr. MERRICK. One man and two animals, making three. How shall Mr. Miner answer this charge of perjury? This is not a speculative opinion of Sears and of Farish, the subcontractor, and these other men; this is what they actually did before expedition and after expedition, and there were no fines for a failure to meet the exigencies of the service or to come up to the time.

Mr. CHANDLER. I desire to correct Mr. Merrick in that particular, if your honor please. The witnesses that he has spoken of did not carry it on the long schedule.

Mr. MERRICK. That will not do.

Mr. WILSON. I desire to correct him on another matter. He stated that on the Vermillion and Sioux Falls route there were only two or three letters a day carried.

Mr. MERRICK. I am done with that route.

Mr. WILSON. I do not care if you are; pardon me.

Mr. MERRICK. Go ahead, if you do not.

Mr. WILSON. There is a statement in the record of the revenues of the offices along the route, and at one of those offices alone, as shown by their own testimony, there was \$241.35 a year.

Mr. MERRICK. What do you refer to?

Mr. WILSON. I am talking about Maple Grove, and I call attention to the record at page 2736.

Mr. BLISS. That is where another route crosses that route.

The COURT. There are ten or eleven post-offices on that route.

Mr. WILSON. Yes, sir. They put in this record showing the stamps sold at those various offices. Now, that record is absolutely contradictory of what Mr. Merrick says.

Mr. MERRICK. It is no such thing.

Mr. BLISS. With reference to this Vermillion and Sioux Falls route, if your honor please, there is one mail bill in, showing, I think, three letters; and the witness Millie swore positively, if I mistake not, that

sometimes there were none, and sometimes there were two or three letters and two or three papers, or about that.. Mr. Merrick stated that.

Mr. WILSON. I agree that one of the witnesses did make that kind of a statement that Mr. Merrick made.

Mr. MERRICK. Did he not make that exact statement?

Mr. WILSON. Substantially that.

Mr. MERRICK. Why do you say "That kind of a statement?"

Mr. WILSON. I say it was substantially the same. Now, they themselves have introduced in evidence the record of the department, showing simply the stamps sold, which does not represent any of the letters that are in there, as the court knows, and I think it is but just and fair that this evidence should be given as it is. I do not deny that he has stated what the witnesses said, but he does not say what the record shows.

Mr. BLISS. At page 3170 there is a mail bill put in by them as follows:

Route No. 35015, from Vermillion to Sioux Falls. Post-office at Sioux Falls, D. T. Date, Nov. 28, 1879. Mail, consisting of ten letters and three packs papers, was dispatched this day at 6.35 o'clock a. m.

That is, starting from Sioux Falls.

Mr. MERRICK. The office to which Mr. Wilson has referred was a point where one or two or more routes crossed the route from Vermillion to Sioux Falls; is not that so, sir?

Mr. CHANDLER. Where is the evidence of it?

Mr. MERRICK. Is it not so?

Mr. CHANDLER. Where is the evidence?

Mr. MERRICK. Is it not so? I am talking to Mr. Wilson.

Mr. CHANDLER. There is no such evidence in the record.

Mr. MERRICK. Is it not so?

Mr. WILSON. You have the evidence there.

Mr. MERRICK. Is it not so?

The COURT. If you have the evidence you can refer to it.

Mr. MERRICK. That was a point where other routes crossed this route.

Mr. CHANDLER. When Mr. Ingersoll was making his speech and made any statement that was contradicted, he was required to cite the page of the record upon which was the testimony to which he was referring.

Mr. BLISS. Allow me to refer Mr. Merrick to page 1925:

Q. Was there a mail route that crossed yours at Glenwood?—A. There was.

Q. Where did that route run from?—A. I think it went from Yankton to Eden.

Q. Where was Eden?—A. On the Sioux River.

Q. On a railroad; was there a railroad at Eden in 1879?—A. I am not prepared to say.

Q. There is now?—A. Yes, sir.

Q. Eden was to the east of Glenwood, then?—A. It was.

Q. Do you know how far?—A. I do not.

Mr. WILSON. That does not touch this point at all.

Mr. MERRICK. It does not?

Mr. WILSON. No, sir.

Mr. MERRICK. Now, gentlemen of the jury, you see the candor of the gentleman, when I ask him whether or not there was not another route crossing this route at Glenwood——

Mr. WILSON. [Interposing.] You misapprehend me; I am not talking about Glenwood; I am talking about Maple Grove.

Mr. MERRICK. I thought you referred to Glenwood.

Mr. WILSON. Oh, no.

Mr. MERRICK. How far is Maple Grove from Glenwood?

Mr. BLISS. They are the same thing.

Mr. MERRICK. They are the same thing, and when I asked him whether or not there was not another route crossing this route at this point, and asked him several times, he was dumb as a tomb; he would not even answer. Now, the revenues at a post-office, when returned, are made up of the revenues from all the routes that come into that post-office. If you reconcile the testimony with the record, as you must do, the routes that crossed the Vermillion and Sioux Falls route furnished those revenues, for the proof from the men that knew what went over the Sioux Falls route is that they carried scarcely any mail at all.

Mr. WILSON. Allow me to call your attention to another post-office (Worthing) where the receipts were \$101.50 for stamps sold.

Mr. MERRICK. I had got through, gentlemen. Let him have the benefit of it. I have but little to say to men who deal in that way, with that want of frankness.

I was reading to you, I believe, this oath, when I was interrupted.

Mr. BLISS. With reference to Worthing, I desire to call your honor's attention to the fact that Worthing is the point to which, long after this expedition, the route was curtailed, so that it did not go up to Sioux Falls; was made the terminal point, and that the revenues that appear at Worthing do not appear at Worthing until 1880, long after this time when it became the terminal point of the route.

Mr. WILSON. That is no answer to it at all.

Mr. MERRICK. Nothing can answer you.

Mr. WILSON. Nothing can answer this evidence you put in yourself. There was a railroad that afterwards crossed the country, and crossed this route at Worthing.

Mr. MERRICK. Does the Worthing revenue speak prior to 1880?

Mr. WILSON. Yes, sir; they commence on the first quarter of 1880.

Mr. MERRICK. Very well, then you have answered yourself.

Mr. WILSON. No, I have not answered myself.

Mr. MERRICK. I am talking of the testimony at the time of this expedition. You have answered yourself, sir.

Mr. WILSON. No; I have not answered myself.

Mr. MERRICK. And I am amazed that you fail to sit down abashed. I might almost use one of Mr. Ingersoll's figures of speech in reference to the liquefaction of metals.

Now, it has been said by the learned counsel—I think Mr. Chandler—that these men, to whom I refer, did not carry this mail after expedition.

Mr. CHANDLER. Before, was the statement that I made.

Mr. MERRICK. What was your statement?

Mr. CHANDLER. That they did not carry it before expedition, is my recollection of the evidence.

Mr. MERRICK. I think the learned gentleman is in error. My Brother Bliss will look it up.

Mr. BLISS. Mr. Sears was the postmaster; did not carry it, but states that Mr. Ames, who appears as Mr. Miner's son-in-law, I believe, did carry it, and that he used two horses and one driver before expedition, making three.

Mr. MERRICK. Just as I said.

Mr. BLISS. Mr. Withers says he commenced carrying it on the 1st of July, 1879, after expedition, I think. Is not that after expedition?

Mr. MERRICK. Yes.

Mr. BLISS. And that he used one man and two horses.

Mr. MERRICK. Precisely what I have said.

Mr. CHANDLER. Did you say that the men who carried it were here as witnesses?

Mr. MERRICK. I said that some of those men had actually carried it; that was my impression. I am looking to see whether I am right.

Mr. WILSON. I know you want to be right, Mr. Merrick.

Mr. MERRICK. I do want to be right, but I do not care about being disturbed by you any more after what you have said.

Mr. BLISS. As I have said, Mr. Withers commenced carrying the mail on the 1st of July, 1879 (page 825); he carried it in seven hours, and testifies that it took two horses and one man. Mr. Sears was the postmaster, and did not carry it. He says that Mr. Ames carried it, and that Mr. Ames used one man and two horses.

The COURT. That is, the same before and after expedition. You proved by the postmaster what was done before, and by the carriers what was done after.

Mr. BLISS. Mr. Farish carried it afterwards, and he says he used two horses and one man (page 835). Mr. Withers carried it in 1880, and he says he used two horses and one man. And Mr. Higgason carried it also, and he says he used two horses and one man.

Mr. MERRICK. That is, after expedition?

Mr. BLISS. Yes, sir.

Mr. MERRICK. I was mistaken. I thought some of them had carried it before expedition. It appears that the witnesses who carried the mail were witnesses who carried it after expedition, and there were four or five of them.

Now, let Mr. Miner answer. He swears that after expedition it took two men and four horses, making six; and the witnesses Farish, Higgason, McDaniel, and Withers all swear that after expedition it took only three; that they only used three. The falsehood is proved on Mr. Miner in respect to the number of men used after expedition. What proof? Sears, the postmaster, the man who, next to the carriers, would know the fact better than any other man upon the route, swears that to carry the mail it required one man and two horses. His evidence on that side of the affidavit therefore (before expedition) contradicts Mr. Miner flatly. So that Miner at that end of the affidavit was convicted of a falsehood by saying it required only two, whereas it required three, according to the testimony of Sears. He was guilty of falsehood at the other end of the affidavit by saying that on the expedited schedule it would require six, whereas Farish, Higgason, McDaniel, and Withers swear that it would require only three and did require only three, and that they did the work with three. Now, if we were trying Mr. Miner for perjury what would be your verdict? Ames, I believe, was Miner's son-in-law.

If you were sworn to try Miner on an indictment for perjury, because he had committed perjury in saying that after expedition it was necessary to use as many as six animals in carrying that mail on that route, and Higgason and Farish, McDaniel and Withers should come before you and swear that it was not necessary to use six, but that three were all that were required, and that they used three, did the work with three, and never subjected themselves to fines or penalties, what would you do upon such an indictment against Miner, especially if it should appear further in proof that the motive for the perjury was the gain he obtained on the contract he made with the department upon the basis of the perjury for which he was being tried? He lied for money. He was indicted. The lie is proved. The motive is accounted for. And the evidence is that the statement in the affidavit which was the basis of his theft was a deliberate falsehood, proved by

those four or five witnesses. What would be your verdict? Gentlemen, as I approach these affidavits from this other point of view, you will perceive their enormity still more distinctly than you have from the different points from which they have heretofore been approached.

This has relation not only to the acrobatic Miner, but has relation to Brady. For, under the law, Brady had no right to give any additional compensation for expedition unless thereby the use of additional stock and carriers was made necessary; and in the proof in this case there was, on this expedition, no necessity for any additional stock and carriers. Brady's only escape from the charge of fraud and participation in fraud, for a violation of the law, is to say that Miner deceived him. And without meaning to speculate upon the motives of counsel or to criticise them it has always been my belief, whether right or wrong, that the reason why all the defendants were not represented here in argument before the jury was that the arguments would cross each other at various points, each seeking protection in willingness to sacrifice his friend and co-conspirator.

To show you the care of Brady, this expedited schedule missed all connection.

The COURT. What route is it?

Mr. MERRICK. It was called originally Saint Charles to Greenhorn, but it finally became Pueblo to Greenhorn.

Let us take another case illustrative of the perjury in these affidavits. Route 34149, Kearney to Kent. Length of route, one hundred and twenty-five miles; one trip, sixty hours, \$868. September 24, 1878, Fitzalon added, \$112.24. July 10, 1879, increase two trips, \$1,122.41. Total pay for three trips, \$2,102.65. Same date, expedited Kearney to Loup City, thirteen hours. You recollect that Loup City lay about half way between Kearney and Kent. Total pay for three trips and expedition, \$4,302. Oath of John M. Peck, contractor (3 A, page 571), was sworn to February 1, 1879, and it slept from that day until April 3, 1879. Kearney to Loup City, slow schedule, three trips, two men and four animals—six. Thirteen-hour schedule, three trips, six men and fourteen animals—twenty. On the present schedule six, on the proposed schedule twenty. What per cent. increase is that? About 233 $\frac{1}{3}$ per cent. Actually used on the thirteen-hour schedule, three trips, one man, one boy and six horses—eight. The oath says six. The proof is one man, and one boy, and six horses—eight. French, subcontractor, did all the work; he says eight only were necessary, and all that he used. The affidavit states that twenty men and animals were necessary for the expedited schedule; the evidence shows that eight were actually used. There was no expedition gained in fact. Why? French testifies that he always carried the mail from Kearney to Loup City in about twelve hours before the order of expedition—only an hour less than the time to which it was expedited—and never suffered any fines or penalties; was always on time. But before the expedition, during the long schedule, he always carried it in less time than the expedited schedule, for which expedition these parties received \$2,200 per annum. The order for expedition was, therefore, fraudulent, and took from the Treasury \$2,200 per annum. And if I am not mistaken in my recollection of the testimony—and I speak now from recollection of a general kind—Mr. French did not know of any order for expedition until he came on here, I think.

Mr. BLISS. Until the inspector went there.

Mr. MERRICK. Until the inspector went there long after the expedition; and although he was the subcontractor, and a certain percentage

of the expedition was to be paid him, that percentage never was paid him, and I think he testified that he had a suit now pending to recover the percentage now due him. They not only did not let him know that there had been an order for expedition, but they did not pretend to pay him for the expedition, although his contract stipulated that when expedition was put on he should have a certain percentage additional on account of the expedition. They knew that he was carrying the mail in less time than the expedited time, and they did not inform him of the expedition, because that would inform him of his rights; and they never paid him the money, and he now has a case pending in the courts, I think he testified, for that money. You will recollect that this is the route on which, in the petition, the words "schedule thirteen hours" were inserted after it came here to Washington, according to the proof; and, according to the proof, those words were written in by Miner. So says Boone (page 2684). So says Rerdell (page 2320). And Nightingale, who prepared the petition, testifies to the fact that those words were not in the petition when he sent it here to Washington City, to post-office box 714, which was Miner's box.

Now, gentlemen of the jury, you see that on this route there was plain and distinct perjury on the part of the man who made the affidavit, by swearing that on the expedited schedule from Kearney to Loup City it would need six men and fourteen animals, whilst at that very time the mail was being carried from Kearney to Loup City in less time than the expedited schedule called for, with one man, a boy, and six horses, making eight. [Mr. Chandler rose.] Do you want to correct me?

Mr. CHANDLER. Mr. French was not notified of the expedition. On page 612 you will find that you introduced a letter yourself, notifying Mr. French on July 10, 1879—

Mr. MERRICK. [Interposing.] I was speaking from recollection.

Mr. BLISS. Mr. French stated that he never heard of expedition until he was told that he must make the time in thirteen hours, but he never knew it as expedition. Miner informs him by this letter that from August 1, 1879, his pay will be \$1,587.40, for three trips per week, thirteen hours schedule, between Kearney and Loup City, once a week. He knew that, but the \$1,587.40 is not the percentage on the expedited pay which his contract called for.

Mr. CHANDLER. That is not the point.

Mr. BLISS. It is the evidence.

Mr. MERRICK. He was not notified of expedition.

Mr. CHANDLER. He says so.

Mr. MERRICK. He was notified to make the trip within a certain time, and he had been making it before that within a shorter time. His pay was modified, but it was not modified according to his contract. There was a covenant in his contract which stipulated that he should be paid a certain percentage for the expedition.

Mr. CHANDLER. The point I make is that he was notified at the time of the expedition.

The COURT. He was not notified, though, of the order for expedition,

Mr. MERRICK. No, and the notification to him was not that he would be entitled to any additional pay under the covenant of his contract which stipulated for additional pay on the expedition.

Mr. BLISS. May I read from page 652?

Q. Was any information every communicated to you that there had been an expedited schedule ordered for which the Government was to pay an additional sum?—A. No, sir.

Q. When did you first learn of that fact?—A. I think it was in September last.

Q. You do not mean September, 1882?—A. No; September, 1881.

Q. How did you learn of it then?—A. By the Post-Office inspector coming and showing me the orders.

Q. Did you ever receive from these defendants any pay for increased speed?

Then came an objection and argument, and then on page 655:

Q. Did you ever receive any pay for expedited service?—A. Not that I know of.

Mr. CHANDLER. I do not deny that he testified to that, but I do say that he was notified, and they themselves introduced the evidence of it.

Mr. MERRICK. Not notified, again I say, of expedition; not notified of the order for expedition, and that letter is no such notification. And why? It does not tell him that an order has been passed. It tells him that he must make the time. It does not propose to pay him the sum stipulated in his contract as the percentage on expedition, and therefore it proposes to pay him some sum which is greatly less than he would have been entitled to upon expedition. He had a right to suppose—erroneous though the supposition was—that he was dealing with honest men; and he had a right to suppose that, when they wrote him a letter in which they mentioned that he must carry the mail in thirteen hours and did not specifically say that it was on expedition to be paid for by the department, and did not offer to pay him according to the covenant of his contract, there was no such order. And in point of fact he swears that he did not so understand it. They never paid him according to that contract. They knew he was in the dark. If they did write him that letter they knew he did not understand it, because they never paid him, and they knew in the course of their intercourse with him afterwards that French did not know what he was entitled to, because he did not demand it, and they kept it because they thought they could steal it away from him. When he found out that he was entitled to it, when he came on here to Washington and learned that there was an order on the files of the department giving them this money, he bade them stand and account.

Being Friday afternoon, may it please your honor, and some of the jury—especially Mr. Greene—desiring at least two days to prepare for the worship of Sunday, I think we might as well let them off for the rest of this afternoon.

Mr. GREENE. I think I want to prepare my ears; Mr. Merrick's lungs are very strong.

Mr. MERRICK. I hope I did not drive it clear through, but just drove it in.

Mr. GREENE. I don't know.

The COURT. Adjourn the court until Monday morning.

Thereupon (at 3 o'clock and 42 minutes p. m.) the further hearing of this case was adjourned until Monday, June 4, 1883, at 11 o'clock a. m.

MONDAY, JUNE 4, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen of the jury: Following along regularly in the course of thought which I have been presenting for your consideration as to the official conduct of Brady and his malversation in reference to these routes

I propose calling your attention to one of his favorite theories of the manner of discharging the executive functions of the Second Assistant Postmaster-General, and show you how far he conformed his conduct to that theory. One of his favorite theories, as he tells us, was to give a daily service on every star route in the country. In order to characterize the policy in office of his predecessor, he called the policy of the Postmaster-General who preceded the Postmaster-General under whom he was then serving the Jewellian policy, which he said was to give a greater and more rapid service to the railroad routes and to the interior cities of the older settled portions of the country, which, from the multitude of their population as well as large commercial interests, might be properly called metropolitan cities. He, on the contrary, held to a policy of giving a daily mail to the different localities throughout the West, so that the pioneer in the far-off regions might have his mail at least once a day. In the course of what I have said to you I have endeavored to explain, although very briefly, yet sufficiently for your full understanding, how much more desirable it would necessarily be to men engaged in agricultural pursuits, in grazing, and in those primitive and original but all-important occupations of life which lie at the foundation of all our prosperity and wealth, to have a daily instead of a fast mail. At page 3403 Mr. Brady says:

Q. And you proceeded as far as possible to carry out that policy, did you?—A. I did.

Q. Introducing daily service upon every route?—A. Not upon every route, but as rapidly as we could.

Q. You did as far as possible?—A. Yes, sir.

Q. That was what you were aiming at, was it?—A. That was the ultimate object.

Again, at page 3392, prior to what I last read:

Q. What interest had you in making any of the orders set forth in the indictment, or other orders relating to the routes in question?—A. Only the interest that I had in building up the service, doing what I thought was a good thing. I was particularly interested in the star service.

None of us doubt that.

The policy of the department before I came in was known as the Jewellian policy; that is, the spending of all the money appropriated for mail transportation for railroad towns and cities. I believed that country towns and people, depending upon the starservice, were entitled to some consideration at the hands of the Government that monopolized the right to carry the mail and would not allow anybody else to carry it, under pains and penalties. I believe so yet.

Q. Did you have any personal interest in the matter?—A. No personal interest except that interest. And probably if I had staid in the department long enough I would have had a daily mail everywhere.

Now, gentlemen of the jury, we have from himself the declaration of his theory that there ought to have been a daily mail everywhere. Let us pause for a single moment here before considering whether there was a daily mail established everywhere; and, if not, why not; and reflect upon the pecuniary results of a daily mail which would arise from multiplication of trips compared with the pecuniary results which I have shown you arose from expedition when founded upon false affidavits. I have shown you, gentlemen, that when false affidavits are filed distorting the proportions, which the law declares shall perpetually exist and never be changed, between the outlay of the contractor and his income on the original contract and the outlay of the contractor and his income or pay on the changed and expedited contract, the violation of that law and the wringing of these proportions out of their proper relations to each other can create an indefinite amount of expenditure on the part of the Government for the expedition and an in-

definite amount of profit on the part of the contractor. You have also seen, as I have gone along, how, in reference to the multiplication of trips, there could only be a certain designated sum realized for each trip. For instance, if on the original contract one trip would cost \$500 and you added another trip, all you had to do was to multiply the original cost and thus pay for the second trip just what you paid for the first. Thus, for two trips it would be \$1,000; for three trips, \$1,500; for four trips, \$2,000; for five trips, \$2,500, and for six trips, \$3,000. That was all that could by any possibility be done. But under the magical operation of a false affidavit and expedition a route originally costing \$500 could be run up, as it was in many cases, to thirty and forty thousand dollars. Brady himself told you he could not possibly see how the Tongue River route could be carried for the compensation which the Government had agreed to pay on the original contract, and did not see how adequate compensation could be given to the contractor by any change he might make in that contract by the addition of trips, and that, therefore, to help the contractor—I am giving the substance of his testimony—and enable him to carry the mail on that route, it was necessary for him to introduce into the manipulations by which the contractor's pay could be increased his theory of expedition. Now, gentlemen, I will give you the last table of figures with which I shall trouble you.

The COURT. Are you on the Tongue River route?

Mr. MERRICK. No, sir; not on the Tongue River route! I have here a table of figures showing how he could have made six trips a week if he had chosen, or given a daily mail at greatly less cost than he paid for giving expedition on three trips a week. I propose to show you, gentlemen of the jury, that on all these routes manipulated by Brady at the time he increased and expedited them up to three trips he could have created six trips a week and saved the Government of the United States \$77,706. I will take them up *seriatim*. On the Kearney and Kent route the contractor was Peck. I will take three trips a week and expedition. I do not want to repeat and go back and show what the trips were originally. I have ground enough to travel over without repeating. At three trips and expedition that route cost \$4,309.65. The expedition, by the way, gentlemen of the jury, as you will recollect, they never got, for you will bear in mind that it was on the route from Kearney to Kent that French was the subcontractor, and French testified that he had carried the mail just as fast before the expedition was ordered as he did after expedition was ordered, and that he never was paid according to the contract his percentage upon the expedited time, and knew nothing about the expedition having been ordered until he learned it from a post-office inspector who was examining the route. Four thousand three hundred and two dollars and sixty-five cents for three trips and expedition. Six trips would have cost what? Six trips would have cost only \$3,786.26. By giving them six trips a week instead of having passed that order of expedition which was never executed, but remained here a dead letter on the books of the Post-Office Department, except so far as it furnished these conspirators with pay, he could have saved to the Government \$516.39 on the price. Reflect, gentlemen, that here is an executive officer of the United States who, before this jury, and in this court, solemnly testified that a daily mail was the material want of the country. That was his theory of the want of the people; that was his theory of the proper manner in which to exercise the power vested in the Second Assistant Postmaster-General by the laws of the United States, and then having that in your mind reflect for a single

instant upon what each one of you yourselves must know, would not a daily mail be preferable to a mail three times a week on an expedited schedule?

The COURT. Mr. Brady, when he was on the stand expressing his views and giving his testimony, declared that a blind man could see that three trips a week with expedition was better than six trips a week without expedition.

Mr. MERRICK. He may have said that in part of his testimony. He also said in the part that I have read what I have stated to the court. Now he says that a blind man can see that six trips a week without expedition would not be as good as three trips.

The COURT. Would not be as good a service as three trips a week with expedition.

Mr. MERRICK. I will take the single route from Kearney to Kent. What was the distance?

The COURT. Forty-nine miles.

Mr. WOODWARD. It was expedited only part of the way.

Mr. KER. One hundred and twenty-five miles is the whole distance.

Mr. MERRICK. Forty-nine miles from Kearney to Loup City was the expedited distance. Let us say fifty miles. We will take an arbitrary case of fifty miles. Now, I ask you, gentlemen, whether in what Brady said when he stated that a blind man could see that three trips a week with expedition was a better service than six trips a week without it, was he sincere, was he honest, was he not wriggling in a corner where cross-examination had forced him? Think of it for a minute. Take a route fifty miles long. Suppose you go at the rate of two miles an hour, or three miles an hour, which is slow time, and you get your mail in thirteen or fifteen hours, and you get it every day. Expedite it to ten hours, and make the schedule ten hours for three trips a week. If you have a trip every day would you not get your mail by the every-day trip sooner than you would by a schedule of three times a week and expedition? If the schedule is three times a week and expedition, and you put in a letter to-day after the mail has gone and the next mail does not go until Wednesday, the letter that you put in to go by Wednesday's mail will not reach its destination at the other end of the route as soon as the letter you put in this evening would reach its destination by to-morrow's mail if it was a daily mail. Is it not palpable and plain? Independent of minute calculations upon that subject, is it not palpable and plain to you and every one of you that in your social and domestic relations, that in your business operations, if you were engaged in business operations such as occupy those men west of the western boundary of the Missouri, in our far-off territory under the shadow of the Rocky Mountains, to the east and to the west of those mountains, you would prefer a daily mail to an expedited three-times-a-week mail? What is there in the occupation and the business of such a people, an agricultural people, that requires great rapidity of intercourse between them and any other people, or between different members of the same community? Frequency of intercourse is infinitely preferable to rapidity of intercourse, and, in answer to Mr. Brady's statement on the stand, I will say that a blind man, if he could see at all, could plainly see that a multiplication of trips is preferable to expedition of trips.

The FOREMAN (Mr. Crane). It would depend on the length of the route, I should say.

Mr. DAVIDGE. Certainly.

The FOREMAN. Evidently on this route a daily mail would be preferable to expedition and three trips.

Mr. MERRICK. It would not depend on the length of the route. A route may be subdivided, and generally is, by intervening post-offices between the two termini of the routes. The rule is the same, no matter how long the route is. If the route is five hundred miles long it amounts to pretty much the same thing. But you must consider not only the convenience and the interest of the people at the two termini of the route, but you must consider the interests and the welfare of the people living between the termini and getting their mail from offices that lie between the two offices at the ends of the route.

The FOREMAN. Take the Bismarck and Tongue River route, for instance. That was one hundred and eight hours. Would not expedition and three trips a week be better than a daily mail at one hundred and eight hours?

Mr. MERRICK. No, sir. There were supposed to be intermediate post-offices on that route.

Mr. WILSON. No, sir.

The COURT. There was not a post-office.

Mr. MERRICK. There were *supposed* to be. There was proposed to be a side post-office.

The COURT. That fell through.

Mr. MERRICK. I will come to that. There was proposed to be a side post-office on that route. It was supposed that there might have been intermediate offices. In fact there were none. But even a daily mail would be greatly preferable to an expedited mail of three times a week. Independent of the convenience of the people why would it not be preferable in view of the benefits to the United States?

Mr. WILSON. I would like to ask you if the advertisement——

Mr. MERRICK. [Interposing.] On the Kearney and Kent route, as I have explained to you, there were three trips, at a cost of \$4,302.65. By making it six trips the Government would have been saved \$516.39.

The COURT. Mr. Crane, the foreman, just now said that on the Tongue River route the time under the contract was one hundred and eight hours.

The FOREMAN. I understood that it was originally.

The COURT. No. The original time, according to the contract, was eighty-four hours. The contract required that the mail should leave Bismarck Monday at 6 a. m., and arrive at Tongue River Thursday by 6 p. m.

Mr. WILSON. The time was subsequently changed.

The COURT. I have an abstract of the contract before me, and the contract requires the mail to leave Bismarck Monday at 6 a. m., and arrive at Tongue River Thursday by 6 p. m. I think that makes it eighty-four hours.

Mr. WILSON. We have had that up half a dozen times. It was restated, as said half a dozen times by Mr. Bliss, at one hundred and eight hours.

Mr. MERRICK. It never was run at that. The time was eighty-four hours.

The FOREMAN. The route was advertised at two hundred and fifty miles, I think, and when they found it was three hundred and ten miles the time was changed.

Mr. WILSON. That has been stated by Mr. Bliss half a dozen times.

Mr. MERRICK. Eighty-four hours was the time.

Mr. WILSON. It was advertised at eighty-four hours and restated at one hundred and eight, as Mr. Bliss has over and over again stated to the court and jury.

The COURT. There is some confusion in regard to that.

Mr. MERRICK. What does the advertisement say?

Mr. WILSON. The advertisement says:

From Bismarck by Yellowstone to Tongue River, two hundred and fifty miles, and back, once a week. Leave Bismarck Monday at 6 a. m.; arrive at Tongue River Thursday by 6 p. m.

That makes eighty-four hours. That was the original time. Then they restated the distance at one hundred and eight hours.

Mr. MERRICK. Will you show me the order?

Mr. WILSON. Now, Mr. Merrick—

Mr. MERRICK. [Interposing.] Don't you know there is no such order?

Mr. WILSON. Mr. Bliss has said half a dozen times that it is so. That is not the way to deal with this case.

Mr. MERRICK. It is the way to deal with this case. The way is to deal fairly, frankly, and honestly, as I have dealt with it; and not as the gentleman has dealt with me by interruption.

Mr. WILSON. I will not say that you have dealt with it dishonestly.

Mr. MERRICK. I have dealt with it fairly.

Mr. WILSON. I will say that the gentleman has not dealt with it fairly.

Mr. MERRICK. I challenge the gentleman to produce an order changing that time. I will show him a law which prohibited them from elongating that time. The law would not allow it to be done. Counsel himself took that very ground when Judge Bennett asked that the time should be elongated upon another route. He claimed before the court himself that Judge Bennett's request was not granted not because the Second Assistant was not disposed to elongate the time or diminish the pay to the contractor, but because the Second Assistant was not allowed by law to elongate the time.

Mr. WILSON. You did not dispute it.

Mr. MERRICK. I did dispute it.

Mr. WILSON. Do you now?

Mr. MERRICK. I do. I am talking about what you claim, chameleon like, colored to suit the occasion.

Mr. WILSON. No, sir. I never color anything to suit the occasion.

The COURT. This route is a very important one and figures largely in this trial. The contract certainly required in the first place the mail to be carried in eighty-four hours each way, and prescribed the days upon which it should leave each end. At that time it was supposed that the length of the route was two hundred and fifty miles. Before any service was put on the route, however, and, in fact, before the first of July arrived, both Mr. Boone and Mr. Miner had ascertained that the length of the route was more than three hundred miles.

Mr. WILSON. Three hundred and ten.

The COURT. And before any service was put on, or the time arrived for putting it on, S. W. Dorsey wrote to General Rosser, who was a civil engineer exploring that country, to furnish the Second Assistant Postmaster-General with the exact length of the route, and that was furnished by General Rosser as three hundred and three miles. That was recognized as the length of the route in one instance, but somehow or other—and I cannot see how; the record does not show by what means—they extended the route from three hundred and three to three hundred and ten miles. But the fact is that all subsequent orders recognized the length of the route as three hundred and ten miles, though I do not think you can find any order in the evidence to show that for the performance of once-a-week service the time was extended from eighty-four hours to one hundred and eight, even after the ascertainment of

the true length of the route. Indeed, the service, according to my recollection of the evidence, was not put on at all until three trips a week and expedition were allowed.

Mr. WILSON. Your honor is mistaken.

The COURT. Well, in the fall of the year 1878 some time, on the affidavit of Miner, accompanied by his proposal that he would carry the mail three times a week in sixty-five hours, an order was made by Mr. Brady to that effect. His offer was to carry it two additional trips a week in sixty-five hours for an additional compensation of \$32,650 a year. But the service, at three times a week in sixty-five hours, went into operation on the 1st of January, 1879, I think. There was a very short trial of the once-a-week trips, and I am very sure—I have looked for it myself—that you cannot find any such order extending the time on once a week to one hundred and eight hours. This affidavit of Miner, on which he obtained the three trips and reduction of time, never stated the number of men and horses required at once a week. It was a mere proposal that he would carry it on the new schedule for a certain amount of money, and saying that on the then present schedule, three trips a week, it would require twelve men and thirteen horses. That is the way I understand it. I do not know of any order reducing the time under the contract, or extending the time.

Mr. WILSON. Your honor is mistaken about once a week. The service was started at once a week on the 1st of July, as required by the contract. I stated in my argument that that matter was left in some confusion, and there is just exactly the confusion that your honor has spoken of.

The COURT. Is it not a fact that the only evidence that any service was put on under the affidavit on the 1st of July was a statement of some postmaster out there that the mail had started on the 1st of July?

Mr. WILSON. Oh, no.

Mr. CARPENTER. The witnesses proved it.

Mr. BLISS. If I may be permitted, certain witnesses stated that they commenced service on the 1st of July, and they also say that they took seven or eight days in going through; that they went through on their trips entirely without reference to the schedule time.

Mr. WILSON. They started the mail on the 1st of July.

Mr. BLISS. Mr. John W. Dorsey undoubtedly went to Bismarck and got it started on the 1st of July, so that there was no failure at the outset.

The COURT. John W. Dorsey testifies that the latter part of July he went there to make arrangements for the service.

Mr. BLISS. Precisely; and I think the record will show that they went through, but not on time or anything like time.

The COURT. There was probably an imperfect service started the 1st of July.

Mr. BLISS. With reference to time I made a suggestion to Mr. Wilson when he was arguing of an easy way to settle it. The route-book can be brought here in a moment, and that will show whether there was ever any order issued extending the time beyond eighty-four hours.

Mr. MERRICK. There never was. I just said there never was.

Mr. BLISS. I have examined the route-book; it is not for me to say what is in it, but I have examined it with a good deal of care.

The COURT. There was no such order put in by either side.

Mr. BLISS. No, sir.

The COURT. I dare say that whilst this imperfect service at once a

week was on they took practically as much time as they chose to make that one trip.

Mr. MERRICK. The route was expedited on October 4, 1878.

Mr. WILSON. That is a mistake.

Mr. MERRICK. The jacket is dated October 4; the order is later.

Mr. WILSON. The order is December 23, 1878.

Mr. MERRICK. On the route from Bismarck to Tongue River Miner was the contractor. That is the route about which we have had some trouble heretofore. The last time I undertook to speak of some matters in connection with it we got into this same trouble, and I left it out and took other routes, for I am only dealing in specimen routes. However, I will go on and read this table:

Three trips and expedition cost \$35,000.

Mr. BLISS. Excuse me, Mr. Merrick, but the order for expedition on Bismarck and Tongue River recites that the present schedule is three and a half days, which is eighty-four hours.

Mr. CARPENTER. What page?

Mr. BLISS. 2139.

Mr. MERRICK. That is conclusive; that settles it. On the Tongue River route the schedule was eighty-four hours. Three trips and expedition cost \$35,000. Six trips, gentlemen, would have cost, at eighty-four hours, \$14,100. Six trips, therefore, would have saved the United States \$20,900. Now, I ask you, gentlemen of the jury, whether there was any occasion for an expedition costing this immense sum on that route, which ran through a perfect wilderness. The first sound made in the woods, after the wild shriek of the savage, was the sound of the axeman preparing the way for this route. Civilization had not taken up her seat along-side of the road. Enterprise had not entered into the forest or the plains there or thereabouts. The white man stood on this side, and looked across the forest beyond the point where civilization had reached. In the intermediate places there was neither enterprise nor civilization, nor people. John W. Dorsey tells you that when he was out there preparing that route he had to get an escort from General Miles, for protection, at the very time he started the mail on the route. General Sherman, it is true, says "Yes, let us have the mail, mail on that route, and mail everywhere." Why? "Mails help to picket the country," and he spoke with some emphasis in favor of frequent mails through that wild region among the Indians and through wild regions contiguous thereto. What was his reason? General Sherman—gallant and able man, immortal name that will go down in our history forever!—General Sherman would take every cent appropriated to every department of the Government that he could lay his hand on legally and give it to the Army to save the Army expense and trouble. General Sherman would picket not only the Northwestern frontier with postmasters and mail routes, but would have them over the whole country, in order to save the Army appropriations and protect the soldiers. It is perfectly natural, therefore, that he should wish for this additional aid. And when he spoke of these mail routes and mails, he spoke of the stations along the route as so many stations for pickets to save the Army the necessity of picketing those localities. But for the needs of the people, gentlemen, where was there any need for an expedited route along that line? What people were there that needed rapidity of communication? If there was a mail needed at all, even for General Sherman's purposes, it was a frequent mail, and not a rapid mail. If a mail was needed there for picketing, it was a mail that went over the route every day and not once in two days.

Mr. CRANE (foreman of the jury). Here is a point that has not been cleared up, and it seems to me this is the place to settle it now. This route was advertised at two hundred and fifty miles in eighty-four hours. When the route was found to be three hundred and ten miles long would not the contractor be obliged under his contract to carry the mail in eighty-four hours?

Mr. MERRICK. The contract says so, and it uses this expression, unfortunately:

This proposal is made with full knowledge of the distance of the route.

So says John R. Miner in signing the proposal. When the route was expedited you will recollect, Mr. Foreman, that by the covenants of the contract the contractor had a right to throw it up and say he would not carry it. But without some action on the part of the Post-Office Department the contractor was by the covenants of his contract bound to carry it according to his contract; and for the reason that the Post-Office Department is obliged, after using its best exertions to ascertain accurately the length of these routes, to throw the burden upon the contractor. In putting in his bid the contractor says, in effect, "I bid upon this route on your advertisement, and my proposal is made with full knowledge of the length of the route, the weight of the mails to be carried, and all other particulars in reference to the route and service, after careful examination of the forms and instructions attached to said advertisement." So said John R. Miner in his bid, and so became he bound by the covenants of his deed.

Now, a daily mail could have been ordered on that route and \$20,900 saved thereby to the Government. Why would not a daily mail have subserved the needs of such a people better than an expedited mail at three times a week? Answer me, Mr. Foreman. Why was not that \$20,900 saved to the Government? That is a question that has been running all the way down through this case, and which now, although not heretofore distinctly repeated, I shall begin to ask and continue to ask. Why was this thing so? That question I shall repeat in reference to these various orders to which I shall call your attention this morning.

Why was it that nineteen routes, taken at forty-one thousand and odd dollars, should in a little over one year have been so manipulated by the Second Assistant Postmaster-General and these defendants as to cost the Government four hundred and seventy-odd thousand dollars a year, including the original \$41,000? Or why should that original sum of \$41,000, the total cost of those routes when the contracts were taken, have had added to it on these nineteen routes in a little more than one year the enormous sum of four hundred and thirty-odd thousand dollars per annum? Why was it? Your inquiry goes forth, as it must go forth in the course of what I shall show you and what I have shown? Why was it? Why was it? If no answer comes, then your minds, your hearts, and your judgments must search to find the reason, and the answer to your inquiries will come that the motive of Brady was that he was a corrupt official, using his official power for corrupt purposes in combination with his co-conspirators, the defendants in this case. For a motive you must find. All human actions have a motive. The human hand may move; it is, at the instigation of the human brain and will, impelled by a motive. A motive regulates your every step; a motive regulates your every act. And in an inquiry with reference to the criminality of human conduct there is no surer way of leading to the truth than ascertaining what was the motive of the questionable

act, by looking into the laws of nature and determining according to those laws and the evidence before us what could have been the motive of the act. And when you once get at an act, if you wish to ascertain the character of that act from the circumstances and your knowledge of the course of human transactions, you must look upon the motive, and when you touch the motive, a flood of light is thrown upon the case, and makes it palpable in its real character as either pure and stainless or black and criminal.

Consider White River to Rawlins, with which you are quite familiar in connection with the affidavits. The original three trips, and expedition added, cost \$13,706.25. Six trips would have cost \$10,200. Had there been six trips from White River to Rawlins, instead of expedition on three trips, the Government would have saved \$3,506.25. Why was it that Brady did not save that money to the Government, and give six trips over the route from Rawlins to White River? White River is, I believe, what you might call the jumping-off place. Is there anything beyond it? Nothing but a wilderness. There stops the mail. There had stopped the tide of emigration and of civilization. The wilds beyond hear no echo from our enterprising people. Why, then, should the United States be required to pay this large sum for expediting the mail to a point which lay upon the line that divided the red man from the white? What was Brady's motive? Founded upon false affidavits, as I have shown you, the order was made. What was their motive for making the false affidavits—affidavits manipulated not by one, but by two or three, whose finger imprints are over them?

What was the motive of these men in swearing falsely? What was the motive of Brady in dealing unjustly with the Government, and taking this money from the public Treasury to expedite a mail to the border lines of civilized life?

Saint Charles to Greenhorn. John R. Miner was the contractor. Three trips and expedition cost the Government \$3,945.60. Six trips would have cost \$2,630.40. Six trips would therefore have saved to the United States Government \$1,315.20. What was the motive in giving expedition there instead of giving the six trips? It was a short route; only thirty-five miles, Mr. Crane. What was his motive? What was the main-spring of his action? Why should he do it? Not only that, gentlemen of the jury, but it missed connection after expedition. He had expedited the route at this large cost instead of giving the six trips at less cost, and after he had expedited it, it reached its destination just after the mail had left going west, and a short time after the mail had left going east; so that the mail coming from Greenhorn had to lie over some thirteen hours before it could start west, and some twenty hours before it could start east. There it had to sleep whilst Brady was paying this extravagant rate to travel fast upon the road. Why should it not have traveled slowly without this pay, and thus have prevented or avoided these delays at the end of the route? It was, therefore, a purely local intercommunication, for letters from Greenhorn could neither go east nor west for from twelve to twenty-three hours after their arrival at the end of the route. And when they could neither go east nor west without lying that long at the Greenhorn end, I ask again why, in the name of all that is honorable and honest, should Brady have given that kind of expedition? Had there been a daily mail, the letters could only have lain over twelve hours, anyhow, either going west or east, even if they had missed connection, for within that time the mail would certainly run between the two places, making con-

nection with the grand through routes west and east. Again, where was Brady's motive?

Trinidad to Madison, forty-five miles long, according to the advertisement; sixty after they put on Raton. Expedition and three trips a week cost \$4,290.30. Six trips, Mr. Foreman, would have cost \$3,064.50. Six trips would then have saved the United States \$1,225.80. Why, again, was this? It was a short route. Why was it?

Garland to Parrott City—a route about which I shall have something further to say by and by. John W. Dorsey was the contractor. Three trips and expedition, \$13,433.04. Six trips would have cost \$9,950.40. Had you given them six trips instead of expedition and trips you would have saved to the Government \$3,482.64. They would have had a daily mail, and \$3,482.64 would have been saved to the Government.

Now I come to something that is interesting, may it please your honor. Mineral Park to Pioche. Three trips and expedition cost \$22,300. Six trips would have cost \$17,892. I want you to bear this in mind particularly, gentlemen. Six trips would, therefore, have saved \$4,408 to the Government. On Mineral Park and Pioche, then, upon which he had given three trips and expedition at a cost of \$22,300, had he, instead of expediting, made it six trips, he would have saved the Government \$4,408. I will show you why that would not do. Now let us see.

I said that was an interesting route. Your honor will recollect that on that route the time was expedited from two and seventy-six one-hundredths miles per hour—which was the original time, and slower than Dorsey says in his letter to Joseph an ordinary horse can walk—to three and eighty one-hundredths miles an hour, as slow, according to Dorsey, as any horse ought to walk. That expedition was a little over a mile an hour, and for that little over a mile of expedition on the three trips Brady paid \$4,408 more than he would have had to pay for six trips upon the original time of two and seventy-six one-hundredths miles an hour. Mr. Foreman, would you have done that? Would you not have stood amazed and shocked at a request to do that? Would you not have been frightened at the language of fraud and accusation that would have arisen out of the figures as you looked at them?

But worse remains on that route, as well as on some others. Having expedited on these false affidavits that I have shown you, having broken the proportion which the law requires to be observed between the receipts and expenditures on the original contract and the receipts and expenditures on the expedited contract, having made a fraud enter into the three trips and expedited time, what did he then do? He then adds additional trips, doubles up the gross sum, and makes the additional pay on that route \$29,733. And here I may pause, gentlemen, to show you for a single moment how this fraud fructified. A route where there is a certain contract price cannot be made very lucrative by adding trips. But the more trips you have, if you are making anything at all, the more you make. You double the cost of each trip. On expedition within the law you can make nothing. On expedition beyond the law, on false affidavits, destroying the proportions I have indicated, you can make an indefinite amount. Now, what did Brady and these conspirators do? They took the route in its infancy at the original price; then they expedited; then they multiplied trips and said "three trips a week and so much expedition are worth so much"—what I have indicated to you here on Mineral Park and Pioche—\$22,300, bringing it up some \$15,000 to \$20,000; then they added three trips more and doubled that sum—doubling the price of the trips and doubling the amount developed by the fraud and the false affidavits. Gentlemen, if there was any better

device or scheme that genius could conceive and rascality put in practice for the purpose of robbing the Treasury by means to these routes I have been unable to find it. Indeed I have been utterly amazed at the fecundity of the intellect of these gentlemen who are now standing at the bar of justice in the multiplication and variety of instrumentalities by which they burglariously entered the Treasury of the people.

Now, we will take Tres Alamos to Clifton. Dorsey was the contractor. Three trips and expedition cost \$14,112. Six trips alone would have cost \$9,408. Six trips then would have saved to the Government \$4,704. Why was it not done? Did that people living in that far-off region need this expedition? No. What else was done? After he had performed this operation upon the false affidavit on that route, and got it up to three trips with expedition; he then multiplied it and allowed for subsequent trips \$15,950.

Eugene City to Bridge Creek. Three trips and expedition, \$21,460.89. Six trips would have cost \$13,949.58. Had he given them six trips on that route—and you recollect the affidavits on that route—he would have saved to the Government \$7,511. He did not do it. Why? What was his motive? Had he saved that to the Government, and not added expedition for the purpose of enhancing the price to be allowed for carrying the mail on that route, the contractors would not have received so much money, and he would not have received his 30 per cent. You must give him a motive. Give him a reasonable motive, for Mr. Brady is not a simpleton, as we have had occasion to see. He knew what he was doing, and he knew as well the results of his acts beyond the law as he did the limitations of the law that taught him they were malversations in office.

The Dalles to Baker City, three trips and expedition, \$31,080. Six trips a week would have cost \$24,864, and thus have saved to the Government \$6,216. Why was not that done? Why was not that amount saved? Why need I ask that question in reference to The Dalles and Baker City route, may it please your honor? Expedition asked for by the people apparently upon petitions gotten up by them, but stimulated by the contractors; expedition ordered; expedition paid for; expedition never put on for one long year after it was ordered. At the end of every quarter the contractors walked up to the Treasury and drew their money for services they knew they were not performing. The order was made, and a whole year elapsed without the order being executed; a whole year passed by without the expedition being put upon the route; and that people, who were represented as being so clamorous for a faster mail, seeing this thing right in their midst, remained passive and quiet, never uttered a breath of complaint, never made a murmur of distress; and the Government itself never discovered the fraud until these investigations began. Brady no doubt knew the fraud, but I say the honest officials of the Government never discovered the fraud until Brady had made way for that integrity which now, representing the Post-Office Department and illustrating the high principles of morality of the present administration, is running that department to the satisfaction of the people and making it pay its own expenses day by day. No more robberies there; no more need for deficiency bills there. No, sir. The people are satisfied. The mail goes everywhere—to the metropolitan city, and to the cabin of the pioneer. From one end of the nation to the other it goes, carrying news, intelligence, business information, and letters of affectionate esteem and love, carrying them with regularity, to the entire satisfaction of the people, and no expedition, no duplication of trips,

running on the schedule, and paying the expenses of the Post-Office Department without burdening the people by taxation.

Canyon City to Camp McDermitt, another one of those interesting routes that suggests some painful reflections in reference to these defendants. Mr. Peck was the contractor. Three trips and expedition cost the Government \$21,500. Six trips would have cost \$17,328. Six trips a week, therefore, would have saved to the Government \$4,172. Why was it not done? What did he add after this?

Mr. BLISS. Four trips, \$41,000.

Mr. MERRICK. \$28,666, making \$50,166.66 in whole for that route. These figures may confuse a little, but I want to be accurate. The cost of this route went up to \$50,166.66. What was the expedition for which this large pay was given? It was expedited, may it please your honor, from one and ninety-one one-hundredths miles an hour—I want to call your honor's attention to it as well as that of the jury—to two and fifty-three one-hundredths miles an hour; it was made to run about half a mile faster. For running that half mile faster this enormous sum of money was paid when, instead of the \$50,000 ultimately paid for trips and this half mile faster, he could have secured the six trips for \$17,328. Where is the motive? Where is the purpose? Heart and mind of man, answer me. Where was the motive? Where was the purpose? How could it be done? How could this officer have done such a thing?

Julian to Colton. Three trips and expedition, \$8,910. Six trips would have cost \$7,128. Six trips would have saved \$1,782. And yet it was not done. But the expedited schedule missed its connections all around. The mail lay over at the end of the route before it could be sent east or west.

Redding to Alturas. Three trips and expedition, \$35,930.66. Six trips would have cost \$17,964. Six trips would have saved to the Government, therefore, \$17,966.66. What about this expedition? No expedition was ever made, says Major (page 1275). Major was the sub-contractor, I believe. He made the time, before the expedition was ordered, shorter than the order required. And yet, at the very date of the order, at the very time this Second Assistant Postmaster-General wrote the order upon that route, the mail was being carried in less time than the time in which he ordered it to be carried.

Gentlemen, these things must startle you, as they startled me when I first looked into them, and as they must have startled the whole country from one end to the other.

Mr. Ingersoll said in his speech that "You can never convict S. W. Dorsey; you may poison the public press, and, by that poisoning, poison public opinion." But we have not poisoned the press. We have sought to poison no public opinion. But when these facts came out, as developed by an examination of the records of the departments of the Government, the whole people stood aghast at the fraud of which they had heard and of which they were the victims, and from one end of the country to the other a wild shout went up, "Let justice be done though the heavens fall!" That is the explanation of the poisoning. It is the public sentiment, the honest declaration of judgment upon these confederates and co-conspirators through the public press. This is no sudden outburst. This is no sudden exclamation of passion that goes up from the people. It is long-settled conviction, founded upon the publication of these very facts that I have detailed to you, and to-day this whole people sit at the end of the electric wire listening to catch every sound from this city to see whether it is impossible in the capital of

the nation to get a jury to condemn a man that has been great, who has done wrong, but who is still rich. Yes, they are listening and looking and asking whether everything in Washington is permeated with the corruption of which they have heard; is this, indeed, the center of iniquity, and has the virus crept into the judicial tribunals as well as into the executive departments of the Government? Are the judicial tribunals poisoned here in the very shadow of the Capitol? Their purity is our last hope. They are the last stronghold of the Republic, and when that falls then honesty is gone and iniquity may hold high carnival everywhere without fear of retributive justice, conscious that it is beyond the reach of the law.

I now beg leave to call your attention to another point in connection with these routes where Brady, in order to gain the emoluments of the conspiracy of which he was a member, disregarded and violated the law. I have shown you, gentlemen, how carefully Congress had guarded against fraud and the abuse of official power in regard to contracts for carrying the mails, by requiring that in every case where the extraordinary and exceptional power to expedite a route should be called into exercise it should be only to meet some special or unforeseen contingency, and that the additional compensation should be in the same proportion to the original compensation as the number of horses and carriers necessarily employed on the original schedule bore to the number of horses and carriers necessarily required on the expedited schedule, so that through all changes and conditions there should be preserved the exact proportion between outlay by contractor and payment by the Government, as that proportion was established in the contract made in the original letting. I have also shown you how these defendants broke through that law by means of false affidavits. I have also shown to you how this ingenious scheme of fraud was devised in 1878, and how, at that time, the custom of the department was revolutionized by Brady, in making the exercise of the extraordinary and exceptional power conferred upon the Second Assistant Postmaster-General to meet extraordinary and exceptional emergencies the daily habit of his office to meet the avaricious demands of himself and his co-conspirators. I will now conduct you a little further along that you may see to what all this led, and how, having concluded to break through one law, Brady's audacity increased with his success, and he determined to trample under foot another law, which is the greatest safeguard of the Treasury against the depredations upon it by any high functionaries of the Government. I will read to you section 3679 of the Revised Statutes of the United States:

No department of the Government shall expend in any one fiscal year—

That is, from June 30th to July 1st of the next year—

any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations.

You will perceive, gentlemen of the jury, that this provision guards the Treasury door against invasion from the high civil functionaries of the Government. No department shall, under any circumstances, expend in any one fiscal year more than the amount appropriated for it by Congress, nor shall it involve the Government by contract in obligations for a greater amount than is appropriated for that fiscal year. You comprehend it without further explanation. That law is written on the doors of the Treasury vaults of the United States.

For the fiscal year from June 30, 1879, to July 1, 1880, Congress had

appropriated for the star-route service \$5,900,000, being every cent estimated for the needs of that service by Mr. Brady and the department. I say by Brady and the department, for whilst the department sends in the estimates, the estimates are made up in the contract office by the Second Assistant Postmaster-General. For the fiscal year beginning July 1, 1879, and ending June 30, 1880, he got every farthing he asked for.

Now, what occurred? In this wild speculation after money, emboldened by success, and relieved by his audacity from apprehensions of the dangers of the law, he went on, and he not only within the first quarter or first half of that year, expended all the money appropriated for the entire year, but he contracted for a much larger sum, away beyond the appropriations.

The COURT. No, Mr. Merrick, you are mistaken.

Mr. MERRICK. He did not spend it all. He made contracts which, on the 30th of June, 1880, would have exhausted the entire fund and left the Government largely in debt on the covenants of the contracts.

The COURT. Two million dollars.

Mr. MERRICK. Two million dollars.

The COURT. The report was made to Congress in December——

Mr. MERRICK. [Interposing.] I am going to read that.

The COURT. And the deficiency had not yet occurred, but the report was made for the purpose of having Congress supply the deficiency.

Mr. MERRICK. The actual deficiency in the money in December had not taken place. But the contracts, you recollect, went into operation and were to continue for four years, and in December it became manifest that those contracts thus recklessly made by Brady would, before the end of that fiscal year, not only consume all the money appropriated, but would involve the Government in liabilities upon the covenants of these contracts to the extent of \$2,000,000 in excess of the amount appropriated. This he had done notwithstanding this law, which forbade him to expend in one fiscal year more than the money appropriated for that department and that purpose, and forbade him to make contracts which would involve the Government in obligations within the fiscal year to any greater extent than had been appropriated for that fiscal year. Now, gentlemen, in December, when Congress met, according to the routine of executive and legislative business, the Post-Office Department made a report to Congress of its proceedings during the preceding year.

After having made that report, without speaking of the prospective deficiency and the official delinquency that had involved the Government in this liability beyond the appropriations, they waited until some days afterwards, when the following took place. I read from page 555, a letter from Thomas J. Brady:

DECEMBER 6, 1879.

Hon. D. M. KEY, *Postmaster-General*:

SIR: I have the honor to state that the appropriation for inland mail transportation on star routes for the current fiscal year has proved insufficient to meet the wants of the rapidly-growing service.

The annual cost of the service now in operation is \$7,620,004, while the appropriation is but \$5,900,000.

Not only will the present appropriation allow no increase of mail facilities during the year—

He wrote that with a sigh, I have no doubt—

but it will be necessary to curtail the existing service in order to bring its cost within the appropriation.

- That must have been very painful, because if he had been compelled to curtail there would have been some paying back of his 30 per cent:

Believing that this cannot be done without great injury to many deserving communities, and further that pressing necessity exists for increased service in many places, I venture to suggest a method of relief.

During the four fiscal years last past, viz, 1876-1879, there has been covered back into the Treasury of unexpended balances of appropriations for inland mail transportation \$3,965,468.27.

During previous years the department had not exhausted all the funds given to it for inland mail transportation on the star service. Why? Because the revolution had not come. Appropriations in excess of needs had been made, and what had not been expended had been covered back into the Treasury for the reason that they had been obeying the law in regard to increase and expedition and making such increase and expedition the consequence only of an exceptional exercise of power. Brady's revolution had made, as I have said, this extreme medicine of the department its daily bread. That had not yet taken place when these unexpended balances were covered back in the Treasury:

In view of this fact, I have the honor to request your recommendation to Congress that about one-half this amount, say \$2,000,000, be re-appropriated for mail transportation on star routes.

This will enable the department to maintain the present service, and besides afford a margin for reasonable and necessary increase during the remaining half of the fiscal year.

Very respectfully, &c.,

THOS. J. BRADY,
Second Assistant P. M. General.

Then, on the 8th of December, Key takes it up:

POST-OFFICE DEPARTMENT,
OFFICE OF THE POSTMASTER-GENERAL,
Washington, D. C., December 8, 1879.

SPEAKER HOUSE OF REPRESENTATIVES:

SIR: I have the honor to transmit herewith a communication from the Second Assistant Postmaster-General, calling attention to the insufficiency of the appropriation for inland mail transportation for the present fiscal year, and asking that the sum of \$2,000,000 be re-appropriated out of the unexpended balances of former appropriations—

Unexpended balances of former appropriations—

for that purpose, which have been covered into the Treasury, and be made available to meet the necessities of the service and of the country during the current fiscal year. I cordially indorse this recommendation, and take this occasion to suggest that the business interests of the country would be promoted by the prompt and favorable action of Congress.

D. M. KEY,
Postmaster-General.

Duplicate to the United States Senate.

Now, what was done? In the first place, before considering what was done, you must bear in mind that you have the admission of a two-million-dollar deficiency upon Brady's conduct; that he had gone \$2,000,000 beyond the appropriation.

Mr. WILSON. Will you not state that correctly?

Mr. BLISS. The \$2,000,000 included a margin.

Mr. MERRICK. It was to include a small margin for other increases.

Mr. WILSON. \$1,100,000 was really the amount.

Mr. BLISS. \$1,100,000 was appropriated.

Mr. WILSON. That was appropriated to cover the service as it was.

The COURT. To cover the service already contracted for?

Mr. WILSON. Yes, sir. The two millions was to give a margin for further increase.

Mr. MERRICK. I do not care how it is. Suppose that is so.

Mr. WILSON. I simply want you to be accurate.

Mr. MERRICK. Counsel admits then that Brady had gone \$1,100,000 beyond the appropriation. \$1,100,000 was not enough. These defendants had only got four hundred and seventy-odd thousand dollars a year of it as I have shown you. Their contracts had gone up from forty-odd thousand dollars to four hundred and seventy-odd thousand dollars a year, and for that fiscal year they were to get four hundred and seventy-odd thousand dollars. That will do me very well. I am content. He admits that Brady had gone \$1,100,000 beyond the law. Am I right?

Mr. WILSON. No, you are not right.

Mr. MERRICK. Of course my Brother Wilson could not say I was right.

The COURT. That was not his admission. That was the judgment of Congress in fixing the sum.

Mr. MERRICK. He admitted he had gone two million.

The COURT. The two million was to cover his present or past contracts beyond the law and leave a reasonable margin for future increases.

Mr. MERRICK. The two million was to cover his past steals and his prospective steals. Take it that way. I do not care much how it is. But you have a declaration from Brady that he had exhausted for the fiscal year 1880 the appropriation made by Congress, or that during that fiscal year on his contracts it would be so much exhausted that there would have to be an appropriation of \$2,000,000 to pay for the service and give some additional service. Mr. Wilson says that \$1,100,000 was the amount to make good the contracts then made by Brady.

Mr. WILSON. I think you are inaccurate.

Mr. MERRICK. If I am, correct me, and I will admit it.

Mr. WILSON. You are inaccurate in just this: that he says if the service is maintained it will at the end of the fiscal year amount to that much and there will not be sufficient money by so much. Then he says, "If Congress don't want this service we will reduce it so that it will come within the appropriation."

Mr. MERRICK. He does not say that.

Mr. WILSON. See if he does not.

Mr. MERRICK. Does he?

Mr. WILSON. Read it.

Mr. MERRICK. If he does I have missed it; I would like to see it.

It will be necessary to curtail the existing service in order to bring its cost within the appropriation.

Mr. WILSON. In order to keep it within the appropriation.

Mr. MERRICK. That is it.

Mr. WILSON. That is it exactly.

Mr. MERRICK. To curtail the existing service, when on his contracts, by their covenant, each contractor had bound himself to carry this mail, and if it was curtailed Brady would have to pay a month's extra pay to each contractor for doing nothing.

Mr. WILSON. To the extent of the curtailment.

Mr. MERRICK. No, sir; he would have to pay to that extent. He had bargained away the money of the United States. He had given the additional service, and then went to Congress and said, "I have done this in my high mightiness as against the law that forbade me to exceed the appropriation. I have done it. Yes. I want \$2,000,000

more. If you don't give it to me I will ruin the service. I have made my contracts, and if you don't succumb to the mandate of the Second Assistant Postmaster-General and give me the money I will not maintain the service." What then? "I will pay a month's extra pay all around to the contractors I have discharged because you do not help me. Dare to refuse me!" What followed? I will show you what followed and how Congress acted. It is an interesting piece of history, and it comes in to answer that bold inquiry of Mr. Wilson, "Show me where my client has violated the law." Show me in this record where he has conformed to the law!

Mr. WILSON. You cannot show where he has ever violated it.

Mr. MERRICK. Gentlemen, what do you think of that? What do you think of that? If I was not so much occupied with my case I might do as Mr. Ingersoll did. He first undertook to convict Rerdell, and then made a dash at Brother Ker and Brother Bliss, and did not seem to be particularly anxious about defending the defendants. I might go on now and convict Brother Wilson; but I have charity for him with all his faults. A merciful humanity with me throws its mantle over a great many things! Now, let us see what was done by Congress? When that extraordinary piece of dynamite exploded in the House of Representatives fifty men were on their feet at once. "In the name of all that is good and great, and especially the Constitution of the United States and the laws of the land, what does this mean?" said one or two of those gentlemen in Congress. "We know something. They have got more papers in the Post-Office Department than we know about." Said Brady, "I don't mean anything. That is all right." "Oh, no. Let us have a committee to investigate this transaction. Congress cannot stand seeing the law trampled under foot. Above all things, the legislative department of the Government cannot permit the executive department to transcend the appropriations and then come to us and say, 'If you don't give us a deficiency certain service we are authorized to take charge of will be ruined.' That would in effect give to the executive department control of the public purse. That we never can consent shall be done. The Second Assistant Postmaster-General that now makes this report to Congress for money for his deficiency within six months after the beginning of the fiscal year took an oath to support the Constitution and obey the laws of the land. One law forbade him to do this thing which he now asks us to condone—one of the laws he swore to support. He has violated that law. Let us have an investigation into this thing." Some time in December, shortly after this report came in, a committee was ordered to investigate the matter. Mr. Blackburn, of Kentucky, was chairman of the committee. That committee sat through winter's snow and spring-time buds examining this question. They had Mr. Brady before it. As you are aware, upon Mr. Bliss's cross-examination, he asked Mr. Brady if he had not testified to certain things before that committee. They had some of these routes before them. It was difficult, in fact utterly impossible, for them to get at the truth. They just scratched the surface and that was all, for these officials, gentlemen, are so slippery that it needs a well-sanded hand to hold them while they wriggle. But the committee got at enough to satisfy it that the whole atmosphere of the Post-Office Department was impregnated with fraud and criminality, at least that part of the department which was under the management of Thomas J. Brady. What did Congress do in consequence of the examinations of that committee? It passed a law which Mr. Brady on the witness-stand openly announced to you as a vindication of his conduct. Let us see what that law is, gentlemen of

the jury, and consider how far it does vindicate his conduct. First, let me say to you—and although it is a momentary digression, I am sure it will hardly take your thought from the line of my remarks—that these contracts seem to have been in trouble from the day of their birth. They were conceived in iniquity and born in sin, and they have had trouble ever since they commenced to breathe the breath of life. In 1877 there was a Congressional investigation in reference to them for the reason that Peck's name appears to the bids and Peck was not here to sign his name.

The COURT. That was in 1878.

Mr. MERRICK. Was it 1878?

The COURT. I believe so.

Mr. MERRICK. Yes, you are right. In 1878 the bids were put in. Boone, before whom the acknowledgments were taken, and who certified to the acknowledgments, swore before you, as was understood at that time to be the fact, that Peck never did appear before him and acknowledge the papers. On this trial we have developed in truth, under oath, of what was then suspected, that Peck's name to those bids, in one or two or more cases, were signed by S. W. Dorsey. But that investigation passed away. Now comes the second investigation, in the winter of 1879-'80. I will read to you the law that Congress passed on that subject. It is dated the 7th of April, 1880. I ask your patient attention to this law because it becomes important:

AN ACT to provide for a deficiency in the appropriation for the transportation of mails on star routes for the fiscal year ending June 30, 1880, and for other purposes.

Be it enacted, &c., &c., That the sum of \$1,100,000, or so much thereof as may be necessary, be, and the same is hereby, appropriated out of any moneys in the Treasury not otherwise appropriated to meet the expenses of inland mail transportation on star routes for the remainder of the current fiscal year.

Now, that looks very much like an approval of Brady's conduct I confess, but let us proceed a little further:

During the remainder of the current fiscal year no further expediting of service on any postal route shall be made.

What does that look like? "Mr. Brady, you have caught Congress in an awkward position. We find we will have to appropriate money to pay for those contracts that you have fraudulently and unlawfully made or else the public service will suffer. We regard them as wrong and we condemn your conduct, but we cannot do anything at present with what is in the past. We will deal with you in the future. We will at least stop the highest flings of your wild dance. No more expediting during this fiscal year, sir. We have looked into it and we find fraud. Although we must suffer and pay for the fraud, or else experience still more acute suffering, you shall perpetrate no more of this fraud. You shall not expedite any more under any circumstances during this fiscal year." A plain, distinct, and unequivocal condemnation of his conduct by the Congress of the United States, and now he swears it was a vindication. I have often thought that he is entitled to some charitable consideration from having such a lack of wit in the way of moral perception that he cannot distinguish between right and wrong. It must be true that he cannot distinguish between commendation and condemnation.

Second, that the further sum of one hundred thousand dollars be, and the same is hereby, appropriated as aforesaid to enable the Postmaster-General to place new service as authorized by law.

What does that mean? Brady tells you he was so busy in expediting

and increasing and in transcending the appropriations for that period that he could not put service on all the routes that Congress had provided for.

Provided, That the Postmaster-General shall not have the power to expedite the service under any contract either now existing or hereafter given to a rate of pay exceeding 50 per centum upon the contract as originally let.

That is Mr. Brady's commendation. He expedited 150, 250, 400, 500 per cent. Congress says that hereafter and forever there shall be no expedition except at the rate of 50 per cent. upon the original contract. If the original contract price is \$500, when you come to expedite you shall only pay \$250 for it. Brady took the original contract of \$500 and on the false affidavits of his co-conspirators, as I have shown to you, expedited and duplicated until he ran up the amount to \$50,000 in some cases. Congress, having looked over the whole field and seen the operations of fraud, seen the machinery by which this fraud was conducted and seen its achievements, said, "We can no longer trust you under the act already in existence, because you have plainly violated that law and pretended to sustain yourself by affidavits you knew to be false. We cannot longer trust you, and we cannot be sure of the official who succeeds you. Therefore on the testimony in the investigation according to our best judgment as to what ought to be paid for expedition, we say that no more than 50 per cent. shall ever be paid on the original cost of the contract."

It is a little after one o'clock, your honor, and I wish to avoid tiring the jury, for I shall be obliged to continue, I say to your honor, for probably two days more.

The COURT. It is very polite for you to say so. We will take our recess.

At this point (1 o'clock and 5 minutes) the court took its usual recess.

AFTER RECESS.

Mr. MERRICK. [Continuing.] Fifty per cent. then, gentlemen of the jury, was the amount that Congress thought, in its best judgment, after a careful investigation, should be allowed for expedition. You will recollect that in this investigation they had Mr. Brady before the committee, and they examined him carefully in reference to all matters that had come within his knowledge and experience upon this subject, and obtained from him all the information he was willing to give. That being the judgment of Congress in reference to what ought to be paid for expedition, it may be interesting again to inquire what was Mr. Brady's judgment, sitting in the chair of executive authority and representing the office of Second Assistant Postmaster-General. According to the judgment of Congress, as I explained, if a route cost originally \$1,000 the Second Assistant might pay \$500 in addition for expedition, and no more. What did Brady do? On route 44160, from Canyon City to Fort McDermitt, as you are already informed, he granted an expedition of half a mile an hour, and allowed \$29,950 additional for expedition alone. The original cost of this route was \$2,800. 50 per cent. would have been \$1,400 for expedition, but instead of \$1,400 there was paid \$29,950. There is another, and, as I have said to you before, quite an interesting route, one of John W. Dorsey's routes, to

which I have already referred in another connection, the route from Mineral Park to Pioche. According to the original contract the time was two and seventy-six one-hundredths miles per hour, and then it was reduced to three and eighty-six one-hundredths miles per hour. That was a reduction of about one mile an hour. Suppose it to have been three miles in the first instance, and then to have been reduced or expedited to four miles an hour. What do you think it cost? For expedition, \$31,161. I will refer you also to the Tres Alamos and Clifton route. It was originally two and thirty-four one-hundredths miles an hour, and was expedited to four and ninety-two one-hundredths miles an hour. The original cost was \$1,568, to which was added \$18,051.92 for expedition. According to the rule laid down by Congress as to the proper cost of such expedition it would have amounted to only \$784. Instead of that, Brady paid for this expedition \$18,051.92. That such things under the law as it now stands can never again occur, cannot weigh with you in considering what shall be done in justice for what has already transpired. Verdicts of juries and penalties of law are not administered so much for the sake of punishing crime in the individual who has committed it as for the purpose of making the commission of crime dangerous to members of society and preserving peace and good order and faithful obedience in the future to the law of the land. Ingenious devices may be invented and put into operation for the purpose of escaping the present law by any other official disposed to be regardless of his trust, as they were put into operation to escape the law existing at the time of Mr. Brady's service in office. What I have given to you as paid for expedition on these routes were the amounts paid for expedition alone, whilst at the same time, as you are aware from what I have already said, large amounts were also added for extra trips. To illustrate: The Canyon City and Camp McDermitt route was carried up from the sum of \$2,800, at which it was originally taken, to \$50,166. The Mineral Park and Pioche route was carried from \$2,982 to \$52,033.33. You can now, from what I have said to you, make a comparison of Mr. Brady's estimate of these expeditions with the estimate put by Congress upon what they ought to have been, and thus you can see that instead of its being a legislative approval of Mr. Brady's conduct, it was in fact a legislative condemnation of what he had done. Let us read a little further and see what else there is to throw light upon the inquiry as to the approbation which Mr. Brady finds in this act:

SECTION 4. Nothing in this act contained shall be deemed or construed to affect the validity or legality of the acts or omissions of any officer of the United States or to affect any proceedings therefor.

The plain letter of the law is condemnatory of the conduct of the Second Assistant Postmaster-General throughout by the judgment of Congress, and Congress appreciated that the judicial tribunals either had or must in the future take charge and care of this subject, and appreciating that the amount of money of which the Government had plainly been defrauded ought to be recovered back, as it will be, gentlemen of the jury, on some of these routes, I trust, and appreciating also that criminal proceedings either had been or ought to be instituted against these men who have been guilty of a violation of their official trusts, and yet apprehensive that the view which Brady now takes of this law might be taken by others, provided carefully in the closing section as follows:

Nothing in this act contained shall be deemed or construed to affect the validity or legality of the acts or omissions of any officer of the United States or to affect any proceedings therefor.

ANY PROCEEDINGS, civil or criminal. You thus see, gentlemen, that by this act Congress not only condemned what Brady did by the expression of its judgment in the sections I have read to you, but in the last section plainly, distinctly, and unequivocally declared that nothing that the act contained should enter into any consideration of a case brought before the civil or the criminal courts to protect Brady's official abuse of trust which had made the appropriation necessary to supply deficiencies on account of his dishonest and illegal orders.

Having shown to you, gentlemen of the jury, what was the view of Congress upon this subject, and having shown how Brady violated the general law made for the protection of the Treasury by limiting the departments to the expenditure of that sum alone which had been appropriated for the fiscal year, and having shown the record evidence from the Post-Office Department, I will now conduct you yet a step further and answer for you by the testimony of witnesses in the case the inquiry I have propounded: What was Brady's motive; what was his purpose and design in thus being guilty of criminal behavior in office? That these orders of Brady, founded upon false affidavits in the manipulation of which these defendants were engaged, should convince your judgment beyond a doubt that the Second Assistant Postmaster-General was not exercising the function of his office for the public welfare I cannot question. We stand amazed to see that by the process I have explained nineteen contracts taken by these defendants should, from an original cost of \$41,135, have been, in a little over a year from their date, raised to a cost of \$538,134.55 additional, or to a cost including the original sum of \$579,269.55 a year. The contracts had four years to run from their date. Bear that in mind in making the calculation. Remember the immense sum they were to draw from the Treasury within that period. That sum amounts to more than a million and a half of dollars. How and why was this? Let me ask you to consider for a little while with me the testimony of Mr. John A. Walsh.

In reference to Mr. Walsh, let me say to you, gentlemen, that he stands uncontradicted, except by Brady himself. He stands before this jury unimpeached, and his testimony was allowed to go to this jury without cross-examination—a most remarkable circumstance, especially for a witness the other side did not attempt to impeach or contradict otherwise than by a party interested in the case himself, by a party who was swearing to keep himself out of the penitentiary. In considering the force and effect of the testimony of these defendants, you must bear in mind, as I have said before in reference to other things, that the law of human nature and the known impulses of the human heart are to be taken into consideration in weighing human testimony.

“Yea, all that a man hath will he give for his life.”

Yea, all that a man hath will he give to save himself from crossing the threshold of a penitentiary, I may add. These defendants, including Brady, when they were testifying before you were testifying in the belief and the conviction that on what they said depended their liberty. They were swearing to protect their liberty, and I ask you, in weighing their testimony, from what you know of men and human nature, to bear in mind that there are but few men in this world who have that elevated standard of morality, that pure and independent and inflexible purpose and character, rendering them capable of resisting the temptation of perjury to protect themselves from the instantaneously impending ruin. The avalanche is hanging above them, and its frail links may be melted by the truth. If they feel that those links can be welded by falsehood,

will they not tell the falsehood to save themselves from ruin? Brady is the only man testifying in contradiction of Walsh, whilst Walsh is sustained first by the circumstance that they did not cross-examine him. Why? For the reason that actuates every counsel in reference to some witnesses, namely, that he knows the cross-examination of a witness testifying distinctly and clearly would only deepen his testimony instead of effacing it or rendering it doubtful. The counsel for the defendants were wise, discreet, and judicious, and showed themselves to be capable and competent advocates, for they knew, from their past experience in another trial, that the cross-examination of that man would only deepen his testimony in chief.

Mr. WILSON. Is that proper, your honor?

The COURT. I think so.

Mr. MERRICK. They knew from their experience in many trials——

Mr. WILSON. [Interposing.] Is a reference to what happened in the first trial proper?

Mr. MERRICK. I speak of your experience.

The COURT. I understand him to be engaged in making comments upon your omission to cross-examine Walsh.

Mr. WILSON. I am not complaining of that.

The COURT. Very well.

Mr. MERRICK. They knew it from their large experience as advocates in many trials. They are men of large experience, men of large learning, men of power, and men of eloquence. They knew what witness to drop and what witness to take up. They spent three, or four, or five days on one witness, and they spent two days on another witness. Wherever they thought a witness was vulnerable, wherever they thought, on cross-examination, they could weaken his testimony there they brought forth the ingenuity, and the learning, and the experience of accomplished advocates to perform the task as well as it could be performed. But knowing, from the manner in which Walsh testified, from the bearing of the man, and from the character of the man, that cross-examination could not shake the solid truth he had told, but only swell its magnitude, increase its impression, and deepen its recollection in the minds of the jury, they let him go without a single word of inquiry. I thought at the time that was done that surely something was in store to destroy him; that surely there must be something of which I had never heard, but which was known to the counsel on the other side, that would break down his evidence. But when the case closed without that testimony coming forward or being developed, and when I found that I was mistaken in my supposition, I stood amazed at what had been done, but stood in profound admiration of the skill which had seemingly admitted the truth which it knew it could not shake.

Now, gentlemen, how is Walsh confirmed? He is confirmed by the records I have shown you. Gentlemen, I still stand upon the solid foundation of the case I have built since I started some days ago. That solid foundation I stand upon at every step, and on that solid foundation I am building and shall continue to build. From the foundation that I have thus far built it has become apparent to you that the orders passed by Brady cannot be accounted for upon any principle of integrity and honor in official authority, and that those orders cannot by any possibility be accounted for consistently with Brady's innocence and patriotism and duty in the discharge of his trust. We must account for them in some other way. Walsh comes now and answers from the evidence given on the witness-stand as to the motive of Brady, and makes plain, by Brady's own declaration, those speculative causes of

action, those views and opinions of Brady in reference to his power and in reference to the influence in respect of petitions and Congressional solicitations. He makes all that plain from Brady's own admission to him. I will not trouble you by going very much into detail in reference to his testimony, as I do not trouble you in going much in detail with regard to anything. My time will not permit it. But I must read to you, instead of repeating it, what he says, that you may have it accurately before you.

The COURT. What page do you propose to read from?

Mr. MERRICK. I propose to begin on page 2207, and read a few extracts. It seems, gentlemen of the jury, that in December, 1880, Walsh addressed a note to General Brady notifying him that he desired to meet him at Sheridan's office at 1 p. m., and requested that he would send back word by the bearer. That note was taken to Brady, and when the note was handed back by the bearer to Walsh it bore upon it this inscription:

Will be there at 12.30—

in Brady's handwriting. Brady does not contradict that writing, if I mistake not. He does not deny the appointment. Walsh says the appointment was made. Walsh swears that the acquiescence in the appointment by him, "Will be there at 12.30," is in Brady's handwriting. That is not contradicted by Brady. He was there. They therefore had the interview. The question is what passed at the interview. I read from page 2207—

Q. Will you be so good as to detail all that passed at that interview?

He then goes on and speaks on some general subjects that were discussed as preliminary to the important part of the conversation, and continues as follows:

We may have and probably did discuss some other subjects before coming to the point, which was the payment of the notes of General Brady that I held, amounting to about \$25,000.

Gentlemen, excuse me if I ask that you give me your particular attention. Indeed I take that back, for you have been so kind to me that I ought not to seem to think you have not been by such a request.

General Brady asked me if I had the memoranda or data with me. I responded that I had. I had the notes in my pocket. I had also memoranda as to other amounts than expressed in the notes. Mr. Brady sat there listening to me. I told him that everything was pretty well determined except as to the matter of interest; that there was no interest expressed on the face of the notes; that that matter had been held in abeyance and that now would be a proper time to adjust it; that the time had come when I desired the payment of the notes, for the reason, among others, that I needed money. Mr. Brady sat there very calmly at the table turning the papers over in his hands and putting them down; he looked at me inquiringly and asked me if I was in earnest. I told him yes, I thought I was. He asked me if I did not think that that matter had been pretty well and fairly liquidated.

He asked me if I did not think that matter had been pretty well and fairly liquidated.

I asked him to explain. He entered into an explanation without any sort of hesitation. He reminded me of the fact that I was in the enjoyment of a very remunerative contract.

Q. What contract was that?—A. From Albuquerque, New Mexico, to Prescott, Arizona.

Q. You held that contract?—A. Yes, sir; at that time. He informed me that he had expedited that very largely, had increased the service; the pay had been largely increased as the result, and that he did not really think that he owed me anything; that he did not see how I thought he could possibly owe me. I reminded him of the facts as I had repeatedly told him, that the contract, even viewed from that standpoint, was unremunerative; that it had been a source of no profit to me; on the con-

trary, a loss; that he himself was largely instrumental in my ever having entered into it—

I will show you presently that they were bosom friends, and Brady persuaded him into it—

and that I felt that such increase and expedition as had been accorded me was made under the law. He smiled at that, and asked me if I had not seen cases where petitions, &c., very numerous and largely signed, had not effected any result whatever. He then referred to the fact that after he had cut my trips down from 1876, all the petitions that had come from that country had not succeeded. He said, in brief, that the matter of petitions was simply to enable him to act within the law, and that any man might have understood that, not seeing half as much as I had. I asked him what he meant by saying what I had seen. He referred me to the Price and Peterson drafts, and said that I ought to have been able to have divined from them what was the custom.

The custom! The CUSTOM!

I asked him what was the custom; that I still could not understand from those drafts; all I knew was the existence of the drafts, but how they came to be made, and what they were made for, was none of my affair and none of my business; that he had turned them over to me to his credit, and that it was not my province as a banker to inquire into the cause of their being made.

You recollect there was an offer to prove all about those drafts, and the court would not allow us to prove it.

The COURT. You cannot comment on it, either.

Mr. MERRICK. I shall not comment on it, but was merely stating the fact lest some juror should ask, "Why didn't you prove it."

He told me that my affectation of not knowing what the terms were was rather ridiculous; that I should know. I told him that I did not. He said that the amount that he exacted as a rule was 20 per cent. of the amount of the pay that was increased [the total increase of pay over the original contract]—20 per centum of that multiplied by the term of the contract.

Then he goes on to state that Brady made a calculation on the basis of 20 per cent. upon the increase that had been made to him, not charging him, however, with the increase that had been given to McDonough before he took the contract, which had already been paid for, but charging him with the expedition and increase that had been given by Brady's orders to Walsh whilst he had the contract, and said then that the amount more than covered the notes, and therefore as Walsh was bound to pay him for the orders on his route the sum of 20 per cent. upon the total amount of expedition, and as that amount when calculated up more than covered the notes, he owed Walsh nothing; that Walsh ought to have known that fact, and ought to have known that that was his custom.

Q. Are you giving now what General Brady said?—A. Yes, sir. The difference between \$74,000, in round numbers, the figure from which the pay had been last increased to \$135,000, in round numbers, amounted to about \$30,000.

You see it was a very valuable route.

Brady then took the notes and put them in his pocket.

He said he meant to make a settlement of that in that way; that that was a settlement of it; that that account was audited, and was dismissed. I asked him if he thought that I was going to submit to that. He asked me what I could do. Well, I suggested mildly that I might go to the court. He remarked that I might go there, and perhaps it was all the good it would do me; that probably I ought to have learned enough by this time to find out that appeals to any of these tribunals were not productive of any great results.

On page 2211 he says further:

Q. You have already stated that, and in a connection where it is appreciable, I think. Did he say anything about what you may have supposed to have been his reason for making these expeditions?—A. Oh, well, he said that he didn't think for

a moment that I thought it afforded him any amusement to make expedition. I told him that I didn't know that I did, but I supposed the law directed him. He said that petitions simply enabled him to act within the law; that the petitions were matter of form. The petitions worked all right if it was all right; and when it was not, they didn't.

The petitions worked all right when it was all right, AND WHEN IT WAS NOT THEY DID NOT. Why work all right at one time and not at another? Because they were matters of form. The 20 or 30 per cent. was the substance. The petitions were all right when accompanied by the substance of 20 per cent. paid to Brady on the increases; but when not accompanied by the substance they did not work all right at all. He was a man of substance and not a man of form. The learned counsel who addressed you so earnestly on behalf of the defendants said, "Look at John A. Walsh and tell me that he allowed Brady to take his notes and go off without knocking him down," or something to that effect. "Look at him. He is an athlete. Had he been living in the days when the coliseum flourished in Rome he would have been a gladiator." Well, he is a fine figure of a man, and so is Brady, and the American citizen who could believe that he might have indulged in gladiatorial exercise in the arena of Rome and undertakes to tackle Brady's three hundred pounds undertakes a serious task.

The COURT. Not three hundred.

Mr. MERRICK. I am expediting. I have got into that habit.

The COURT. I think if you put on three hundred pounds you would destroy expedition.

Mr. MERRICK. Say two hundred and fifty or two hundred. Brady is a good-sized man. Brady is a muscular fellow, and brave, too, to do the things that he did. A man of ordinary courage might confront his equal in stature and physical strength, but it requires vast courage combined with grand audacity to do what Brady did. No, sir; the reason Walsh did not take those notes from him, as possibly he might have done under other circumstances, was this: Walsh had that route, which he had taken at Brady's suggestion, and which had been run up, as I have shown you, to \$135,000 per annum. He had invested in that route nearly all he had or everything he had in the world, and it remained with Brady by a single stroke of the pen to ruin that man, and ultimately he did ruin him. Walsh knew that as between him and Brady the physical struggle for the repossession of those notes might have resulted in Walsh's victory over Brady. What then? The darkened eye from the blow could still see to write the record, and the hand guided by malice could have stricken Walsh down on the instant, a hopelessly ruined man. "Take the notes and go. I will trust to the future. I cannot peril my all against your wrath and your power." He let him take them. He tried to compromise. He worried along, and ultimately when he was ruined he brought his suit in the courts, where it is now pending, to recover back the amount.

Now, gentlemen of the jury, I do not mean to say that Brady in that interview with Walsh may not have been all right according to the condition of things as he understood that condition. I do not mean to say that Brady may not, and I do not mean to say that he did not honestly believe that those notes were liquidated. He had wanted money and Walsh had given him money, and Walsh had taken Brady's notes. When Walsh asked Brady to give him the notes for the money that he loaned him, Brady understood the least said to be the soonest mended, and that he only wanted the notes for a cover to conceal the fraud. He thought, "He ought to understand just as I do and I will

give him the notes. They are mere matters of form, because yesterday, or day before, I gave him expedition which will pay him infinitely more than the amount." Brady may have understood and no doubt did understand when the notes were given that they would never be paid; that they were a mere cover to shield him if he should be accused of having granted this expedition for pay or should ever be arraigned for receiving money from Walsh; that he would then have the notes to produce and show that it was an honorable transaction, a simple loan. But the notes were only to be used in vindication of Brady and not as evidences of debt, which Brady was in any way bound to pay. I have not any doubt that such was Mr. Brady's view and opinion, and Mr. Walsh ought to have understood from what he did know of the Price and Peterson drafts that such was Brady's view and opinion. Now, what does Brady say upon the subject? I read from page 3562:

Q. You never received any money from him?—A. I never received any money from him.

Q. You never wrote to him for any money?—A. I do not think I ever wrote him for any money. I once asked him to loan me some stock. He was always professing his willingness to loan me some money, but I do not think I ever asked him to loan me any money.

That is what Brady says. At the same time he admits that the note is in his handwriting.

Mr. WILSON. Are you not mistaken?

Mr. BLISS. He does not deny it.

Mr. MERRICK. I think he admits it.

Q. I show you a letter and ask you to look at it and the envelope and state whether they are not in your handwriting.—A. This is asking him to loan me——

Q. No matter what it is asking; is it in your handwriting?—A. I believe it is in my handwriting,

Q. Signed by you?—A. I think so.

Q. Is the envelope your handwriting?—A. It looks like my handwriting.

That is the ginger letter, I expect. Now, we will come to the ginger letter. I am much obliged to Mr. Wilson.

Mr. WILSON. I thought you were mistaken.

Mr. MERRICK. I am. I do not deny it. Perhaps he was not asked about the other note.

Mr. WILSON. He was not asked about it.

Mr. MERRICK. This is the ginger letter, and there is a good deal of ginger in it. Brady says, "I never asked him to lend me money, although he was always proposing to do so. I never got any money from him. I hadn't that kind of relation with him." That was the purport of his testimony. Now about this letter. Mr. Bliss read it to the jury, and I will read it to the jury, to show the relations of these men—their fraternal relations—and how natural a thing it was for Walsh to let Brady have his money, and thus to show you that, what would naturally occur between two men in their relations to each other is precisely what Walsh said did occur between him and Brady in the incipency of those transactions and what from day to day occurred between them down to the time when Brady met him at Sheridan's and when Brady put the notes in his pocket. The envelope is addressed to "Mr. John Walsh, present," and has a monogram, T. J. B., stamped upon it. The letter is as follows:

MY DEAR WALSH: The Chatt. people send for me to be in New York to-morrow.

"The Chatt. people" meant the Chattanooga Railroad people.

We propose to make an effort to put it up this week. I am in need of "ginger."

"Ginger" is what I want. "GINGER," Walsh, "GINGER." "Ginger" is what I want.

Can't you loan me your Chatt., for which I will give you my obligation at what you paid for it, and will also account to you for any profits made.

"I will give you my obligation." I will give you my note for the amount that you paid for it if you will let me have it.

With that I can raise what I need to help in the movement.

To put it up in Wall street. They were going to have a corner in "Chatt."

The trouble is that my means—

Now we come to something interesting—

are in Am. U. Tel., and the bonds and stock are not yet issued. When issued will give me one hundred and twenty or one hundred and thirty thousand dollars—

Where did he get it all from? Where did this man, who was originally supervisor of internal revenue at \$3,000 a year, and Second Assistant Postmaster-General at \$3,500, get this money from?

but this may not be for sixty or ninety days and hence not available. My telephone bonds—

That was another investment—

are already up as collateral, and with buying newspapers, a mine, or rather part of one (the P. & D.)—

The Pelican and Dives, I think it is—

and running the lumber business, I am a little cramped.

I should think he would be. He was Second Assistant Postmaster-General, with one hundred and thirty odd thousand dollars tied up in American Union Telegraph stock, with lots of telephone bonds all up as collateral, buying a newspaper, buying a mine, and running the lumber business. He said, "I am a little cramped. I want ginger to run this machine. I want some stimulant. The work is too heavy. I am a little cramped." That shows you to some extent the measure of his fortune. Ginger is good for cramps. It is one of the best remedies in the world.

The COURT. What is the date of the letter?

Mr. MERRICK. It is not dated. I do not know that the date was established. Walsh did not fix the date. I am inclined to think it was just prior to this interview in December. That is my recollection. Has your honor any recollection of it at all, because you are very accurate in your recollection of these facts?

The COURT. No; I have no recollection of the date of that ginger letter, and it seems to me now that it has no date.

Mr. MERRICK. It has no date, but I think Walsh said it as just before that interview in December, 1880. That is my impression. Brother Bliss will look that up while I go on.

Help me if you can. It will be helping yourself if we succeed in Chatt., of which I have no doubt.

Yours, etc.,

BRADY.

The COURT. Of course it must have been prior to the interview.

Mr. MERRICK. Prior to the interview, and, therefore, in that same December.

Now, gentlemen of the jury, do you not think, if Brady could write

such a letter as that to Mr. Walsh, that those two men, Brady and Walsh, stood in those relations, the one to the other, that would justify the one in borrowing money from the other? Do you not think, if Brady could write that letter to Walsh, that those two men stood in such relations to each other that they could communicate confidentially in reference to money matters? Brady is in distress, his money tied up in the American Union Telegraph, in the telephone, in mines, and in newspapers that have been pouring out their villainous calumny upon jury, court, and counsel since this star-route case began—newspapers bought to help him in the perpetration of his frauds upon the Treasury of the United States, and to assail every man that dare disclose his villainy, do you not think, if he could write that letter to Walsh, that they were in such close relations that confidential money transactions could take place between them? What does he say to Walsh? “I am sinking under this load, and upon you, of all the world, I call to help me.”

Mr. BLISS. As to the date, I think the only evidence is this, on page 3579. He is asked how he knew Mr. Walsh got any Chatt. stock:

Q. Do you remember when that stock was bought?—A. I do not, distinctly. It was some time, I think, during the summer or fall of 1880; I can't say exactly.

Q. How did you know it was bought?—A. Mr. Walsh visited me at Messrs. Hatch & Foote's, where I generally rendezvoused while in New York, one morning, and asked me if I thought Chatt. was a good purchase that morning, and I told him I thought it was, and he sat right down there and bought it.

Q. Was not that the 11th day of December, 1880?—A. I do not think it was so late as that, but I am not certain. I have not a very distinct recollection of the time that it was bought.

Q. It was bought through Hatch & Foote?—A. It was bought through Hatch & Foote, and was paid for on the spot.

He was seeking to borrow “Chatt.” stock.

Mr. WILSON. At the time of the purchase.

Mr. MERRICK. It must have been after the purchase that Brady wanted to borrow.

The COURT. I was not interrogating as to the date of the interview.

Mr. BLISS. Twenty-eighth of December, 1880.

The COURT. I thought so.

Mr. MERRICK. That gives me another thought. And it is strange, gentlemen, that every incident that takes place in this case operates to develop the truth of the theory of the prosecution. What have we here? We have here Walsh going to Brady to know whether he intended to buy “Chatt.” stock. What have we there? Brady writing to Walsh in this confidential relation to borrow “Chatt.” stock. Mutual friends consulting about topics of common interest, each asking the other for advice and for help, and probably at a later day reciprocating and exchanging questions—Brady asking Walsh for advice and Walsh asking Brady for advice. Were they not closely bound and closely knit together? But they fell out, because Walsh would not accept Brady's theory of his obligation to pay the tax which Brady levied for the expedition of his route.

Now, how else is Walsh confirmed as against Brady? For you must bear in mind, gentlemen, that whilst Brady stands before you in the manner in which I have described, with all his feelings stimulated to tell that which would help himself, with an overpowering interest to constrain if not to pervert the truth, and therefore needing corroboration in your judgment, as he must in the judgment of all sensible men, yet he stands before you uncorroborated, while the other man, Walsh, stands corroborated by the record proof, by the “ginger” letter, by the close relations in which he had stood to Brady; and further and be-

yond that corroborated on the main point by Brady's receipt of money for this expedition granted to the contractors, by other written evidence in the case and by evidence furnished by one of his co-conspirators.

If I ever felt a profound sympathy for a witness seeking on the stand to evade the terrible effect of a truth he could not deny, by flimsy and insufficient explanations, I pitied Miner when he undertook to explain away the letters he had written to Hayes. What were they? They come in here, gentlemen, with emphatic and terrific confirmation of what Walsh has said, and what Walsh has said flies back to emphasize the letters. Not only that, but they both together confirm what Moore said Dorsey told him in his interview with Dorsey, when he came back from the West, and before he made the second trip to the West in the summer of 1878. First, then, let me read Miner's letter to Hayes—the letter of one of these defendants to a subcontractor on his route. Hayes, I think, was a subcontractor on one of the routes of which Miner had charge here in Washington. On September 19, 1878, the defendant, Miner, wrote as follows (page 1822):

J. C. HAYES, Esq.,
San Luis Rey, Cal.:

DEAR SIR: Yours first and fourth received. Increased speed is very seldom ordered, and never without special labor here and—

What, gentlemen of the jury?

never without special labor and *considerable expense*.

Expense for what? How he twisted and how he turned when the question was asked! "Oh, for living here," this, that, and the other. That would not do. Various other excuses were given, but they would not do, and he saw they would not do, as my cross-examination struck out the substance and left nothing behind but the form. Finally, says he, in explanation, "*I do not always tell the truth when I ain't under oath.*" He meant to say to this jury, and to impress upon you the belief, that when he wrote that letter in September, 1878, he had deliberately lied to Hayes, and he told you so in so many words. Gentlemen of the jury, in my humble opinion, a man who does not tell the truth in the business relations of his life when not under oath will lie when he is sworn. This was a business transaction between him and a man that he had in his employ, and he told you that, not being under oath, he had lied, and that he had lied in order to deceive or to bring down from his position his employé serving him on the Pacific coast. Now, I say to you, gentlemen, as business men, every one of you, however we may in our social relations indulge the faculty of imagination, the man who, in his business relations, when making a bargain with another, will tell a falsehood, will commit perjury on the stand. That man could not be credited in a court of justice, and his carcass should be thrown beyond the reach of the court's limits. Why is it, gentlemen of the jury, that when you want to impeach a witness you call two or three witnesses to the stand to inquire as to the character of John Jones or of John R. Miner for truth and veracity, you ask: "Do you know John Jones among his people?" "Yes." "What is his character?" "His character is that he will lie." What does that mean? That among the people with whom he lives, in the serious transactions of life, he has lied. When you prove by two or three or four witnesses on the stand that he has won that character by lying, in reference to the serious transactions of life, his testimony is at once trampled under

foot, and he is regarded as not worthy of belief. But I do not call witnesses here to give evidence upon that subject. I take John R. Miner himself. He himself has given the best evidence of his character for truth and veracity. He says he lied, and in a serious business transaction with a person whom he had employed, in order to get the advantage of that person or in order to prevent that person getting the advantage of him.

Miner is not a stranger to courts of justice. His position here is no novelty to him. He has stood at the bar of justice before, as he told you on the witness stand, indicted and arraigned for defrauding the revenues of the United States, and succeeded in escaping the penitentiary, in all probability, by paying \$1,800, the amount of which he had defrauded the Treasury, and getting a *nolle prosequi* upon the indictment in consideration of paying that sum back which he had stolen. He is no novice in this business. He is an astute man in affairs like this, and as familiar with the precincts of courts of justice as he is with the diplomatic use of his tongue in reference to truth or falsehood.

But he did not tell a story when he wrote Hayes that letter. He told the truth. He said it required "*special labor here and considerable expense.*" Now recollect, gentlemen of the jury, he could not account for the expense, to save his life, and was driven to this resort to get rid of the force and effect of the testimony in the case. What was the expense? Walsh tells you, what the expense was. The expense was the percentage upon the increases obtained; the expense was the toll levied by Brady; the expense was the amount these conspirators had agreed to give Brady. These contractors divided up the allowances. It was not all clean profit to them. That was the expense. Can you get rid of it, gentlemen of the jury?

The COURT. Mr. Merrick, the point was made, I believe, by the defense, that this story of Walsh could not be true in fact, or the statement made by Brady to Walsh was not the statement of a truth, for the reason that if Brady accepted the 30 per cent. of the allowances for expedition in each case, after paying the subcontractor, and other items, it would leave nothing for the contractor, so there would be no object in the contractor paying such a sum of money to Mr. Brady?

Mr. MERRICK. Yes, your honor, I remember it.

The COURT. I thought I would call your attention to that.

Mr. MERRICK. I remember it. That was reasoned upon in this way: That 65 per cent. was paid to the subcontractor. Was a contract shown to you of that kind? It was reasoned upon the basis of what Boone said, that Dorsey had told him to insert 65 per cent. in that new covenant of the contract. I showed you the contract and I showed you that in that new covenant there was no insertion of 65 per cent. at all. And the testimony showed you—to which I have not yet come—that Dorsey told Moore when going West to make these sub-contracts at 40 per cent., and Moore did make them at 40 per cent., and when I come to consider Moore's testimony I will use that fact that he made the contracts at 40 per cent. in corroboration of his interview with Dorsey, which Dorsey denies. There is but one single contract in this whole case for 65 per cent. That is the contract on the route from Kearney to Kent, where the contract was made to pay French 65 per cent. of the expedition. But they cheated him out of it; they never told him expedition had been made; they kept the money in their own pockets. The subcontracts were in many cases made with the subcontractors for the purpose of cheating them, and a good part of the evidence in reference to

what they received was excluded by the court. The case of French came in. French was the only living creature that ever had a contract of that kind, and he was cheated out of every farthing of it, and now has a suit pending, in the ultimate hope that he may recover it. Brady's share was 30 per cent.; the subcontractors got a certain per cent., say 40. They were to get it, but never did; and then the residue was to be distributed among the contractors. Brady got the lion's share, beyond doubt, because he did the lion's work. He was the lion. He had the power. All the others had to do was what seemed to Miner and John W. Dorsey to be a facile task—to commit perjury as occasion required. That was their daily moral food.

On Redding to Alturas the subcontract called upon the contractors to pay the subcontractor \$4,000 for expedition. The contractor received \$18,000. That does not look very much as if there was any trouble about the division, your honor.

The COURT. Was that \$18,000 on account of expedition alone?

Mr. MERRICK. Yes, sir.

Mr. BLISS. They got, on Redding to Alturas, for three trips and expedition, \$26,946.66. The trips were \$2,994 each. The three trips would be about \$9,000, and they were paid \$26,946.66.

Mr. MERRICK. How much were they to pay the subcontractor? Four thousand dollars. How was it on the Camp McDermitt route? Vaile admits \$20,000 of profit on Camp McDermitt; the contract shows \$30,000. I read to you the profits from a paper, and I probably will recur to that paper. I hardly thought it worth while, with a jury as intelligent as this, that had paid such careful attention as it went along, to answer such an argument made by Mr. Ingersoll. I determined, when I commenced to prepare the form of this argument, that if I went over all the details and swept away all the rubbish, piece by piece, that had been piled up before this jury, it would take me twelve months; but that by discussing some few general questions applicable to the entire mass of evidence I could explain it all in all its bearings, in some three, or four, or five days. I am very glad that the court called my attention to the particular fact of which I have been speaking. I am obliged to his honor, for it enables me to clear that up, when I should not have reached it until later in the argument, and this brief explanation of it will save me some time hereafter.

I wanted to read to you precisely what Miner said in his explanation. I have not a reference to the page upon my notes. So, while Mr. Bliss is looking for it, for me, I will pass on, and recur to it presently.

What says Moore in reference to this subject, as to his interview with Stephen W. Dorsey? At page 1374, your honor will find it:

Q. Did you have any conversation with him about your profits, &c.?

That is the question propounded to Mr. Moore.

A. Yes, sir; I made the same proposition to him that I had to Mr. Miner, or that Mr. Miner had made to me. I told him I was willing to give my time, but my expenses must be taken out of the general fund before there was a division of profits. Mr. Dorsey told me he acquiesced in that, and said I must understand another thing, that it required money to hold the influence they all had with the department, and that must be taken out of the general fund before the division of profits.

Do you understand that?

The COURT. That was the first conversation, in the spring of 1878, was it?

Mr. MERRICK. That was the conversation, I think, after his return, when he was talking about making these contracts.

The COURT. I think he returned here in July, 1878.

Mr. MERRICK. July, 1878; that is it, sir.

Mr. BLISS. Before he went out again.

Mr. MERRICK. Before he went out again.

The COURT. That was in April.

Mr. MERRICK. No; this is after his return here and before he went back, I think.

Mr. BLISS. Yes, you are right.

Mr. MERRICK. It was between his two visits.

Mr. Dorsey told me he acquiesced in that, and said I must understand another thing, that it required money to hold the influence they all had with the department, and that must be taken out of the general fund before the division of profits.

Mr. Stephen W. Dorsey denies that any such conversation ever took place. Again, Stephen W. Dorsey is swearing to keep himself out of the penitentiary; and I will show you when I come to consider Stephen W. Dorsey, the teacher, and Montfort C. Rerdell, the pupil, and trace them down and show their sweet relations in reference to this subject, that wherever a question is asked Stephen W. Dorsey that is to his benefit he gives a prompt and decided answer, and where there is one asked that looks the other way he seeks refuge under the subterfuge, "I don't remember." Is not Moore, in reference to this conversation with S. W. Dorsey, corroborated in a certain respect by the Hayes letter and by Walsh? Was it not a fact that they needed money to hold their influence in the department? That is our principal inquiry. Does not Walsh tell you that Brady himself told him so? Does not Miner tell you that it was so? Does not Miner say to you, speaking in his letter to Hayes, that it required considerable expense here to get expedition, and thus confirm Walsh? And do they not, both united, confirm and establish the fact that they did need money? When Moore was bargaining with Dorsey to become a participant in the speculation was it not a most natural thing for Dorsey to tell what was the truth—that it took money to keep their influence with the department? Can you escape it? Is there on that jury a single man that now doubts it, after we have gone over all the record and confirmed the record by the parol testimony? Is there any doubt even among *the two or three hoped-for deliverers*? What has been done once cannot always be done again. I say there is not a man on that jury that, in his mind and conscience, doubts for a minute the conclusive and unquestioned character of this proof that orders for expedition did need money to bring them forth.

Now, let me do justice to Mr. Miner. I would not, for any consideration in the world, add a single feather to the heavy weight that is on his shoulders. I could not do him worse than ask for justice. Let me read what he says at page 4274:

Q. What do you mean in this letter to Hayes by saying:

"Increases can only be obtained by our joint effort. They are based upon petitions from citizens along the route, but it requires active work here to consummate them."

What do you mean by "active work here?"—A. I mean what I said.

Q. You mean active work, and that is all you have to explain?—A. That is all.

Q. Look at 22 P, and tell me if that is in your handwriting.—A. That is in my writing.

That is the letter I have just alluded to:

Q. What do you mean in this letter, which is a letter to Hayes of the 19th of September, 1878, by these words:

"Increased speed is very seldom ordered, and never without special labor here and considerable expense."

A. I meant precisely what I said.

Q. "Never ordered without considerable expense here?"

What is his answer, gentlemen?

A. I meant precisely what the letter said.

Q. "Never ordered without considerable expense here?"—A. I meant precisely what the letter said.

You remember his attitude and appearance when he replied.

Q. Precisely what it said?—A. Yes, sir. If you want to know the circumstances under which that letter was written, I can tell you.

Q. You can make any explanation you want. I want to know what you meant by saying "considerable expense?"—A. I can explain the whole matter. Mr. Hayes had a postmaster out there by the name of Scipio Craig, who was a schoolmate of "Tom Brady," as he called him, and he thought that anything he asked, whether reasonable or not, could be done.

Q. And you wanted to satisfy him that it could not?—A. I wanted to satisfy him that it required the indorsements of his members of Congress from California, and there is another letter in the case that so states.

Q. Is that your only explanation?—A. That is all.

Q. What did you mean by considerable expense?

I do not generally let a witness go, if he has an explanation, until he gives it:

A. I was at the expense of living here.

Q. You meant that?—A. I did.

Q. Then if you were at the expense of living here, and you meant that only, why did you refer to the expense in connection with increased speed, and say that increased speed required special labor here and considerable expense?—A. Because his letter that that was a reply to related only to increased speed.

Q. That is your explanation, is it?—A. That is my explanation, sir.

Q. That is your explanation of why you told him that increased speed required considerable expense here?—A. Yes, sir; and furthermore, Mr. Hayes was of the opinion that if any expedition was ordered on that route he ought to have it all, and I was trying to make a good trade with him.

Q. You wanted to make him believe you were at heavy expense in order to appreciate your services and to depreciate his?—A. I did, sir.

Q. That is, you wanted to deceive him, did you?—A. It would so appear.

Q. Is it a fact?—A. I think it is.

Q. Then when you said that it required expense here you told him a lie, did you?—

A. Well, sir, I was not under oath when I wrote that letter.

Deal with him, gentlemen, deal with him as you think he ought to be dealt with.

Q. You will lie when you are not under oath, will you?—A. I have not said that I would.

Q. You have said that you told that lie and that you were not under oath?—A. I generally make the best trade I can.

He might supplement it by, "Lie or no lie." What shall we do with such witnesses as that? Experienced in criminal proceedings, making the best trade he can, lie or no lie, how much credit will you give him?

The law that authorizes a party in a criminal case to become a witness for himself is an extremely wise one in its application to many cases. It enables a man who is accused of crime, when encircled round about by treacherous enemies, with devices, through perjured statements to convict him, to explain what otherwise might remain forever unknown and to clear up the concealed and mysterious circumstances pointing to his guilt. But at the same time it is a privilege which every lawyer and statesman must recognize, puts a man in a position of sore temptation, and makes us all feel, when we see him yield to that temptation and swear falsely for his interest, how grand the prayer and how grand the statesmanship that would follow the prayer—

Lead us not into temptation.

The spirit must be strong and the character iron that can yield obedience to the solemn mandates of moral power requiring the truth to be told, when, upon the telling, follow destruction and irretrievable and hopeless ruin.

I now pass, gentlemen, to a subject especially germane to those that I have heretofore called your attention to, and that is to the general doctrine of conspiracy. As we have traveled our weary way during the last several days, you have observed all along that, without my mentioning a single word in reference to the law of conspiracy, I have gradually brought all these parties close together and shown them before you in the fraternal embrace. Indeed, I think upon one single affidavit I brought four of them together and linked them all in the fraternal concord of criminality. And all along, wherever I have touched upon one criminal act committed by one, I have shown you how it bore upon another and another, and how it bore upon all, and redounded to the great good and great benefit of all. So that when you refer to what I have said you will see that although I have not mentioned conspiracy, nor dealt, by that name, with any of the legal doctrines of conspiracy, yet I have all the time been introducing you to conspirators. And now before I proceed to take up Rerdell and his master, and go over what remains of the case, I deem it proper to make to you some explanation upon the subject of the law of conspiracy.

And, first, I desire to say to you, gentlemen, what conspiracy is not. Every combination is not a conspiracy, of course. It is proper that I should say to you, in the beginning, what is not needed to form a conspiracy. You may have supposed that in order to form a conspiracy it is necessary that the alleged conspirators should get together around table and mutually agree upon the acts to be done by each and the ultimate result to be accomplished by the general combination. That is not necessary. There need not be a word uttered by the mouth; there need not be a word in writing. A conspiracy in law means this: The concurrence of mind to accomplish a given result by various means, each looking to the accomplishment of that result. The conspirators need never know each other, need never see each other. They may conspire across mountains, across rivers, across continents, across oceans if they all understand that a certain object is to be accomplished, and each is to do his part in aid of that object as time and occasion may arise.

The COURT. It must be a common object.

Mr. MERRICK. I think I said a common object; if I did not, I dropped the word. Each must understand the object, and it must be the common object to be accomplished by the parties.

The COURT. That is, there must be a unity of purpose. Many persons may be engaged in pursuing a common object, apparently similar in each case, without being engaged in a conspiracy. For instance, if this story of Walsh's be true as to what Brady told him, it was Brady's custom to exact 30 per cent. of all expeditions he ordered. Every contractor who obtained expedition paid him that 30 per cent., if that evidence is true. But the fact that they all paid him the 30 per cent., does not make out a conspiracy between those who paid the 30 per cent. because they were individuals, each acting for himself. So that, in addition to that, similarity of conduct on the part of different persons and similarity of interests may exist without there being a conspiracy. There must be, besides a general similarity of conduct, the bond of the common understanding, if not a common interest, in the parties engaged in a conspiracy for the purpose of reaching one object common to them all. I think so. I do not know, Mr. Merrick, that your remarks needed that correction.

Mr. MERRICK. I do not think, sir, that I expressed any opinion different from the intimation of the court.

The COURT. I wanted the jury to get a clear comprehension of the difference between individual acts of a similar character but of an individual nature, and the same acts united by a common purpose on the part of those engaged in the prosecution of the object.

Mr. MERRICK. If Brady gave these orders upon these false affidavits, understanding that he was to receive so much for giving them on behalf of these contractors, and these contractors understood that he was to give the orders in consideration of receiving so much, that constituted a conspiracy.

I desire to disabuse your minds of the idea that I feared might have arisen that there would be some necessity for a formal execution of articles of copartnership in order to create conspiracy. That is what I wanted to do during the few minutes that remain of this session of the court. And I will read, as an illustration of what I think about the matter, and as part of my argument, from a very good authority upon the subject, namely, 3 Dillon, 585, where in the Whisky cases, the United States circuit judge pronounced the following opinion :

It is not necessary to constitute a conspiracy that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by *words* or *in writing*, state what the unlawful scheme was to be, and the details of the plan or means by which the unlawful combination was to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together, in any way, in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although the part he was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators. A combination formed by two or more persons to effect an unlawful end is a conspiracy, said persons acting under a common purpose to accomplish the end designed. Any one who, after a conspiracy is formed, and who knows of its existence, joins therein, becomes as much a party thereto from that time as if he had *originally* conspired.

This last clause is applicable to Vaile. Now, gentlemen, if you can bear this exposition of the law in mind, you will understand what is meant by a conspiracy. Brady to make the orders, one to get up the petitions, one to prepare the affidavits, to swear to them in blank, another to fill them in, each one doing some act which is the co-ordinate of an act done by another, and all which acts, with their respective co-ordinates, moving in the common direction of defrauding the United States. If you see in the individual acts, in the workings of the parties, such harmony of movement, such uniformity of co-ordination, that you are constrained to believe that they were designed, you have the conspiracy established. The ultimate design you will find is worked out; and by reasoning from the fact that the different transactions could not have occurred relatively to each other in the way they did, unless design presided over the whole, you will be constrained to the conclusion that a common purpose must have existed among the actors. For instance, you take your watch, Mr. Foreman. Open it and look at it. What do you find? You find an "infinite" variety of wheels, each working in harmony and in perfect accord with every other. You find a main-spring, large wheels and small wheels, all working together, moving in the interior; for what? Not for their individual entertainment, or for a result to be accomplished by any individual or separate wheel; but each wheel locking in some other wheel, and all moving together to accomplish, in the union and harmony of their united movement, the

simple purpose of making the hands follow the course of the sun in his circuit around the world. Each wheel may be likened to one of these parties, acting in harmony with the others, each performing some separate and distinct function, but every function acting in harmony with every other, and all those actions necessarily united to the consummation of the ultimate grand purpose—the robbery of the Treasury of the United States.

The hour of adjournment has arrived, may it please your honor.

The COURT. Adjourn the court.

Thereupon (at 4 o'clock p. m.) the court adjourned until to-morrow morning at 11 o'clock.

T U E S D A Y, J U N E 5, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

The COURT. I do not often take up the reports as printed in the morning, but I see in the report of some remarks made by the court yesterday, at page 5631, this sentence:

For instance, if this story of Walsh's be true as to what Brady told him, it was Brady's custom to exact 30 per cent. of all expeditions he ordered. Every contractor who obtained expedition paid him that 30 per cent., if that evidence is true.

I think it was 20 per cent.

Mr. MERRICK. It was 20.

The COURT. According to Walsh's statement Brady told him that it was his custom to levy 20 per cent. per annum upon the gross amount of all expeditions. The reporter made a mistake, or if he did not, I made a mistake. I do not think I could have made the mistake, because, although I have not looked at Walsh's statement since, I know he said 20 per cent., and not 30.

Mr. MERRICK. Shall I proceed, your honor?

The COURT. Yes.

Mr. MERRICK. [Resuming.] In reference to the correction which his honor has just made in the report of yesterday's proceedings, I may say to you, gentlemen, that this testimony of Walsh was designed in its introduction to have, and has this bearing on the case; not that these defendants obeyed and conformed to this custom of the Second Assistant Postmaster-General as stated by Walsh, but that the Second Assistant Postmaster-General declared that it was the habit of his office to receive personal remuneration for the exercise of his official functions in that respect. I have no doubt that he made different arrangements with different parties, and with different combinations. In your consideration of the testimony of Walsh you will inevitably be led to this conclusion: First, that the habit and the disposition existed of charging compensation for official acts. Second, that if these parties defendant in this case, except Brady, were combined and united for the purpose of obtaining emolument and fortune by means of Brady's orders, they had with Brady an arrangement of some percentage which necessarily brought Brady into the combination they had formed and made him a coconspirator with them; not that it was necessarily 20 per cent., but that he carried out his custom of receiving emolument under the operation of some understanding with them.

In further explanation of the general principle of the doctrine of conspiracy which I have been discussing, I shall read to the jury as part of my argument the opinion of one of the great men of the past who has adorned in his judicial station the highest magistracy of the country. In the case of the United States against Lyman Cole *et al.*, reported in 5 McLean's Reports, the late Mr. Justice McLean, speaking of conspiracy, uses the following language, at page 601 :

The indictment in this case is found under the twenty-third section of the act of the 3d of March, 1825. It provides: "That if any person or persons shall on the high seas or within the United States, willfully and corruptly conspire, combine, and confederate with any person or persons, such other person or persons being either within or without the United States, to cast away, burn, or otherwise destroy any ship or vessel, or procure the same to be done, with intent to injure any person or body politic, that hath underwritten or shall thereafterward underwrite, any policy of insurance thereon, or of goods on board thereof, or with intent to injure any person or body politic, that hath lent or advanced, or thereafter shall lend or advance, any money on such vessel, on bottomry or respondentia, or shall within the United States build or fit out, or aid in building or fitting out any ship or vessel, with intent that the same shall be cast away, burnt, or destroyed, for the purpose or with the design aforesaid, every person so offending shall, on conviction thereof, be deemed guilty of felony, and shall be punished by fine not exceeding \$10,000, and by imprisonment and confinement to hard labor not exceeding ten years.

The offense there prohibited by the statute was a conspiracy to cast away or burn a vessel on the high seas with a view to injuring any person or corporation. It seems that the defendants had procured insurance upon fraudulent invoices. Professing to have loaded the ship, they went to insurance companies and obtained insurance, not upon what was really in the vessel, but upon false invoices falsely representing what was in the vessel. The question was whether there was a conspiracy among them to cast away or burn this vessel. I may remark in the first instance, before reading what Justice McLean says upon certain points, that I desire to call the fact to your attention that he states that the burning of the vessel, the ultimate object of the conspiracy, was not at all necessary to consummate the crime of conspiracy, although if they had burned the vessel or caused it to be burned it would have been strong, *if not conclusive, proof of the conspiracy*. You will perceive, as I read to you from what Justice McLean says, the remarkable analogy between that case and the case now before you. The ultimate object of the conspiracy, as charged in this indictment, was to defraud the United States. The object of the conspiracy in the case of Cole was to burn the vessel. The means by which they were to accomplish the fraud and obtain the benefit they were to derive from the conspiracy were false affidavits and false petitions in the present case. The means by which they were to benefit and procure individual and pecuniary emolument in the case of Cole that I am now considering were by insurances obtained on false invoices. Our case: Orders of Brady obtained on false affidavits. That case: Insurances on stock obtained under false invoices. Let us see what Justice McLean says first in reference to the manner of proof of the conspiracy :

A conspiracy is rarely, if ever, proved by positive testimony. When a crime of high magnitude is about to be perpetrated by a combination of individuals, they do not act openly, but covertly and secretly. The purpose formed is known only to those who enter into it. Unless one of the original conspirators betray his companions and give evidence against them, their guilt can be proved only by circumstantial evidence. This kind of evidence often satisfies a jury of the guilt of the accused. But in such a case the circumstances must be so strong as to be inconsistent with the innocence of the accused. It is said by some writers on evidence that such circumstances are stronger than positive proof. A witness swearing positively, it is said, may misapprehend the facts or swear falsely, but that circumstances cannot lie.

The common design is the essence of the charge.

Now, listen to this, gentlemen, and lay it up in your memories :

This may be made to appear when the defendants steadily pursue the same object, whether acting separately or together, by common or different means, all leading to the same unlawful result. And where *prima facie* evidence has been given of a combination, the acts or confessions of one are evidence against all.

I will read a part of that again :

This may be made to appear when the defendants steadily pursue the same object, *whether acting separately or together, by common or different means, all leading to the same unlawful result.*

Whether some of the parties act by procuring petitions for expedition, some by forging the names of petitioners, as Miner did on the famous Hall petition, some by obtaining affidavits, some by inclosing affidavits and petitions to the département, some by importunities at the department, and some by making orders at the department of such enormity as to shock the understanding and belief of ordinary men, they are acting together to produce a common result. Then, further down, he says, in reference to the bills of lading or the invoices upon which the insurance was obtained, and he would have said the same with regard to the affidavits upon which the orders in this case were obtained :

So if it appears that the bills of lading were false, it shows a combination to injure the underwriters.

So if it appears that the affidavits were false it shows a combination to injure the United States. So, if the affidavits were forged, if they were blank when written, and subsequently filled up in a manner inconsistent with the truth they show a common design to obtain a fraudulent order from Brady to injure the United States.

Again, on page 610, he says :

If these insurances were made on false invoices or bills of lading it would afford conclusive evidence that the intention was to injure the underwriters, and it would authorize a presumption against the defendants, that they had done anything necessary to be done to effectuate their object. And if the insurance was greatly beyond the probable value of the article shipped, at the place of consignment, it would be ground on which the fairness of the transaction might well be questioned.

Just exactly as when we had reached a period in the case at which we deemed it expedient to ask that the declarations of one of these conspirators should be introduced against the others, his honor then said that the extraordinary character of these orders impressed him most unfavorably in reference to their good faith.

Now, to paraphrase the sentence that I have read to you and apply it to the present case : If these orders were obtained on false affidavits it would afford conclusive evidence that the intention was to injure the United States, and it would authorize a presumption against the defendants that they had done anything necessary to be done to effectuate their object if the orders granted were beyond the proper value of the services rendered, and specially in the teeth of the law providing for the estimate of that value it would be ground on which the fairness of the transaction might well be questioned.

I will now read you another passage, gentlemen, as part of my argument. I adopt the expressions of these learned men for the reason that they condense better than I can and speak with more explicitness than I can, as well as for the further reason that I am sure, like yourselves, I am severely oppressed by this atmosphere and my mind works with some pain to my body and possibly not with satisfaction to you. I read from 2 Wharton's Criminal Law, 8th edition, which is the last edition, the opinion pronounced by Judge King in a conspiracy case, and found in a note to section 1398 :

In prosecution for criminal conspiracy, says Judge King, the proof of the combination charged must always be extracted from the circumstances connected with the transactions which form the subject of the accusation. In the history of criminal administration the case is rarely found in which direct and positive evidence of criminal combination exists. To hold that nothing short of such proof is sufficient to establish a conspiracy, would be to give immunity to one of the most dangerous crimes which infest society.

I may add to that expression of Judge King which was intended to apply to an ordinary conspiracy formed in society for the consummation of a criminal purpose, that the crime of conspiracy to defraud the United States, in which crime one of the civil functionaries of the United States is involved, one of those functionaries who was placed by the supreme authority to guard the interests of the people, becomes a crime much more, yea, infinitely more dangerous than any conspiracy involving simply private individuals, in reference to private transactions in social and business life. The judge continues:

Hence, in order to discover conspirators we are forced to follow them through all the devious windings in which the natural anxiety of avoiding detection teaches men so circumstanced to envelope themselves and to trace their movements from the slight, but often unerring, marks of progress which the most adroit cunning cannot so effectually obliterate as to render them unappreciable to the eye of the sagacious investigator.

This passage, gentlemen of the jury, from Mr. Justice King's opinion last read, is especially applicable to the devious ways and methods of Stephen W. Dorsey, adopted for the purpose of concealing his connection with this transaction during the period that he was in the United States Senate; but he has left slight traces by which you may track him with as unerring certainty as you could thread the mazes of the labyrinth if you had the clue of Ariadne to guide you:

It is from the circumstances attending a criminal or a series of criminal acts that we are able to become satisfied that they have been the results not merely of individual, but the products of concerted and associated action, which, if considered separately, might seem to proceed exclusively from the immediate agents to them; but which may be so linked together by circumstances, in themselves slight, as to leave the mind fully satisfied that these apparently isolated acts are truly parts of a common whole.

Now, in reference to the affidavits filed in this case, gentlemen, I have as to one affidavit introduced four of these several defendants as participants in its manipulation. It is not necessary for us in considering the affidavits to regard them, and we cannot regard them as made severally by one or by another. We find affidavits written in blank by one member of the conspiracy, filled in by another member of the conspiracy, sworn to by a third member of the conspiracy, and carried to the department by a fourth member of the conspiracy, and there, according to the circumstantial evidence in the case, possibly manipulated by Brady himself, or being there considered and thought over and discarded and another affidavit, still preserving the proportions, ordered to be filed by him, as was the case in the matter of the affidavits on the Pueblo and Rosita route. You will recall the evidence as to those affidavits without my repeating it, and you will recall the proof that as to the first affidavit filled in by Rerdell leave was asked to withdraw it, two days after it was filed and a second affidavit then placed on record, and yet the two affidavits differed in nothing as to results. The proportions being preserved the results became the same. They differed in nothing except that the second affidavit made an apparently better record for Brady and was surer to protect him from peril when investigation should turn over the pages that he had blotted with his iniquity.

The COURT. For the sake of reference, Mr. Merrick, I should be obliged to you if you would name the first affidavit in the preparation of which you claim that four were concerned.

Mr. MERRICK. That is the first or second affidavit, I think, of the 21st of April which Dorsey swore to, your honor.

The COURT. The first of the Addison County affidavits?

Mr. MERRICK. I think it is the first of the Addison County affidavits, your honor. I will look and tell your honor the next time I come into court precisely what it is. There is another affidavit in which the word "twelve" was inserted by Rerdell, after it was filed in the department. If Colonel Bliss will take them and look at them he will probably find the one the report refers to. I did not bring down the papers I have already used and therefore have not the specific reference.

The adequacy of the evidence in prosecutions for a criminal conspiracy to prove the existence of such a conspiracy, like other questions of the weight of evidence, is a question for the jury.

Bear in mind, gentlemen, as part of the law claimed by me, what I read from Justice King. I believe the court will instruct you that such is the law, and I shall ask the court to instruct you also in this case as follows, laying these propositions down as correct law:

In considering the acts of the various defendants the jury will bear in mind:

1st. That forgery is a crime under the law.

The COURT. Is this forgery?

Mr. MERRICK. I question if it is. If a blank affidavit is subsequently filled up I call it forgery.

The COURT. You call it forgery.

Mr. MERRICK. I call it forgery. I think it is forgery for Miner to write the name of another man on a petition.

The COURT. You might find some difficulty in maintaining that proposition. Certainly it is wrong to do as he is claimed to have done. But I speak of technical forgery.

Mr. MERRICK. I understand.

1st. That forgery is a crime under the law.

I may add to that the qualification suggested by the judge, that if it is not a crime under the law it is a high moral offense.

The COURT. It is certainly a fraud.

Mr. MERRICK. It is certainly a fraud. I will qualify this prayer as I go along:

2n. That to alter in any particular, after it has been signed, a paper required or authorized by law to be executed is a forgery.

3d. That to file any such forged paper in a department of the Government to obtain its action thereon is a crime.

4th. That a false oath or affidavit filed in a department of the Government is criminal under the statutes of the United States, and punishable like forgery.

5th. That the filing of a false, fraudulent, altered, or forged paper in any department of the Government with the design and intention thereby to deceive any executive officer of the Government with reference to a matter subject to his jurisdiction, for the benefit of the person filing the paper or causing it to be filed, is a crime under the statute law of the United States.

6th. That the presentation of any claim to an executive department of the Government for payment when said claim is fraudulent, and so known to be by the person presenting the same, is a crime against the United States.

7th. That the presentation for payment to any department of the Government of a claim against the United States founded upon fraud, or upon a contract obtained by fraud, is a crime if the person presenting the same or causing it to be presented is cognizant of the fraud.

Those instructions are asked that the various acts of these parties may be brought before you in their criminal and offensive character or

in their fraudulent character in a condensed form, in order that you may reason as to why these men should have been guilty of these criminal acts, and come to the conclusion, appreciating the ordinary motives governing human nature, that a man does not do a criminal act without an ultimate purpose of some particular benefit to himself. When you find a set of men doing a series of co-ordinate criminal acts all tending to the consummation of one purpose, namely, personal emolument by defrauding the Treasury of the United States, you are forced, as sensible men, to the conclusion that the individuals who perpetrated these co-ordinate acts were in a conspiracy to dovetail the co-ordinate and criminal acts into each other so that by their common operation they should produce the result designed by all, namely, the obtaining of personal emolument by defrauding the Government. I will read to you, gentlemen, a passage from the opinion of one of the greatest men that ever adorned this country. William L. Marcy delivered the opinion from which I will read. It is the case of *The People vs. Mather*, reported in 4 Wendell, 230, and is the famous case arising out of circumstances which you will recollect, namely, the extraordinary disappearance of Morgan, the Mason, in New York. In the marginal note it is stated as follows :

The fact of conspiring need not be proved. If parties concur in doing the act, although they were not previously acquainted with each other, it is a conspiracy.

They need not be friends ; they need not be acquaintances. But if they co-operate in doing two acts, neither one of which would have been effectual without the other, and if both are operative to produce the result, that is a conspiracy, though between strangers. At page 261, he says :

The law considers that whenever they act they renew, or, perhaps, to speak more properly, they continue their agreement, and this agreement is renewed or continued as to all whenever any one of them does an act in furtherance of their common design. In this respect conspiracy resembles treason in England when directed against the life of the king. The crime consists in imagining the death of the king. In contemplation of law the crime is committed wherever the traitor is, and furnishes proof of his wicked intention by the exhibition of any overt act.

That passage is particularly applicable to that part of the case which I will consider as belonging to a period subsequent to April 1, 1879, when these men met together, and, as the counsel on the other side said, met for the purpose of agreeing to separate. I will show you that this meeting was not for the purpose of agreeing to separate from the crime of conspiracy, but was an agreement to separate the plunder which the conspiracy had achieved, each party binding himself, by an agreement at that time, to co-operate with every other party in enhancing the value of the plunder severally set off to each, and to carry out the original purpose of the conspiracy, to defraud the United States, by furnishing any papers between themselves that might be needed for the purpose of carrying out that conspiracy. And I will show you, when I reach that part of the case, that after they had thus divided the routes Miner furnished the affidavits upon the routes that passed to Dorsey, and with which Miner claims to have nothing to do, and that affidavits and papers were flying back and forth between the distributors, and that the only result of that agreement of April 1, 1879, was to divide the plunder, but to keep the crime ; to divide the burglars' tools, but agree to help the burglary ; and that after that the burglary went on just as regularly, just as energetically, and just as criminally as it had gone on before by the co-operative action of these parties exchanging, under their contract, the mutualities of assistance.

Mr. BLISS. The affidavit to which Mr. Merrick refers as bringing four of the conspirators together is 6 E, on the route from Trinidad to Madison, signed by John W. Dorsey, filed by S. W. Dorsey, altered in the Post-Office Department by Rerdell, and, as Mr. Merrick argued, with the knowledge of Mr. Brady.

The COURT. What is the date of that?

Mr. BLISS. The affidavit is dated 26th April, 1879, filed 30th of April, 1879; and Mr. Rerdell swore that he altered it at some time in May, 1879.

Mr. MERRICK. Now, also, may it please your honor, the affidavit of the 21st or 26th, 25 S——

Mr. INGERSOLL. [Interposing.] What do you claim about that affidavit?

Mr. MERRICK. Different persons combined in the transaction.

Mr. INGERSOLL. Four persons.

Mr. MERRICK. Four persons in the affidavit on the route from Trinidad to Madison.

Mr. BLISS. That is 6 E.

Mr. MERRICK. Three persons were combined in nearly all the rest.

One other author I beg leave to read from as part of my argument in this case, gentlemen, to develop the theory which I have been presenting to you. I refer to Roscoe's Criminal Evidence, where you will find a very distinct and clear exposition of this doctrine of conspiracy and an illustration of its application, at page 416:

A husband, his wife, and their servants were indicted for a conspiracy to ruin a card-maker, and it appeared that each had given money to the apprentices of the prosecutor to put grease into the paste, which spoiled the cards, but no evidence was given of more than one of the defendants being present at the same time.

Each of the three did the act, but there was only one present at the same time.

It was objected that this was not a conspiracy, there being no evidence of communication; but Pratt, chief-justice, ruled that the defendants being all of one family and concerned in making cards, this was evidence of a conspiracy to go to a jury.

Now, gentlemen, I will pass from that point, taking occasion possibly hereafter to recur to it.

I now come to consider, with a little more particularity, the character and effect of the agreement of April 1, 1879. I do not know, gentlemen, that I can pass with greater ease from the point I have been considering to any other more directly illustrative of the practical application of the doctrine of conspiracy in this case than by referring you to the circumstances under which Mr. Vaile came into this combination. It is contended on the other side that Mr. Vaile is perfectly innocent. Let me call your attention to one or two prominent facts that characterize his introduction into the conspiracy, premising by saying that where a conspiracy already exists any one who comes into that conspiracy becomes as much a part of it as one of the original organizers.

Before I do that let me make a suggestion, in reply to the view thrown out by Mr. Ingersoll, that it is necessary for the Government, in regard to this conspiracy, to show the four W's—when, where, who, what? It is immaterial to you, gentlemen, *when* this conspiracy was formed, subject to a limitation I will speak of directly. It is immaterial to you *where* it was formed. For *what* it is formed is material. *Who* formed it is material. So we will take one-half, which is a liberal allowance for the doctrine of the gentleman as correct. It is enough for you if you find that this conspiracy was in existence on the 20th day of May, 1879, for the reason that prior to that time acts done by

a defendant are barred by the statute of limitations. But as to the period of its formation, that is entirely an immaterial question. It may have been formed one year before or ten years before. It is enough for you to know that it was *in existence then*, and, as the court will tell you, if you find it to have been in existence then, you have done all that you are required to do in reference to finding all about its formation and continuance. Of course it was formed, according to the theory of the prosecution, long anterior to the 20th of May, 1879, and, according to the theory of the prosecution, it continued from the period of its formation, whenever that may have been, down through the days and the nights and the years to the 20th day of May, 1879, and after the 20th day of May, 1879; and the tree which was planted by these defendants prior to that time continued to bear its fruit during the year of 1879 and down to the end of the continuance of these contracts. When I have satisfied you that it had been formed or had existed prior to the 1st of April, 1879, as you will see by and by, I have satisfied you of the most important fact that the prosecution need satisfy you of to demand from you a verdict against these defendants.

Now, what was its condition in 1878, when Vaile came in? And I will take it up at that point, taking up a segment of the time subsequent to its formation. It had then been formed. Now, how did Vaile make his appearance? Let us see. And I think you will conclude with me, gentlemen, that this is one of the most remarkable transactions that ever took place among men of business and men of sense, and is in itself not only proof that Vaile was a member of the conspiracy, but proof that there was a conspiracy at the time to receive membership. You recollect that Vaile tells you, gentlemen of the jury, that he was here for a while in the summer of 1878, when he saw this unfortunate creature, Miner, in a state of distress. His great heart was moved with philanthropic sympathy, and he helped him because he was a son of Adam. There had been no relations between them, no interchange of mutual kindnesses, no past associations to awaken kindly sympathy and kindly friendship; but he was sorrowing over these contracts, and Vaile pitied his distress and came to his relief. He embraced him as a long-lost brother, and I can almost fancy that I see the two—realizing the description given by a humorist of the present day—going together hand in hand upon their first meeting to shed fraternal tears over the grave of their father Adam, for their common descent from him was the only tie that bound them together. [Laughter.]

Now, there was some communication between Miner and Vaile at that time in reference to Vaile coming into the concern, but nothing was consummated, nothing was done, except some doubtful agreements that do not remain of record, but rest only in Miner's extremely treacherous memory. Vaile went to the West. Still nothing was done. Vaile receives a telegram from Thomas J. Brady, dated August 20 or 21, 1878, asking him, "Which of the routes of Peck, Dorsey, Miner, and Watts will you put service on?" Vaile replies, "I will put service on the routes of Peck, Dorsey, and Miner—not Watts." Why did he leave out Watts? Why did this large-hearted man, whose soul was so big that it took in all the world, exclude Watts? Why did he not take him in too? Miner was the acquaintance of a day. John W. Dorsey he had never seen. Peck he never did see in his whole life. There were two strangers, and one other who was the acquaintance of a day. He answers, "I will put service on the routes." He then goes to work and expends his money, and not until some time in September or October—what was the date of the contract, Colonel Bliss?

Mr. BLISS. The 16th of August, executed in October.

Mr. MERRICK. Not until some time late in October was a contract executed between Vaile and these parties. Up to the time of the signing of the contract in October, which was antedated to the 16th day of August, there was no contract binding upon these parties.

Now, gentlemen of the jury, I think I can best present the case to you by reading the testimony of Mr. Vaile himself. I will read a part of it and occasionally comment, in order to enlighten you and will apply it as I go along; and I think when you have heard it read, you must inevitably come to the conclusion that Vaile had an understanding with Brady and an understanding with Miner, that these then unprofitable routes were to be made profitable by some process of manipulation which they do not disclose, and if I do not convince you of that, I am willing to abandon this case. On page 4044, this occurs, on Vaile's cross-examination:

Q. You say that this agreement of the 16th of August, 1878, was in point of fact not signed by you until some time in October, as you think?—A. That is my recollection of it.

Q. Where were you when you signed it?—A. I think in this city.

Q. When you signed it had it been signed by the other parties?—A. I could not say; I don't know whether it had or not. I thought it was signed by them first; but I find that there is one here signed by me and Mr. Miner—

Q. [Interposing.] At the time when you signed it, was Miner in the city?—A. I think he was. I think he was living here.

Now, I read from page 4045:

Q. Was Peck here?—A. I don't know; I never saw him.

Q. You never saw Peck?—A. No, sir.

Q. Was John W. Dorsey here?—A. I think not; I had never seen him at that time.

That is, when he signed this agreement.

Q. You had never seen him at that time?—A. Not that I know of.

Q. Do you remember when you first saw John W. Dorsey?—A. I think the last of November, but I won't be positive.

Q. In 1878?—A. 1878.

* * * * *

Q. Prior to the execution of that contract by you in October, who had been carrying on the business referred to in connection with these routes?—A. I think Mr. Miner, but I am not sure. I knew nothing about the business.

Prior to the time he signed that contract in October, dated back to the 16th of August, he swears to you that he knew nothing about that business. Not the business of mail carrying, for that had been the business of his life, but nothing about that business of Miner's. "I knew nothing about the business."

Q. Who had furnished the money necessary to carry on that business upon all the routes between the 16th of August and the time in October when you signed it?

Can you imagine what his answer was?

A. I think I did.

Q. You think you furnished the money upon all the routes?—A. Yes, sir; from the 16th of August up to the time I signed it.

The contract.

* * * * *

Q. Did you sign here in October?—A. Yes, sir.

Q. You had not prior to that time made any agreement as to the terms at all?—A. None whatever.

From the 16th day of August down to October, when he signed the paper, he had made no agreement at all as to the terms; and yet, within that time, as I will show you ultimately out of his own mouth, he expended from \$20,000 to \$50,000.

The COURT. Did he not refer then to any period prior to August 16?

Mr. BLISS. No, sir.

Mr. MERRICK. No, sir.

The COURT. Read that again, and let me see.

Mr. MERRICK. [Reading:]

Q. Who had furnished the money necessary to carry on that business upon all the routes between the 16th of August and the time in October when you signed it?

The COURT. I understand that perfectly well.

Mr. MERRICK. [Continuing:]

A. I think I did.

That was not prior to August.

Q. You think you furnished the money upon all the routes?—A. Yes, sir; from the 16th of August up to the time I signed it.

Q. You had not prior to that time made any agreement as to the terms at all?—A. None whatever.

But here is the conclusive proof:

Q. Prior to the signing of the contract in October, when had you verbally agreed to its terms, if at all?—A. It must have been about the time that I signed it in October.

The COURT. Well, but Vaile testified pretty largely in regard to his interviews with Miner here in August. Prior to the 16th of August, he spoke of negotiations between them, and how they fell into each other's company.

Mr. BLISS. No, sir; if your honor will excuse me; not prior to the 16th of August. All that occurred prior to the 16th of August was an arrangement about his taking up the contracts provided they were declared failing contractors. But there was nothing of detail.

Mr. MERRICK. Nothing of detail at all.

The COURT. I speak in reference to the formation of the acquaintance and the subsequent negotiations between Miner and Vaile.

Mr. MERRICK. That was this: Vaile, I believe, tried to get an extension of time for Miner to put on the service, and I think he got some extension.

Mr. HENKLE. To the 16th of August.

Mr. MERRICK. To the 16th of August, but he had no agreement with Miner as to the terms upon which he was to go on—none whatever. He was thinking of taking the routes if they were declared failing contractors, and had some arrangement to prevent their being declared failing contractors, possibly. But am I not right in saying that there was no agreement as to the terms?

Mr. HENKLE. No definite agreement.

Mr. MERRICK. That is what I said. Now, from the 16th of August until October there was no agreement as to the terms. So says his counsel. Now, gentlemen, bear with me through these interruptions.

Q. You had not, prior to that time, made any agreement as to the terms at all?—A. None whatever.

Q. There had been no agreement as to how the percentages of profits were to be distributed?—A. Not at all.

Q. And you had gone on paying all the expenses?—A. I had.

Q. During that period were there profits, or were the expenses in excess of the profits?—A. Oh, largely in excess of the profits.

During that period, from the 16th of August to the signing of the contract, the expenses were largely in excess of the profits, and he had gone on paying them all.

I now read from page 4046:

Q. You went on paying the expenses of putting in operation those contracts?—A. I did.

Q. Those contracts were in the names of Peck, Miner, and John W. Dorsey, were they not?—A. They were.

Q. You had never then seen Peck or Dorsey, had you?—A. Neither, that I recollect.

Q. And you had only the casual acquaintance with Miner which you gathered here in the preceding July?—A. Yes, sir.

Q. And yet, without any arrangement with any one of them, with no means provided by which you could get even the money paid by the Government for performing the service, you went on incurring these expenses, did you?—A. I did.

Q. Had you any arrangement or agreement by which you were to be reimbursed the money which you were paying out?—A. I did not have at that time.

Now, sir, here was this man, a mail-contractor all his life, belonging to a class of men noted for their astuteness, a man of business, as I have shown you, who, by his business capacity, had accumulated a large fortune, as shown by the record, in view of the bonds upon which he became security for nearly a million dollars, paying out money upon losing contracts without any agreement or any assurance that he should ever be paid back one cent.

Mr. HENKLE. Mr. Merrick, as you are making the closing argument, and do not wish to be unfair—

Mr. MERRICK. [Interposing.] I do not, most unquestionably.

Mr. HENKLE. You have not stated all that Mr. Vaile said in that connection.

Mr. MERRICK. Read it, then.

Mr. HENKLE. On page 4045:

Q. Under what arrangement and with whom had you gone on paying the expenses of all these routes which were held by other persons?—A. From the moment that I telegraphed General Brady that I would see the Miner, Peck, and Dorsey routes started I considered myself in the light of the contractor.

Mr. MERRICK. Yes; that is right.

The COURT. That was the 20th of September.

Mr. MERRICK. Twentieth of August. "From the moment I received Brady's telegram I considered myself in the light of the contractor." Good! Why? How?

Mr. HENKLE. The moment he telegraphed Brady that he would put this on.

Mr. MERRICK. That moment he considered himself in the light of the contractor. Why? By arrangement with whom? By arrangement with what contractor? By agreement with what contractor? None. But when Brady telegraphed him to put it on, and he wrote, "I will put it on," he considered that the consummation of the contract made by one co-conspirator in behalf of his other co-conspirators, the contractors. The truth will sometimes come out, even when it is tried to be concealed. There was no other reason by which he could consider himself in the light of the contractor. He could consider himself in the light of the contractor in no other way on the face of this earth except by some bargain with a contractor, and when Brady telegraphed to him to put on service he replies, "I will put service on the contracts of Miner, Peck, and Dorsey," and he then says, "I then considered myself in the light of the contractor, because I knew that Brady would protect me. I knew that Brady had the right to make this arrangement, and I considered that the arrangement under which I was to operate." I tell you, gentlemen, as Mr. Ingersoll says, a lie won't fit anywhere, but the truth does fit. It is a strange thing to see in the moral econo-

my of this world, how, when two lies are put together, you can never fill up the crevices, but how, when two truths are put together, the ragged edges of the one dovetail into the excavations of the other until they become a solid. No; a lie will not fit anything. But every truth fits every other truth. Truth is harmonious, truth is fraternal, truth is sympathetic, truth unites with truth. But each lie reveals and exposes every other lie.

Now, you will find the truth developed even by the interruption of Vaile's own counsel, that Mr. Vaile came into this combination with an understanding of its nature, and with an appreciation of the ultimate growth and development of fortune. He came into it knowing what was to be done, and met these expenses without obligation for repayment and without security, because he could rely upon the head actor in the conspiracy, namely, Thomas J. Brady. I thank the gentleman for his interruption.

Q. How much money had you paid out prior to the date in October when you signed this agreement?—A. I could not tell you; I paid out a good deal.

Q. How much—\$5,000 or \$50,000?—A. I had sent men to Oregon, and I don't recollect—

Q. [Interposing.] How much had you paid?—A. I can't tell

Q. You can tell whether it was \$5,000?—A. It was more than \$5,000.

Q. Was it \$20,000?—A. It probably was.

Q. Was it not more than \$40,000?—A. I think not at that time, but—

Q. [Interposing.] Had you not, in addition to the amount of money you had actually paid out, incurred other expenses which carried the amount up to at least \$50,000, and had you not so stated?—A. If not before that, I did soon after.

Q. I mean at that time—before this contract was signed?—A. I can't say as to that, but I know that about the 1st of November there was \$60,000 to \$80,000, and I don't know but more than that.

Q. The 1st of November it was \$60,000 to \$80,000?—A. I think up to \$100,000.

Q. Actually expended?—A. Yes; I think as much as that expended; I am not positive now.

Q. But you cannot tell whether the amount that had actually been expended when you signed this contract in October was as much as \$50,000 or not?—A. No; I cannot.

Q. Will you say it was not?—A. No; I won't say that.

He says it was over \$20,000, and he will not say that it was not \$50,000; we may therefore conclude that it was certainly between \$20,000 and \$50,000, if not \$50,000. And I repeat here that you must bear in mind now that not only between \$20,000 and \$50,000 advanced upon these routes was advanced by this enterprising mail carrier, a millionaire, without bargain, without agreement as to its being paid back, but without security and without a right in the property.

Mr. INGERSOLL. As to there being no security, of course you want to be correct?

Mr. MERRICK. Certainly, I do.

Mr. INGERSOLL. I think the record shows that for the quarter ending September 30 the money was paid to Mr. Vaile.

Mr. MERRICK. I did not say that.

Mr. INGERSOLL. That, I suppose, is security to that amount.

Mr. MERRICK. By an agreement made in October?

Mr. INGERSOLL. By an agreement made in August, not definitely fixed, and signed in October.

Mr. MERRICK. No.

Mr. INGERSOLL. In the mean time he drew all the money for the quarter ending September 30.

Mr. MERRICK. No. Now, find me the evidence, and I will read it, for I desire to be fair in this case, even beyond ordinary fairness.

Mr. HENKLE. The contract of these contractors with Mr. Vaile was that he should draw all the money. That contract was made on the 16th of August, and was sent out, as the testimony shows—

Mr. MERRICK. [Interposing.] No, sir; he says himself that he had no contract up to the time he signed this paper. The contract was signed here.

Mr. HENKLE. The testimony of Miner shows that the contract was sent out for Mr. Peck's signature and Mr. Dorsey's signature.

Mr. MERRICK. Why, Mr. Vaile says—I have just read it—that he had no agreement, either verbal or written, up to the time he signed this paper.

Mr. INGERSOLL. I will call your attention—

Mr. MERRICK. [Interposing.] As to the payments, I think he did draw the pay; that I do not question. I have no doubt, gentlemen of the jury, that Brady saw that he got paid.

Mr. INGERSOLL. Would it not be right to see that he got paid if he performed the service?

Mr. MERRICK. I do not know about that. Brady's duty was to obey the law, and he could not, without declaring those contracts failing contracts and giving them to another, pay some individual for helping those contractors without being in combination with those contractors.

Mr. INGERSOLL. I simply want to call your attention to the fact that the pay on every one of these routes was given to Mr. Vaile.

The COURT. There is no doubt about that.

Mr. MERRICK. He arrived here on the 29th of September and got postal drafts for that quarter. But I am speaking of his testimony, and I am trying to deal with it as fairly as I know how. I do not want to put a shade upon a word or give a wrong emphasis to a word. I am reading just exactly what he says himself. Now I will go on, at page 4047:

Q. Did you know which routes were in the name of Peck, which in the name of Miner, and which were in the name of Dorsey?—A. I can't say that I did.

He did not even know what routes they had.

The COURT. What time is it that he refers to?

Mr. BLISS. The time he telegraphed to Mr. Brady, on the 22d or 23d of August.

Mr. INGERSOLL. He does not say that he does not know what routes they had, but what each one had.

Mr. MERRICK. I will accept that, too. He says he does not know which routes were in the name of Peck, which in the name of Miner, and which were in the name of Dorsey.

Mr. INGERSOLL. Yes, that is right.

Mr. MERRICK. I will accept that:

Q. Did you know anything of John Dorsey or his responsibility?—A. I did not.

Q. Did you know anything of Peck or his responsibility?—A. I did not.

Q. You knew that Miner was a man without responsibility, I gather from your testimony?—A. I did.

Now, pause here. What was his condition then? He did not know anything about Dorsey's responsibility, he did not know anything about Peck's responsibility, but he knew that Miner was irresponsible financially:

Q. You assumed that liability—

That is, for these expenses—

simply from the sympathy that Mr. Miner had excited in your breast, you stated on your direct examination?—A. Yes.

Simply from sympathy for Miner :

Q. Having that sympathy for Miner, did you know at what price he had bid on any route?—A. I think I had looked at some routes before I had left here, but I could not tell what the prices were.

He did not know anything about it :

Q. Did you know what the aggregate amount of the contract prices of the contracts awarded to any one of those four parties was?—A. I did not.

He was as innocent as a child unborn :

Q. Did you know how many routes any one of them had?—A. No ; I don't think I did.

Q. Did you know the location of the routes?—A. I did not.

Q. Did you know the length of the routes?—A. I did not ; I don't think I did.

* * * * *

Q. Did you not at that time believe that the contracts had been taken at too low a price?—A. I did, so far as my observation had gone, and so far as my examination had gone.

Now, he knew nothing about it ; did not know the length of the routes ; did not know the location of the routes, knew nothing about to whom they respectively belonged. All that he did know was that they had been taken at too low a price, according to his observation ; in other words, they were taken at a price at which they were not considered to be profitable.

Q. That showed that they would be losing contracts?—A. Some of them.

Q. I mean in the aggregate.—A. Yes, sir.

Losing contracts in the aggregate, incapable, as I have shown you before, of being converted into gaining contracts, Vaile takes these contracts upon his shoulder and he carries this burden at Brady's suggestion made to him by telegraph in August ; has no contract upon the subject with the contractors giving him any rights in the premises until in the following October ; and, before he has a contract in the following October, expends between \$20,000 and, \$50,000—he cannot say that it was not \$50,000—without any agreement to be paid back, without any security for its payment, with nothing to rest upon whatever except the fact that Brady had telegraphed him and he had agreed to put service on the routes ; and these routes, too, taken by contractors, as to the responsibility of two of whom (Peck and Dorsey) he knew nothing, and the third of whom (Miner) he knew to be irresponsible.

Gentlemen, can you believe that to have been simply an honest business transaction upon the part of a man whose intellect had been sharpened by keen contact with the bright workers of the far West, whose genius had been enlivened by the necessities of quick and acute action in the mail-contracting business throughout the country, and who, by the genius for making and saving, and, in making and saving, protecting his money, had made an immense fortune? Do you believe that such a man would have made such an arrangement as that? Is it within the range of human credulity that any man would have done so? I know no Yankee would have done it, but can any spendthrift District-of-Columbia man, or Maryland spendthrift, or reckless Southern man, give it credit for an instant?

When Vaile went on, and met these large expenditures, opened the iron chest where lay the accumulated sweat of his brow during years of toil, he understood from Brady that those then losing routes would loom up, under the magic of the touch of Brady's official power, tinged with the fraud of the false affidavits that were to be made, and become immensely profitable to him, as he says the Canyon City and Fort McDermitt route did become.

We must reason about the condition of men according to what we know. If Vaile had been a simpleton, if Vaile had been a man that allowed his stage-drivers and carriers to rob him of his money, we might believe such a thing. But that would not have been this Vaile; that would have been another Vaile. That would have been a Vaile literally in the darkness and in the shadow. But this Vaile is a towering man, reaching his head above the mountains and catching the golden rays of the sun of enterprise and thrift, and converting them into ingots and putting them in his chest. This Vaile is a smart, delightful Vaile, not a Vaile of despondency.

Gentlemen, the large heart and extensive philanthropy of the man must commend him to your most charitable consideration. We must account for this man's conduct on some hypothesis consistent with what we know of ordinary human nature, and we have no evidence that a mail contractor's human nature is different from that of anybody else. I say that, in my judgment, he had not only arranged with Brady, but he had arranged with S. W. Dorsey. He quarreled with him afterwards; of course he did; quarreled with him in 1878, when they were both in the same conspiracy. Why? Two men like Stephen W. Dorsey and Vaile could no more work together in harmony in such a business than two women of decided character could keep house together, exercising common authority. [Laughter.] The cups and saucers would fly around every morning. Yes; they quarreled. Vaile came out of the West, as I will show you, like one of these Western tornadoes, full of wrath, in the latter part of February or 1st of March, 1879, determined to sweep Dorsey out of the concern, determined he would not keep house with him any longer, while Dorsey stood back ready to meet Vaile in the encounter and thrust him out. Why, gentlemen of the jury, if this large-hearted, money-making man, Mr. Vaile, had been seated among the money-changers in the temple when the Savior came to thrash them out and cleanse the sacred place from their defilement, he would have passed Vaile by, suspended the lash, laid his hand upon his head and blessed him, and his large charity and philanthropy would probably have saved the condemnation of the thieves adjacent to him, and even protected the temple itself from the denunciation of being a den of thieves. A man of such charity, such large philanthropy, is incomprehensible; and above all is it incomprehensible that a man of such wealth should thus peril his substance without promise of repayment or of security. You or I might have done it, but the rich man loves his money. The more he gets the better he loves it. Each ingot he throws in the chest, as it rattles against the others, sings to him a song of delight and avarice becomes the god he worships. He perils nothing, saves all, and gets what he can. So much for Mr. Vaile.

The COURT. In regard to that telegram, Mr. Merrick, when Mr. Vaile left here, he had this proposition under consideration, but he did not decide, if I remember the testimony, whether to take the routes off Miner's hands or not.

Mr. INGERSOLL. That is right.

Mr. BLISS. I think there is no testimony going even to that extent.

The COURT. Yes, there is. Certainly, he testified that he went home with the matter under consideration. Brady did not know, according to his testimony, whether Vaile was going to assume the performance of the service upon the routes of those three men Miner, Peck, and John W. Dorsey. But, at his instance, Brady had postponed declaring the contracts forfeited until the 16th of August. He went home from here with a mind uncertain as to what he was going to do. On the

20th of August, if I remember rightly, Brady telegraphed him to know what he was going to do about it, whether he was going to assume the performance of the service or not. In reply to that telegram he answered that he would take the routes belonging to Peck, Dorsey, and Miner, but that he would not take the routes belonging to Joshua H. Watts.

Mr. INGERSOLL. Not those of Watts.

Mr. MERRICK. Not those of Watts; that is it.

The COURT. That was about the 20th of August.

Mr. HENKLE. The testimony is that he left in the hands of Miner written proposals to take these routes himself in case they were going to be declared failing contractors.

The COURT. That is outside of the question that I am looking to now.

Mr. BLISS. If your honor will allow me, I think you stated it a little more strongly than the testimony will warrant.

The COURT. I spoke of the impression on my mind.

Mr. BLISS. Precisely. On page 4007:

Q. What passed between you and Mr. Brady, if anything, with regard to these contracts before you went into them?—A. About the 1st of August, or perhaps the very last days of July, Mr. Miner requested me—

Then there was an interruption; afterwards he says:

A. The last days of July, probably the very last, or the 1st day of August—I do not recollect now—I went to Mr. Brady in behalf of Mr. Miner to get an extension of the time to put on the service not then on up to the 16th of the month.

Q. What took place between you and Mr. Brady at that time?—A. I represented to him what Mr. Miner had represented to me, that they had men scattered over the country upon these routes, and they thought that if they could get a further extension to the 16th they would be able to go on with the contracts; and I remarked to him that if that was true I thought it would be wise in him to extend the time. In that view he consented to extend the time up to the 16th of August.

Q. Upon that point I want to ask you whether you made any offer to Mr. Brady to pay him money or give him anything valuable of any kind, or offered him any sort of consideration, for the indulgence you asked of him on behalf of Mr. Miner at that time?—A. I did not.

* * * * *

Q. When did you first determine to take an interest in these routes?—A. I think it must have been about the 20th or 21st of August, 1878, or thereabouts.

Q. Do you know whether or not the service had been put on on the Miner routes by the 16th of August?

Then he goes on and refers to the telegram of Brady. There was some discussion about its admissibility, and then the testimony came out that it was dated the 20th or 21st of August. He then states the answer which he sent in a day or two afterwards. Then he says, on direct examination, at page 4012:

Q. Will you tell us, Mr. Vaile, whether before you went home you had made any definite agreement with Mr. Miner or anybody else as to going into this arrangement?—A. I had not.

Q. How far had your negotiations with Miner progressed at that time?—A. I had agreed, in case that General Brady should declare these parties failing contractors on the routes not started, that I would file an offer in my own name to take them at the contract prices. I left such offers with him before I went home.

Mr. INGERSOLL. That shows exactly what the court said.

Mr. BLISS. [Continuing to read:]

Q. In case General Brady should declare them failing contractors you left written offers with Mr. Miner to file to take the contracts?—A. Yes, sir; at the contract prices.

Q. Was that on behalf of yourself, or for their benefit?—A. Myself.

Q. For yourself?—A. Yes, sir; it was on their behalf. I was not anxious to get into it; it was to keep them from failing, for that would have made me responsible the same as a contractor; I would then become the contractor instead of them.

Mr. MERRICK. Exactly.

Mr. BLISS. [Continuing to read:]

Q. What I want to get at just now, Mr. Vaile, is whether your agreement with Miner contemplated that, in the event of your offer being accepted and you taking it, you were to take it on their behalf, or on your own?—A. Well, I would have been responsible, of course. The object was to have them not fail. * There was no definite agreement at all, but the object was simply to keep the service from failing.

Q. You proposed to keep them from failing?—A. Yes, sir. If these had failed, necessarily the whole row would have tumbled sooner or later.

Q. Had you acquired at that time any additional information as to the condition in which these routes were?—A. No; I had not.

Q. I mean financial condition.—A. I had not at that time.

I think that is all there is of it. Mr. Miner testifies, your honor, that the agreement as to making an offer was a device by which they would get time, because if he came in and took up the contracts, then, as a new contractor, he would necessarily be given time to go on and arrange to perform the service.

The COURT. I think that is about what I recollected.

Mr. INGERSOLL. Yes, that bears out exactly what the court said.

Mr. MERRICK. I do not see that that differs from what I said much, if at all.

Mr. INGERSOLL. Is the court through?

The COURT. I am through.

Mr. INGERSOLL. I want to say one word.

Mr. MERRICK. Certainly.

Mr. INGERSOLL. I understood you to say that Brady suggested to Vaile that he take up this service. Do you refer to anything contained in the evidence, except the telegram?

Mr. MERRICK. No; nothing except the evidence of the circumstances. I think on those your own mind will lead you to agree with me.

Mr. INGERSOLL. I do not think that was suggested. It was simply a question as to what service he would take up.

Mr. BLISS. "What service do you expect to put into operation?"

Mr. INGERSOLL. I don't think that is a suggestion.

Mr. MERRICK. I don't think the testimony read differs at all from what I have stated.

The COURT. Perhaps not.

Mr. MERRICK. In no way whatever. There was talk here and talk there, but out of it all comes this——

The COURT. [Interposing.] There were some facts that you overlooked; that is all.

Mr. MERRICK. It may have been because I regarded them as immaterial. The fact is this: That Vaile, when he advanced this money, did so without security.

Mr. INGERSOLL. He had security.

Mr. MERRICK. There was no security.

Mr. HENKLE. He took the contracts himself.

Mr. INGERSOLL. He had subcontracts on file in the department.

The COURT. Under these circumstances, I think no executive officer would perform his duty if he would allow the man who had assumed and taken the risk and put the service on to be cheated out of his pay.

Mr. INGERSOLL. That is it.

Mr. BLISS. But if the contractors decline to sign subcontracts or postal drafts he could not prevent it.

The COURT. He could have managed it.

Mr. HENKLE. They do that all the time.

Mr. BLISS. The fact is, your honor, that it appears that on the 29th

of September, Mr. Vaile came here, and having ascertained that there were on file post-office drafts given by Dorsey, as he testifies, he then got from Miner subcontracts under his power of attorney which on the 30th day of September he filed to get the pay then due.

Mr. INGERSOLL. That shows that he did want security.

Mr. MERRICK. Yes, he did want security after he had spent the money. That was not the time to want it.

The COURT. He wanted to get the money.

Mr. MERRICK. He wanted to get the money which he had spent, and he was looking for it.

The COURT. He was right.

Mr. MERRICK. It was about that he and S. W. Dorsey finally quarreled. I want to state it right.

Mr. INGERSOLL. I know you do. Vaile left here in August. On the 20th of August he got the dispatch. He then assumed certain service. His first return to Washington was towards the last of September. The moment he returned he got his subcontracts.

Mr. HENKLE. And put them on file.

Mr. MERRICK. I will read you what he says. Let us see how he understands it:

Q. Had you any arrangement or agreement by which you were to be reimbursed the money which you were paying out?—A. I DID NOT HAVE AT THAT TIME.

The COURT. Well.

Mr. MERRICK. He had no agreement. He knows better than his counsel. He made that statement on the stand, and his counsel did not even argue in his case.

Mr. HENKLE. He had the contracts.

Mr. MERRICK. He had no contracts on the 15th of August. I am talking of one time and you are talking of another. The day he signed that contract he had no contract with the contractors.

Mr. HENKLE. He says that he considered himself the contractor.

Mr. MERRICK. "He considered himself!" Go home and dream that you are worth millions, and that will do as well as if you were. Consider yourself worth millions. It is just as good as if you were.

Q. Prior to the signing of the contract in October, when had you verbally agreed to its terms, if at all?—A. *It must have been about the time that I signed it, in October.*

He never had agreed to it verbally before at all. That is what he says. Now, I beg pardon, but we have had interruptions enough.

Mr. HENKLE. Now go on.

The COURT. Allow Mr. Merrick to go on.

Mr. INGERSOLL. Yes; I beg pardon.

Mr. MERRICK. I want to be fair, but I can see nothing coming from these interruptions but useless confusion. Vaile's own counsel sits there and pretends that he thinks imagination of things equal to the reality.

Mr. HENKLE. Go on and have it your own way.

Mr. MERRICK. I am going to have it my own way, and I am going to have it Vaile's way. I am going to read what Vaile says. If you did not speak for Vaile, because you might cross somebody else's path, still Vaile spoke for himself. Now, gentlemen, be silent and hear Vaile.

Mr. HENKLE. I did not speak, because I did not think it was necessary.

Mr. MERRICK. Be silent and hear Vaile.

Mr. HENKLE. You have not made a shadow of a case against him, and I did not think it was necessary to speak in his defense.

Mr. MERRICK. Now, look here, Brother Henkle, you are a good member of the church. Argue your case on the evidence, but do not stretch your conscience by saying what you do not believe.

Mr. HENKLE. I do not stretch my conscience by speaking the truth.

Mr. MERRICK. No lawyer is required to hurt his conscience. Do not do that. Let Vaile speak for himself. I read from page 4045:

Q. You think you furnished the money upon all the routes?—A. Yes, sir; from the 16th of August up to the time I signed it.

Q. Prior to the signing of the contract in October, when had you verbally agreed to its terms, if at all?—A. It must have been about the time that I signed it, in October.

Q. Did you sign here in October?—A. Yes, sir.

Q. You had not, prior to that time, made any agreement as to the terms at all?—A. None whatever.

Q. There had been no agreement as to how the percentages of profits were to be distributed?—A. Not at all.

Q. And you had gone on paying all the expenses?—A. I had.

Q. During that period were there profits, or were the expenses in excess of the profits?—A. Oh, largely in excess of the profits.

Q. Having gone on and done that during that period from the 16th of August, will you now tell me under what arrangement and with whom you had so done?—A. I made arrangements with Miner; this contract was drawn up for that.

Q. I mean the verbal arrangement preceding the contract, under which you went on and paid out the money for expenses during that period?—A. Perhaps I had better state—

Q. [Interposing.] Well, answer my question: Under what arrangement and with whom had you gone on paying the expenses of all these routes which were held by other persons?—A. From the moment that I telegraphed General Brady that I would see the Miner, Peck, and Dorsey routes started I considered myself in the light of the contractor.

Q. You had then from that time, which was somewhere about the 22d of August—General Brady having telegraphed you on the 20th, and you taking, you thought, two or three days to consider it—

A. [Interposing.] Yes.

Q. From that time on you considered yourself in the light of the contractor?—A. I did.

Q. You went on paying the expenses of putting in operation those contracts?—A. I did.

Q. Those contracts were in the names of Peck, Miner, and John W. Dorsey, were they not?—A. They were.

Q. You had never then seen Peck or Dorsey, had you?—A. Neither, that I recollect.

Q. And you had only the casual acquaintance with Miner which you gathered here in the preceding July?—A. Yes, sir.

Q. And yet, without any arrangement with any one of them, with no means provided by which you could get even the money paid by the Government for performing the service, you went on incurring these expenses, did you?—A. I did.

Now, will you take his word or will you take his counsel's construction?

The COURT. Counsel do not deny that.

Mr. HENKLE. No, sir.

Mr. MERRICK. [Reading:]

Q. Had you any arrangement or agreement by which you would be reimbursed?—

A. I DID NOT HAVE AT THAT TIME.

Then he goes on to tell how much money he paid out, and goes on to say he did not know where the routes were, how long they were, or anything about them, except according to his best judgment when he had looked over the papers, they were losing routes. The routes that he took were losing routes. -I submit that does not stand to reason that this business man should have taken those losing routes without having some assurance that he would be reimbursed his money. Suppose that he had a lien upon the amount of money paid by the Government. If they were losing routes they were losing routes because the expense of running consumed in payment to the carriers on the

lines more than the Government paid to have them run, and the first lien on the amount to be paid by the Government was the carriers' lien. The carriers that ran the routes had to be paid first. If they were losing routes the amount that it cost to run them was greater than the amount the Government paid. If the carrier's lien, the first lien on the amount the Government paid, was greater than the contractors' pay there was nothing left wherewith to reimburse Vaile. Even if it had been the duty of the Second Assistant to see that Vaile was paid before the contractor was paid, Vaile could get nothing that the contractor could not get, and if the carrier's pay for carrying the mail was greater than the amount coming to the contractor, there would be nothing coming to the contractor, and as there would be nothing coming to the contractor, there would be nothing coming to Vaile. Consequently Vaile saw if they were losing routes that he had no possible hope of being paid by the Government. He knew he could not be paid by Miner, because Miner, as he says, was insolvent. He did not know anything about Peck, and he did not know anything about Dorsey, whether solvent or insolvent. He had then no hope of being paid by the Government. He had no hope of being paid by Miner. He had no knowledge that he ever could be paid by Peck or John W. Dorsey. I ask you, gentlemen of the jury, to tell me where was the hope of this enterprising, financially successful man to be reimbursed his money if that hope did not find its place of origin and existence in an agreement and an arrangement by which these routes by some manipulation or some fraud were to be converted from losing into gaining routes. Otherwise there was no hope or prospect of payment; there was no prospect of reimbursement from any source. All the money paid by the United States had to go to pay the carriers. Miner was bankrupt, and Dorsey and Peck he knew nothing about. He was, therefore, just throwing his money away uselessly for the benefit of the United States, a thing which I say shocks your understanding with regard to such a man as Vaile. To come back, then, gentlemen, after all this digression, to the plain, simple, naked, and prominent truths in the transaction, they stand out just exactly as I presented them to you in the first place, unchanged, unmodified, and undimmed by anything that has been said.

Now, gentlemen of the jury, I think at this point, especially as I see Mr. Ingersoll in court, it would be as well for me to take up and present to you some parts of his speech in which he attempted to show Rerdell to have been contradicted.

Gentlemen, I will now take up the counsel's speech on the subject referred to. It is hardly out of place either, because the next subject which I propose to consider, gentlemen, will be S. W. Dorsey in connection with Montfort C. Rerdell, the master and pupil, and I propose to follow them along through their lives in this transaction, lives which were pleasant and lovely, and compare the two, and take you as far as I can into the spirit of their intercourse with each other. I propose to show you how, many years ago, S. W. Dorsey, then a rising man of great intellect, took this young man, Rerdell, by the hand, brought him from the wilds of Arkansas to the city of Washington, taught him here the ways of iniquity, and, having debauched him, used the moral wreck he had made for his own personal benefit and emolument. Before I come to that I desire to call your attention, as I say, to some portions of Mr. Ingersoll's speech, in which he attacked Rerdell, where, with all due respect to the eloquent gentleman, I think he is in error.

At page 5326, Mr. Ingersoll says :

According to this letter—

Speaking of the letter of July, 1882—

among other things he was to have an office, the steamboat route was to be reinstated, the Jennings claim was to be allowed, his father-in-law was to get a clerkship, and according to this letter he also was to have a position.

Now that, Mr. Ingersoll says, is what was in the letter. Correct me in anything, if I am in error. The letter is on page 3733. After stating some general matters, which I need not read, the paragraph next to the last—

Mr. INGERSOLL. [Interposing.] That was the Dorsey letter.

Mr. MERRICK. The letter of Rerdell to Dorsey.

Mr. INGERSOLL. No. I understood it to be a letter of Dorsey to Rerdell. That is what I understood when I was speaking of it. On page 5326, I think, I referred to the letter that Mr. Rerdell says that Dorsey wrote to him on the night that Dorsey left New York. Here it is. I am now giving Mr. Rerdell's report of the letter:

The letter started out by stating that he did not believe the report that had been brought to him in reference to myself, and that he also believed the affidavit story to be a lie. He plead in the letter for the sake of his wife and children and himself, and his social and business relations, and the friendship that had long existed between us not to do anything for his injury; for God's sake to reconsider everything that I had done and take no steps further until he could see me. It was in that strain, simply begging me not to do anything further until he could see me.

That letter was written in June, 1881, according to Mr. Rerdell's testimony. It is a letter claimed by Rerdell to have been written by Dorsey to him, Rerdell.

Mr. MERRICK. That does not say anything about position, office, or anything of that kind.

Mr. INGERSOLL. You are mistaken either in your page or in your subject.

Mr. MERRICK. I am mistaken probably in the page. Here is what you say, cut out from your speech:

According to this letter, among other things he was to have an office, the steamboat route was to be reinstated, the Jennings claim was to be allowed, his father-in-law was to get a clerkship, and according to this letter he also was to have a position.

What letter is that?

Mr. INGERSOLL. The letter of July 5, 1882, must be the letter referred to. Mr. Rerdell states in that letter that had he remained with the Government he would by this time have had a good position.

Mr. MERRICK. Now we are all right. It is that letter you refer to.

Mr. INGERSOLL. It must have been. If you will find me the page I will show it.

Mr. MERRICK. He says to the jury, referring to this letter:

According to this letter, what? Among other things he was to have an office.

Mr. INGERSOLL. That is improperly reported.

Mr. MERRICK. [Continuing to read:]

The steamboat route was to be reinstated, the Jennings claim was to be allowed, his father-in-law was to get a clerkship, and according to this letter he was also to have a position.

Mr. INGERSOLL. There is a mistake there. It should not be according to this letter, but according to his testimony before.

Mr. MERRICK. It is printed "According to this letter."

Mr. INGERSOLL. That is a mistake. According to his testimony he was to have the other things, and then, according to this letter, he was to have a position in addition.

Mr. MERRICK. There is no such thing in the testimony; nothing of the kind.

Mr. INGERSOLL. Let me call your attention to it.

Mr. MERRICK. You cannot do it.

The COURT. Whilst you are looking for it we will take our recess.

At this point (1 o'clock and 5 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen, I made a reference to Mr. Ingersoll's remarks as of page 5326. The reference should have been page 5328, where he says, referring to the letter of July 5, 1882:

According to this letter, among other things he was to have an office, the steamboat route was to be reinstated, the Jennings claim was to be allowed, his father-in-law was to get a clerkship, and according to this letter he also was to have a position.

I propose, gentlemen of the jury, to show you how inaccurate Mr. Ingersoll was in commenting upon Rerdell and in attempting to show you throughout his speech for two or three days that Rerdell was not to be believed because so flatly contradicted by other testimony in the case. When I came to look at the speech and examine it I was amazed to find how many errors there were of that class and character in the speech of a man who had undertaken to criticise two of the clearest, most concise, accurate, and logical arguments ever made in a court of justice, namely, the two arguments made by Messrs. Ker and Bliss. His object was to convince you by his attack on those gentlemen that Mr. Bliss especially was not entitled to be regarded as a correct "encyclopedia" of the records and testimony in the case, as every lawyer in the case, as well as the court, had come to regard him. Out of all his mighty efforts, with all his auxiliaries to help him, he found in that lofty and able argument only some seven or eight mistakes which any man might make in the heat and rapidity of discussion. Let us see how accurate Mr. Ingersoll is.

This letter of which he speaks says not one word about the steamboat route. It says not one word about the Jennings claim. It says not one word about his father-in-law. The only thing in the letter which sustains what Mr. Ingersoll says is that he expected to get a good position. The statement of Mr. Ingersoll, therefore, that in the letter, among other things, he was to have an office is not so. The statement that the letter referred to the steamboat route is not so. The statement that the Jennings claim was to be allowed is not so. The statement that his father-in-law was to have a clerkship is not so. The only statement that Mr. Ingersoll made in all that paragraph that was correct and true is the statement that Rerdell says he expected to get a good position.

On page 5342 Mr. Ingersoll says as follows:

On page 2215 Rerdell swears that Miner told him that the amounts in the bids were filled in by S. W. Dorsey. On page 4177 *Miner* denies this, and says that he filled in the bids with only two exceptions.

Now, what is the fact? This statement of Mr. Ingersoll's is true in part only. On page 3875 S. W. Dorsey swears, referring to the original bids on the bidding-book:

Q. How many of those bids did you change?—A. Well, I changed no bid at all. Do not confound these things. The amount was written in pencil on the edges of the Government advertising book, from which they would make up their bids. It was not a bid.

Q. How many of those amounts did you change?—A. I don't remember. I do remember changing two, as my memory has been refreshed as to them. I don't know exactly on what routes they were, but I think on the Bismarck and Tongue River route and The Dalles and Baker City route.

Q. How has your memory been refreshed on the subject?—A. By the evidence that has been given in court here.

Q. Whose evidence?—A. The evidence of Mr. Boone, I think. I think it was Mr. Boone. You can turn to it and see. Then I have talked with Mr. Boone about it since.

Q. On page 1585 Mr. Boone was asked this question:

“Q. Were the estimates which you made used at all?—A. Some might have been used, and some were not. I know one or two very important ones that were not used.

“Q. Were your estimates reduced?—A. Yes, sir; on The Dalles and Baker City route they were reduced \$3,000.”

Did you make that reduction?—A. My impression is that I did. I do not know the amount, but I think I made a change there, or suggested a change.

Q. Did you not strike out the figures that were there and write in your own hand the substituted figures on the book?—A. Well, if I wrote anything at all there it would be in my own hand.

Q. I did not ask you *if* you did. Do you recollect that you did?—A. I do not remember just in what form, but I have a recollection that I did suggest a change on that route.

Q. On page 1586 Boone says:

“A. As I stated before, one route particularly attracted my attention, and that was the route from The Dalles to Baker City, in which the figures that I had suggested, \$11,888, were reduced to \$8,888.”

What is your recollection about that?—A. I presume Mr. Boone's recollection is better than my own. I know that I suggested a change there. Just as to the amount I cannot say.

Q. Boone goes on further:

“How were the other routes?—A. To the best of my recollection they were all reduced.”

That is what Boone says, and Dorsey has just before said that Boone's recollection is more reliable than his:

Have you any recollection of reducing more than two?—A. No, sir; I may have reduced more, but the only recollection that I have is of the two. I may have suggested a reduction. I did not reduce them. I may have suggested a reduction.

Mr. INGERSOLL. Does he say he may have reduced others; if so, what page is that?

Mr. MERRICK. I am reading from page 3875:

Have you any recollection of reducing more than two?—A. No, sir; I MAY HAVE REDUCED MORE, but the only recollection that I have is of the two. I may have suggested a reduction. I did not reduce them. I may have suggested a reduction.

Q. I will accept that. You may have suggested a reduction?—A. Yes, sir.

Now, on page 1586, Boone says:

Q. Were the bids put in the bids you prepared on those circulars, or were the amounts which you fixed as proper amounts arbitrarily reduced?

Mr. INGERSOLL. I object to that. It is exceedingly leading.

The COURT. Yes; and it is objectionable, because it does not relate to new matter brought out by the other side. You will have to put it in a less objectionable form.

Q. State relatively to each other the character of the amounts you indicated as the amounts to be bid for the routes and the character of the amounts finally determined upon.

Mr. INGERSOLL. I object.

Mr. WILSON. I object, because that is not the best evidence. It is in writing, and the writing ought to be produced.

The COURT. You can answer the question.

Mr. INGERSOLL. I would like to have the question read first.

[The stenographer read the question.]

The COURT. You can answer the question.

A. As I stated before, one route particularly attracted my attention, and that was the route from The Dalles to Baker City, in which the figures that I had suggested, \$11,888, were reduced to \$8,888.

Q. How were the other routes?—A. To the best of my recollection they were all reduced.

Boone swears that, to the best of his recollection, they were all reduced, and S. W. Dorsey swears, "I presume Mr. Boone's recollection is better than my own." Rerdell says that Miner told him that the amounts in the bids were filled in by S. W. Dorsey. Miner denies this, says Mr. Ingersoll, and says that he filled in the bids with only two exceptions. Now, if there is corroboration anywhere, the testimony as to the fact that S. W. Dorsey reduced all those bids is clear and distinct, and made distinct by Boone. Boone is sustained by S. W. Dorsey stating on his oath that his, Boone's, recollection is more reliable than Dorsey's; and whilst the testimony confirms Rerdell, it condemns Miner.

Mr. INGERSOLL. Where does he say that Dorsey reduced all the routes?

Mr. MERRICK. [Reading:]

As I stated before, one route particularly attracted my attention.

Q. How were the other routes?—A. To the best of my recollection, they were all reduced.

Mr. INGERSOLL. By whom?

Mr. MERRICK. The inference is here, plain and palpable. Miner had the book. Miner exercised no authority. Boone had prepared the substance of the bids. He had obtained the information, on which the amounts were based. Miner brought the book and showed it to Boone, and the amounts were reduced. Boone states that the amounts were reduced. Miner told Boone, as Boone said in his testimony, that he intended to keep the book to show who was responsible for the reduction.

Mr. INGERSOLL. Of those two routes.

Mr. MERRICK. No, sir. Boone says it is not limited to those two routes. That statement is unauthorized by the testimony.

Mr. Ingersoll says, on page 5342:

On page 2217 Rerdell swears that S. W. Dorsey applied to him to go West. On page 3768 Dorsey swears that he did not employ him to go West.

Mr. Ingersoll uses that as a contradiction of Rerdell. Did Rerdell say that Dorsey had *employed him*? Rerdell says Dorsey *applied* to him to go West. Dorsey swears that he did not *employ* him to go West. Did not Dorsey *apply* to him to go West? Did not Dorsey send him West? Let us see how fair the counsel is in that statement. Rerdell swears, on page 2213:

Q. Miner's room?—A. Yes, sir. Mr. Miner was not here at that time. All the spare time I could have from my duties under the District government I would devote there in writing letters and sending out communications to subcontractors and postmasters and things of that kind that would naturally come through the hands of the contractor, and continued in that way until about, I will say, to be accurate, between the 5th and 10th of July, and then he asked me if I did not want to take a Western trip.

Q. What did you say to that?—A. I asked him where it was and he said Dakota and Montana Territory, and remarked that it was a pleasant time of the year to go there and that all my expenses would be paid. He asked if I could get leave of absence from the District government. I replied that I would try. He said, "If they refuse it, I will go and see that you get it; make your application." I made my application for leave of thirty days, and it was granted; and on the night of the 11th I left here.

By the COURT:

Q. The 11th of July?—A. Yes, sir; it took several days to get the leave of absence and to get some other matters arranged, and then I left for Dakota.

On page 2218 he says:

Q. For what particular purpose were you to go West?—A. I was to go West for the purpose of assisting John W. Dorsey in putting service on the route from Bismarck, Dakota, to Tongue River, Montana, or Fort Keogh, as they called it then, I believe.

Q. Did you go?—A. I did; leaving here on the night of the 11th of July.

Q. Did you receive any instructions before leaving?—A. I did.

Q. From whom?—A. From Senator Dorsey.

Q. Did you receive any money or were you given a credit upon which to draw at the time you left?—A. I was, but I would have to explain how that was done. I got no direct credit to me in my name.

Q. Did you receive any money?—A. I did.

Q. How much?—A. One thousand five hundred dollars.

Q. From whom?—A. Senator Dorsey.

Q. Now, will you explain the credit?—A. He went with me to the German-American National Bank, on the corner of F and Seventh streets, and placed to the credit of John W. Dorsey & Co. \$3,000, causing me to sign the firm name of John W. Dorsey & Co. on the signature book, so that they would know who drew the drafts.

Q. Did you sign the firm-name?—A. I did sign the firm-name of John W. Dorsey & Co., and he placed to the credit of John W. Dorsey & Co., for me to draw out over the signature that I signed on the signature book, \$3,000.

Q. How much money did you say you took?—A. He gave me \$1,500 in money and a credit to John W. Dorsey & Co. of \$3,000.

Is all that a fact that Rerdell there states? Let us see. Dorsey says, on page 3768:

Do you know anything about employing him to go West?—A. Yes, sir; I did not employ him to go West.

Q. Just state what there is about it.—A. About the time that he states there, about the 10th or 12th of July, the service on the route from Bismarck to Tongue River I think had not been started. At all events, John W. Dorsey, who was in charge of it, was in great trouble about getting it started, and Rerdell told me that his vacation would begin the 15th of July and he was going West somewhere, and I suggested to him to go up there and help John put the service on that route. My reason for doing that was—

Mr. MERRICK. Wait a moment; I object.

*Mr. INGERSOLL. Let him give his reason. It is the same thing right over and over.

The COURT. He can give his reason for sending him out,

Says the court, understanding precisely what the testimony meant.

Mr. INGERSOLL. Certainly.

Mr. Ingersoll acquiesced at the time in what the testimony meant, that Dorsey was sending him out.

A. [Continuing.] My reason for doing that was that if that service failed, and then it looked very much as if it would, the bondsmen who were on all these bonds at my request would probably lose a great deal of money and I would feel in honor bound to protect them against that loss.

His reason for doing what? His reason for sending Rerdell out West.

That is the reason why at that time I took such an active interest in having this service started.

Q. Because you felt under obligations to protect the bondsmen?—A. Yes, sir; if there had been a failure there would have been a great deal of money lost by them. Of course it was understood that if one route failed all the rest would fail in the name of that contractor.

Q. When Mr. Rerdell started for the West did you furnish him with any money or any means of getting credit?—A. Yes, sir; I think I did.

Q. For the purpose of assisting John W. Dorsey?—A. I think I did.

Q. Do you remember the amount?—A. I do not.

Q. Do you remember whether he had any certified check?—A. I do not know that. Perhaps he did.

Q. You do not remember just the amount that you gave him?—A. No; but I think \$3,000. The checks would show that.

Q. Do you know whether you placed that amount to his credit or to the credit of any member of that firm?—A. I think that I placed it to the credit of John W. Dorsey & Co., and then I think I went to the bank with Rerdell and told Mr. Austin, the assistant cashier, or Dr. Prentiss, I don't know which, that Rerdell was authorized to draw this money out by signing the name of John W. Dorsey & Co., for the reason that John W. Dorsey—if I can give my reason—was absent on the line somewhere, or I supposed he was, and Rerdell, on the way up, would probably have to purchase horses or grain and so on before he saw John W. Dorsey.

Now, gentlemen of the jury, was that fair, was that dealing in frankness with a man he was seeking to kill, as he says he was? Is it fair to assassinate a man instead of meeting him in open fight? Was it fair as a contradiction to use language of this sort?

On page 2217 Rerdell swears that S. W. Dorsey applied to him to go West. On page 3768 *Dorsey* swears that he did not *employ* him to go West.

That is the contradiction furnished by Mr. Ingersoll. I am obliged to him for it, for in searching out the unfairness of his attempted contradiction of Rerdell it led me to the confirmation of Rerdell out of the mouth of S. W. Dorsey himself. S. W. Dorsey applied to him to go West. S. W. Dorsey says so. S. W. Dorsey told him to go West to assist John W. Dorsey in putting service on the Tongue River route. S. W. Dorsey assisted in getting his leave. S. W. Dorsey gave him \$3,000 in money; and further on it is in proof from Dorsey that he provided him with passes and sent him out West to do this business; and further on it is shown and conceded that he went out and did the business upon which he went.

But, gentlemen, let me pause here for a moment to consider one very peculiar and extraordinary circumstance in this transaction. S. W. Dorsey has given you as a reason for his active interest in these routes that he wanted to take care of his bondsmen. Let us see if that is true. If I am not mistaken Boone swears and it is in proof from John W. Dorsey that Boone and John W. Dorsey were the only members of the firm of John W. Dorsey & Co. At the time S. W. Dorsey sent Rerdell out West Boone was here in the city. John W. Dorsey was not here, but Boone, a member of the firm, was here in the city. How dared a stranger to that firm go to a bank in the city of Washington and order a credit in the name of that firm? How dared a stranger to that firm, not a member of the firm, having no interest in the affairs of the firm, having no authority over the contracts and dealings of the firm, go to a bank and take with him a man and authorize that man to draw indefinitely on that bank in the name of the firm?

Mr. INGERSOLL. Was Boone interested in the Tongue River route?

Mr. MERRICK. He was a member of the firm of John W. Dorsey & Co.

Mr. INGERSOLL. But was he interested in the Tongue River route?

Mr. MERRICK. I am not speaking of that, and am not able to answer at this moment. Was he not a member of the firm of John W. Dorsey & Co.? Did not S. W. Dorsey take Rerdell to the bank and authorize him to draw on John W. Dorsey & Co.? He deposited \$3,000 to the credit of that firm, and authorized Rerdell to sign the name of John W. Dorsey & Co. S. W. Dorsey did not open that account. S. W. Dorsey did not know how much was to be placed to the credit of that account, and if \$20,000 had been placed there the day after the arrangement made between S. W. Dorsey and the bank, Rerdell could have drawn out every cent. And yet they tell us that S. W. Dorsey at that time had no interest in the transaction. Gentlemen, they ask you to extend credulity beyond even the limits of stupidity.

Mr. INGERSOLL. I presume you want to state all that there is on that subject. Mr. Rerdell swears that he had a balance left.

Mr. MERRICK. Yes. That was afterwards. He did not steal the money, and did not want to steal it. He never meant to steal it. But the power was given. The authority was given.

Mr. INGERSOLL. He had a balance left and when he came back he turned it over to Vaile and Miner. Why did he turn it over to Vaile and Miner?

Mr. MERRICK. Is that a proper interruption? He turned it over to Vaile and Miner, because they were all one and the same, and it did not make any odds to whom he turned it over, provided it was to one or more of the combination. Now, gentlemen, do not let us enter into any argument upon incidental matters.

Mr. INGERSOLL. All right.

Mr. MERRICK. I appeal to you, Mr. Crane, would you have dared to do such a thing as to go to the Bank of Washington and take Mr. Woodward with you, and, referring to an account of a firm in this city, say, "I want you to go and look after some matters in which that firm is incidentally interested, and I am going to put \$3,000 to the credit of that firm. Write your name. Mr. James, I want you to recognize Mr. Woodward as authorized to draw on that account." Would you dare to do such a thing?

Mr. INGERSOLL. To draw for how much?

Mr. MERRICK. Indefinitely, for he did not limit the amount.

Mr. INGERSOLL. No, sir; only for \$3,000.

Mr. MERRICK. It was not limited to \$3,000. He was to draw on that account and sign the firm-name of John W. Dorsey & Co.

Mr. INGERSOLL. For limited a amount.

Mr. MERRICK. No, sir; he was to sign the name of that firm and there is no evidence of any limit. The only evidence is that Dorsey put \$3,000 there, but left Rerdell's ability to draw unlimited.

Mr. INGERSOLL. I have found the page on which I spoke of that letter.

Mr. MERRICK. I have already referred to it in your absence. I have passed that.

Mr. INGERSOLL. I would like to make a statement if you will look at the page while I read it.

The Government must have promised the gentleman an office when he went, in June, 1881, to Woodward and to Clayton and to the Attorney-General and to the Postmaster-General.

Mr. MERRICK. That is not what I referred to. I referred to this expression, following your example in criticising my associates:

According to this letter, among other things he was to have an office, the steamboat route was to be reinstated, the Jennings claim was to be allowed, his father-in-law was to get a clerkship, and according to this letter he also was to have a position.

Is there anything in the letter about those subjects at all?

Mr. INGERSOLL. It is not properly reported.

Mr. MERRICK. Oh, well, I cannot help that.

Mr. INGERSOLL. It is merely the question of a punctuation mark:

According to this letter, among other things he was to have an office.

That is all there is about that letter. Then there commences a new sentence:

The steamboat route was to be reinstated.

That was according to the evidence, and not according to the letter.

Mr. MERRICK. It does not say so.

Mr. INGERSOLL. [Reading:]

His father-in-law was to have a clerkship, and according to this letter he also was to have a position.

The reporter should have put a period at the end of the word "office."

According to this letter, among other things, he was to have an office. The steamboat route was to be reinstated.

And so forth. The letter says nothing on that subject.

Mr. MERRICK. Now, gentlemen of the jury, I do not want to enter into a discussion with the learned counsel about punctuation and the use of the English language, but I think his explanation makes it worse than it was before.

Mr. INGERSOLL. Very well. If you so consider it, go on.

Mr. MERRICK. It could not have been that a gentleman so familiar with the use of the English language would have interpolated that expression resting upon some other basis than the letter in such a sentence as this, which begins with the letter and ends with the letter:

According to this letter, among other things he was to have an office.

Mr. INGERSOLL. Stop right there.

Mr. MERRICK:

The steamboat route was to be reinstated. The Jennings claim was to be allowed and his father-in-law was to have a clerkship.

Mr. INGERSOLL. Go on.

Mr. MERRICK:

And according to this letter he also was to have a position.

Mr. INGERSOLL. Let the court state whether that is not perfectly correct.

Mr. MERRICK. The court is not teaching a grammar school. Probably the learned gentleman's punctuation in reference to the correction of his mistake has about as near a relation to the real subject as Dorsey's recollection of his possibly having punctuated that affidavit of 1881, which I will show you he and the learned counsel helped write, according to Dorsey's own testimony, when I get to it.

Now, gentlemen, in connection with this statement about Rerdell's having been applied to or employed to go West, let me refer to page 3820 of S. W. Dorsey's cross-examination:

Q. Did you not send Mr. Rerdell West in the spring or summer of 1878 to look after these same routes?—A. As I stated in my direct testimony, I asked Rerdell to use his vacation to go out and help John W. Dorsey on the Bismarck and Tongue River route.

Q. When was that?—A. I should think it was in July, probably.

Q. 1878?—A. 1878.

Q. Was that done at your suggestion?—A. That was done, I presume, at my own suggestion. At all events, I assume the responsibility for it.

Q. Where was John W. Dorsey at that time?—A. I supposed that he was somewhere on this line, but it appears from the information I have since got that he was not. He was buying horses out in Minnesota, I believe.

Q. Where was Peck?—A. Peck was in New Mexico.

Q. Where was Miner?—A. Well, of course I do not want to answer questions of this sort when I was not personally present to know, but I think he was in Denver.

Q. Where was Boone?—A. I believe he was here, though I do not know.

Q. Did you not procure passes for Rerdell to go West?—A. I do not remember, but I suppose I did.

Q. Have you any recollection of procuring passes for him?—A. No, sir; but I have no doubt I did.

Q. Did you give him letters of introduction?—A. I think I did.

Q. Did you give him any forms of petitions?—A. That I do not remember.

Q. Did you give him any money?

The WITNESS. For himself?

Mr. MERRICK. Did you put in his control or his possession any funds?

A. I think I did.

Q. How much?—A. I believe \$3,000; but as to that I will not make an absolute statement. I think it was \$3,000.

Q. Did you give him any instructions as to building ranches or organizing post-offices along on routes connecting with the Tongue River route?

The WITNESS. As to building ranches?

Mr. MERRICK. Yes.

A. I think the ranches were mostly built at that time.

Q. That is not an answer to my question.—A. I don't remember whether I did or not.

Bear that in mind, gentlemen.

Q. Did you give him any instructions as to building ranches or organizing post-offices along on routes connecting with the Tongue River route?

That relates to the fraudulent side office.

A. I don't remember whether I did or not.

Q. You don't remember whether you gave him any instructions or not?—A. No, sir; I gave him general instructions to go out there and assist John W. Dorsey in putting that service on, for the reason that at that time I was afraid it was going to fail.

Q. Did you give him any instructions about petitions for expeditions and increase?—

A. Possibly.

Q. Did you not tell him that the route would be increased?—A. I may have told him so.

Mr. INGERSOLL. Read the balance of it, please.

Whether I told him so or not, I believed it.

Mr. MERRICK. Yes.

Whether I told him so or not, I believed it.

He had good reason to believe it.

Mr. INGERSOLL. Certainly he did.

Mr. MERRICK. He knew it would be.

Mr. INGERSOLL. He thought it would be.

Mr. MERRICK. He knew it.

Mr. INGERSOLL. No.

Mr. MERRICK. He knew it.

Mr. INGERSOLL. He did not say so.

Mr. MERRICK. I know he did not but he knew it. He told Rerdell to go and tell them that it *would* be; not that he believed it.

Mr. INGERSOLL. He does not say so.

Mr. MERRICK. He says, "I may have told him that. I may have done it." Rerdell says he did, and Rerdell told them so out there. Rerdell was doing Dorsey's work. He was doing Dorsey's bidding. He had no interest but Dorsey's to subserve. Certainly under those circumstances he did not himself conceive the idea. He swears positively that Dorsey gave him the instructions, and it is in proof that he executed the instructions. Dorsey swears that possibly or probably he did give those instructions to him.

Q. Then you say that you directed Rerdell to go out there and help John W. Dorsey, and that you gave him passes and letters?—A. Yes, sir.

Let us go on a little further. I will come back to the Western trip and I will prove to you by the circumstances, gentlemen, that Dorsey instructed him to get up that side post-office. I will prove it to you conclusively and to your satisfaction. It was all conceived in S. W. Dorsey's brain.

Mr. INGERSOLL. I would like to have you read what he says about that route being increased.

Mr. MERRICK. I have read enough. I have shown that you have not dealt fairly with this evidence.

Mr. INGERSOLL. He gives the reason.

Mr. MERRICK. I am showing that you have not dealt fairly with Rerdell.

Mr. Ingersoll says, on page 5342 :

On page 2218 Rerdell swears that he received instructions from S. W. Dorsey as to what to do on the Bismarck route. On page 3769 S. W. Dorsey swears that that is utterly untrue.

Mr. INGERSOLL. What is the page ?

Mr. MERRICK. I gave the page, and I must ask counsel to bear it in mind. It interrupts me to have to give it a second time. The page is 5342, the statement of Rerdell on page 2218, and the statement of S. W. Dorsey on page 3769. Rerdell in fact says, on page 2218 :

Q. Did you receive any instructions before leaving ?—A. I did.

Q. From whom ?—A. From Senator Dorsey.

Q. Did you receive any money or were you given a credit upon which to draw at the time you left ?—A. I was, but I would have to explain how that was done. I got no direct credit to me in my name.

Q. Did you receive any money ?—A. I did.

Q. How much ?—A. One thousand five hundred dollars.

Q. From whom ?—A. Senator Dorsey.

Q. Now, will you explain the credit ?

He then explains the credit of \$3,000 and says that he was authorized to sign the firm-name. Now, in Dorsey's testimony, at page 3769 :

Q. On page 2219, Rerdell being asked about the instructions that you gave him, said :

"Among the instructions that he gave me was one to the effect that I was to arrange for an office. He first furnished me with the necessary blanks for the establishment of post-offices. The Post-Office Department furnished the blank applications to be filled up. He furnished me with some of those blanks, explaining how they were to be filled up, and said the advertised distance was short, and when I put the men out over the road, to make an application for an office off to one side, at an angle, giving me a little draft of what he wanted, and to have it sent to the Post-Office Department.

"Q. How far off from the line of the Tongue River route did he indicate that this new post-office was to be ?—A. I was to put it far enough off to get an increase of distance of about sixty miles, that being about the distance that the line was short."

You may state whether you ever gave him any such instructions, or what instructions you gave on the subject.—A. That is utterly untrue. I never gave him instructions of any kind on that subject.

Now, gentlemen, before I go on I will pause to enlighten you a little about the instructions as to that side post-office. Did S. W. Dorsey give Rerdell instructions about that side post-office ? You remember that Rerdell went out there. You remember that he saw John W. Dorsey. You remember that John W. Dorsey says he got a petition for that side post-office from Rerdell. You remember he gave that petition to Lounsberry and that Lounsberry declined to participate in the scheme. You remember that Rerdell talked with Pennell about that side post-office. The plan was to run out some sixty miles to the north of the Tongue River route into an uninhabited region and to have the men that were working on the Tongue River route sign the petition, to have one of them for postmaster, and then to carry out the fraud by having fictitious returns made. There was no population. It was a perfect wilderness, where even the wild beasts roamed undisturbed by the sportsman's gun.

Mr. INGERSOLL. Where is the testimony about the fictitious returns?

Mr. MERRICK. I infer that from the character of the fraud. The nearest station agent or one of the men was to be the postmaster. Now, you see, gentlemen, this scheme for getting money out of the Government, this scheme which Lounsberry would not carry out, and which John W. Dorsey himself repudiated as a wrongful act on his part, claiming that it was the only wrongful act he had done in this business, and the scheme for getting the side post-office is traced back to the brain of Rerdell? John W. Dorsey got the scheme and the petition from Rerdell. Where did Rerdell get it? What interest had Rerdell in that side post-office? What interest had he in defrauding the Government? He gave it to John W. Dorsey and told John W. Dorsey how the thing was to be done. Now, gentlemen, does it stand to reason that Rerdell got that scheme up just because he loved mischief? Is it not satisfactory to your minds as a conclusion from the circumstances that Rerdell was carrying out the mandate of S. W. Dorsey who not only wanted the service put on that route, but wanted that route made more profitable? Rerdell had no interest in it on the face of the earth. Nobody pretends that he had. He had no knowledge of mail matters at that time. None on earth. He was sent out there by S. W. Dorsey and had no personal knowledge or familiarity with mail matters. He suggested this scheme to John W. Dorsey. Did he conceive it himself or was it conceived by the man whose fruitful brain had devised new covenants in the subcontracts unknown to previous contractors, that man whose fruitful brain had repudiated the contracts drawn by Boone, and who substituted for the covenant Boone had written a covenant drawn by his own hand and given to Boone to be inserted. We must have some common-sense, gentlemen, in dealing with these things. Whilst oratory adorns and pleases, still it is utterly useless if it is without facts and without reason.

Mr. Ingersoll says, on page 5343, at the bottom:

On page 2224 Rerdell swears that in November, 1878, Miner asked him to write certain words in a line on petition 40104. On page 4178, *Miner* swears that he never asked him to interline any petition.

On page 4191, Miner admits that he himself altered one of these petitions as Rerdell says he did, writing in the word "Ehrenberg." Miner also forged some six names to another petition. He does not admit that he forged those names. He don't know whether he did or whether he did not. It is in proof by all the witnesses who testified to handwriting that Miner wrote them. Miner's counsel brought Mr. Waugh on the stand, expecting him to prove that Miner had not written them, and asked him in all the glory of a prospective triumph, "Who wrote those six names?" "Why, Miner wrote them without doubt." Afterwards Mr. Bliss says, with a keenness of sarcasm that I wish I could imitate, but which I will quote as I cannot imitate, "I can imagine Brother Henkle and Mr. Waugh in private converse after he came off the stand, and Brother Henkle saying, 'Why, Mr. Waugh, what do you mean?' 'What is the matter? I thought that was just what you wanted Mr. Henkle.'" That was on the Camp McDermitt route, you recollect. But, gentlemen of the jury, after what we have seen of Mr. Miner and the Hayes letter, they cannot contradict Rerdell or anybody else by him. I do not profess to kill as Mr. Ingersoll did. I only profess to push aside witnesses who cannot be believed, and say, "You may live, but keep your mouth shut until you learn how to tell the truth."

On page 5344 Mr. Ingersoll says:

On page 2231 Rerdell swears that he filled in blanks under the direction of S. W. Dorsey—that is, of the Perkins affidavit—and filed it under the direction of S. W. Dorsey. On page 3793 *Dorsey* swears that he never knew there was such an affidavit, and that he never gave such instructions; and more than that, *that he never at any time or place gave Rerdell authority to change any affidavit or any petition that was to be filed.*

On page 3945 Dorsey says:

Q. Did you give Rerdell directions as to filling up one of these blank affidavits?—

A. Well, the only recollection I have about that is that he telegraphed me, or wrote me, when I was West, in 1879, that the department required a shorter schedule on two routes, I think, but what reply I made to him I don't remember.

Q. Did you not direct him to fill up a blank affidavit and preserve the proportion of 150 to 200 per cent.?—A. Oh, I don't think I did.

Q. What is your recollection about giving him directions as to filling up the affidavit?—A. My recollection is that I did not, but I don't know; it is possible that I might have done it.

Is that a contradiction of Rerdell?

“It is possible that I might have done it;” “I don't know;” “I don't think I did;” “I don't remember;” “but it is possible I might have done it.” Gentlemen, do you not see, lying behind there, knowledge in Dorsey's bosom of the fact, from the use of language that would be a shield against perjury and at the same time an evasion of the truth? “*I might have done it.*” It is conclusively shown that Dorsey himself filled up one of John W. Dorsey's affidavits of the 21st of April on the Pueblo and Rosita route, whilst Rerdell was absent from the city in the far West. I need not go back on that discussion and repeat it. But I have gone over it carefully with you, and I am satisfied that you retain all I said in distinct remembrance.

On page 5354 Mr. Ingersoll says:

On page 2223 Rerdell says that in August, 1878, he had a talk with Miner, who said that they could do nothing while Boone was in the combination; that Brady was hostile to Boone, and that Boone's place was to be taken by Vaile; and that Miner asked his opinion about Vaile, and asked what Rerdell thought about Dorsey's approving it, adding that Vaile was very close to Brady. On page 4177 Miner swears that he has no recollection of the conversation, and does not believe any such conversation ever occurred.

Mr. INGERSOLL. You referred to page 3793.

Mr. MERRICK. Did I refer to page 3793?

Mr. INGERSOLL. Yes.

Mr. MERRICK. I referred to what you quoted; that is all I referred to. Have I quoted it right?

Mr. INGERSOLL. I do not know.

Mr. MERRICK. Have I quoted correctly from what was there?

Mr. INGERSOLL. I did not follow you; I presume you did.

Mr. MERRICK. If I did, that is all.

Mr. INGERSOLL. I wanted to call your attention——

Mr. MERRICK. [Interposing.] I did not want to be unfair, your honor.

The COURT. Let him state his proposition.

Mr. INGERSOLL. Let me say to the court that the great question is about filling up blank affidavits after they were sworn to.

Q. Now, I will ask you whether at any time or any place you ever gave Mr. Rerdell any order, or any authority, or made any suggestion to him, to change any affidavit, any petition, or any paper that was to be filed in the Post-Office Department in connection with any mail route?

Mr. Merrick read that.

The WITNESS. That is, after the paper was complete?

Mr. INGERSOLL. Yes.

A. No, sir; I never did.

That is, "I never gave him any authority to touch a paper after it had been sworn to."

Mr. MERRICK. Mr. Ingersoll's statement was that Dorsey—

never knew there was such an affidavit, and that he never gave such instructions; and more than that, that he never at any time or place gave Rerdell authority to change any affidavit or any petition that was to be filed—

After it had been sworn to. I showed you, gentlemen of the jury, when I was discussing the John W. Dorsey affidavits, that S. W. Dorsey filled that affidavit up after it was sworn to. I showed it to you, in connection with the circumstances, so conclusively that it was better proof than the positive evidence of a man that had seen it done. I am not going back on the argument, however, to repeat it.

The COURT. It has to go to the jury, in any event.

Mr. MERRICK. On page 5345 Mr. Ingersoll said:

On page 3771 S. W. Dorsey swears that he never instructed Rerdell to get any affidavits in blank. On pages 4126 and 4107 J. W. Dorsey *swears that he made none in blank*; that he has no recollection of any such thing. On page 2240, Rerdell swears that he had a conversation with S. W. Dorsey about getting blank affidavits. On page 3771 S. W. Dorsey denies it?

It would be a useless waste of time for me to pause upon the moral wreck which is all that is left of John W. Dorsey. The affidavits have been shown to you to have been gotten up in blank. The affidavits have been shown to you to have been sent on to John W. Dorsey in blank, and sworn to by him in blank; to have come back here, and to have been filled up here; and that circumstance corroborates Rerdell.

At page 5354 Mr. Ingersoll says:

On page 2223 Rerdell says that in August, 1878, he had a talk with Miner, who said that they could do nothing while Boone was in the combination; that Brady was hostile to Boone, and that Boone's place was to be taken by Vaile; and that Miner asked his opinion about Vaile, and asked what Rerdell thought about Dorsey's approving it, adding that Vaile was very close to Brady. On page 4177 Miner swears that he has no recollection of the conversation, and does not believe any such conversation ever occurred.

Now, gentlemen, is this the fact? If it is, the conversation did take place. Let us see. Boone says, at page 1529:

Q. What did Miner say to you in that connection?—A. On the 8th day of August, 1878, Mr. Miner sent for me to come to the house of Stephen W. Dorsey. Dorsey was absent from the city at the time. He said to me, "It is a matter of impossibility for us to raise the amount necessary to go on with the balance of this service, and it is useless for me to tell you the position we are in; you can see it yourself," and I did see it, and signed the paper going out of the concern.

Q. What did he say about Vaile?—A. He said Mr. Vaile was coming in because he had the means necessary to put the service on.

Q. Did you have any conversation with S. W. Dorsey in reference to Vaile?—A. I had a conversation about Mr. Vaile with S. W. Dorsey pending the letting or the award of the contracts.

Q. Did you have any conversation with Stephen W. Dorsey about Vaile's coming into the concern?—A. I never had any conversation with him about his coming into the concern. He asked me the question about Mr. Vaile's financial ability, his standing as a mail contractor, and his ability to handle mail contracts, and probably from the conversation I inferred that Mr. Vaile would be brought into the concern.

Q. At what time was that conversation; do you recollect?—A. That conversation must have occurred within thirty days after the awards were made; either in the latter part of March or the first part of April.

Pausing for a moment, you will see that even then Stephen W. Dorsey was preparing to bring Vaile in, either in the latter part of March or first part of April, before the loving embrace between Miner and Vaile:

Q. At what time did your conversation with Stephen W. Dorsey take place in which he asked you what was the occasion of Brady's hostility to you?—A. That occurred before the contracts went into execution, before the 1st of July, 1878, and I think it grew out of the fact of my putting in a bid——

Q. [Interposing.] No matter about what it grew out of. It occurred before July, 1878?—A. Yes, sir.

Q. When was the conversation between you and Miner?

Between Boone and Miner.

He asked me, says he, "What is the trouble between you and General Brady?"

Mr. INGERSOLL. What page is it, please?

Mr. MERRICK. 1530.

Q. When was the conversation between you and Miner?

Mr. INGERSOLL. I would like to have the balance of the answer to the preceding question. I do not understand that the witness quite answered.

Mr. MERRICK. Go on and finish it. Counsel on the other side want it.

The COURT. Do you desire to have it?

Mr. INGERSOLL. Let him tell what it is.

A. [Continuing.] As Mr. Miner had the award of the contract for the service on the Bismarck and Tongue River route, and as the department was anxious to put on service previous to the contract going into execution, I filed a proposal for that service for the month of June, 1878, a very low proposal for the service.

Mr. HENKLE. That was the month before the service was put on.

The WITNESS. Yes; the month before the service was put on, and it grew out of that fact that the service was not ordered on; it grew out of the fact that Brady was hostile towards me that he would not award the service.

As to Brady's actual hostility to Boone, it is shown by the proof that it was desired to put special service on this route before the time for the commencement of the service under the four years' contract, and Boone put in a very low bid to put on service for the month preceding the July when, under the contract, it was to be put on, and Brady would not award it to Boone, Boone says, because of his (Brady's) hostility to him (Boone)—a relation of hostility which, your honor will now see, was well known to these parties, and knowing that, they had to get rid of Boone.

The COURT. In connection with that proposed service to commence on the 1st of June, a month in advance of the regular service on that particular route (Bismarck to Tongue River), I remember a letter written by General Miles, I believe, to Brady, in which he refers to a conversation he had had with Brady the winter preceding—that is, the winter of 1877-'78—in regard to the importance of service upon that route for the purpose of accommodating the military out there. That letter, I think, I cannot be mistaken about. That letter refers, I think, to a conversation between General Miles and Brady in the winter of 1877-'78, and when you spoke of this service for the month of June I connected it with that letter.

Mr. MERRICK. Probably it was on that account he desired to put on service there before the 1st of July. Boone put in a low bid, but Brady would not let him have it because of his (Brady's) hostility to him (Boone). And this confirms what S. W. Dorsey said upon the subject. On page 1529 Boone states that he had this conversation with S. W. Dorsey:

A. He asked me, says he, "What is the trouble between you and General Brady; why is he so hostile to you?" I says, "It is a matter that I don't understand, and never could understand." Then he repeated to me the remark that General Brady said——

The COURT. [Interposing.] Do not repeat that.

Q. Go on.—A. That was all that was said. That so long as I was in the concern nothing would be done by General Brady for its relief.

The COURT. Do you find that letter, Mr. Bliss ?

Mr. BLISS. I have not found it.

Mr. MERRICK. There is such a letter.

Mr. BLISS. It is a letter referring to the conversation ?

The COURT. Yes.

Mr. MERRICK. Now, gentlemen, you have Boone's testimony as to what S. W. Dorsey told him, that nothing would be done as long as Boone remained in. And Rerdell says that in August, 1878, he had a talk with Miner, who said that they could do nothing while Boone was in the combination. Mr. Ingersoll quoted it, and then quoted Miner's denial in refutation of Rerdell. Does not the testimony of Boone as to his conversation with Miner, as to the refusal of Brady to grant him the service on a low bid on that route for the month of June, prior to the commencement of the regular service, and as to his conversation with S. W. Dorsey in which Dorsey says precisely what Rerdell says Miner told him, confirm Rerdell's statement made before this jury ?

Mr. INGERSOLL. The point is as to his being close to Brady.

Mr. MERRICK. The point is everywhere that does not touch the learned counsel.

Mr. INGERSOLL. The point is as to his being close to Brady.

Mr. MERRICK. The conversation is the point ; what they thought of Boone and Boone's relations. You see from what I have read you that they not only understood that Boone and Brady were hostile, but that back in March S. W. Dorsey was preparing to take Vaile in. In point of fact, they simply wanted to use Boone, as they are trying to use him now, and cast him out when he ceased to be useful, as he will find him-cast out now. At page 5354, at the bottom, Mr. Ingersoll says :

On pages 2429 and 2430 Rerdell swears that he had two balance-sheets of the books, made by Donnelly ; that he showed them to MacVeagh and Woodward. How does it happen that Woodward was not sworn about it ? Nothing would have been of more importance, if they wished to prove the existence of the two red books, than to prove by Woodward that Mr. Rerdell, in June, 1881, showed him copies of those balance-sheets or the balance-sheets themselves. They did not bring Mr. Woodward on the stand. Why ? Mr. Woodward, in my judgment, had he come upon the stand, would have sworn to the truth.

James says, at page 2031, in reference to those balance-sheets, which Mr. Ingersoll says we did not prove that Rerdell had in his possession :

Q. Did he say anything about any books ?—A. He exhibited what purported to be transcripts of books ; records of books.

Those were the balance-sheets proved by James. Mr. Ingersoll, in his statement, says that we had not proved them. We proved them by Mr. James to have been in Rerdell's possession at that time ; to have been exhibited to him. Why should we call Woodward to confirm James ? Can we not rely upon James ? Does not this jury rely upon him ? If you doubted his testimony why did not you call Woodward, who sat here ready to be sworn by either side that needed him ? We did not need him. You did need him to contradict James and sustain the statements you had made yourself. Why did they not swear Woodward ? Woodward, they say, would have told the truth. Woodward knew the same facts that James knew. James's testimony was there in the record before the counsel who uttered the statement. He says it was all-important to us to prove that Rerdell had those balance-sheets at that time and that we had not proved it, when, in point of fact, we had proved it.

Mr. INGERSOLL. Was not the testimony of James and MacVeagh ruled out ?

Mr. MERRICK. The confessions of Rerdell were ruled out in James's and MacVeagh's testimony, but not James's acts and not Rerdell's acts.

Mr. INGERSOLL. I understood that it was all ruled out.

Mr. MERRICK. Oh, no; but even if it had been ruled out you should not have made such a statement.

Mr. INGERSOLL. Why not?

Mr. MERRICK. But it was not ruled out. At page 5357 Mr. Ingersoll says that Rerdell manufactured the memorandum, marked 31 X, after he had got out of jail last summer.

At page 2022 MacVeagh says—

The COURT. [Interposing.] Before you go to that, Mr. Merrick, I see that my memory was at fault in regard to that letter. It was not a letter of General Miles, but it was a letter of Martin Maginnis, dated July 23, 1878, and addressed to the Second Assistant Postmaster-General, in which he says:

I have the honor to call your attention to the personal call made on you last winter by General Miles and myself in relation to establishing a daily mail route between Miles City and Bismarck, which, at that time, you may remember, received your favorable consideration. [Page 2140.]

Mr. MERRICK. I do think, gentlemen of the jury, that I have never seen on the bench in my life the equal of his honor in remembrance of the details of this case. I believe to-day he knows more about it than all the lawyers engaged in it.

On page 2022 Mr. MacVeagh says:

Q. In what way did he say it?—A. He said, as I told you, that he had made the entries in this book, as I understood him, from memoranda furnished by Mr. Dorsey.

Kellogg says that the first part of that memorandum is in Dorsey's handwriting. Dorsey says that he gave the first part of that memorandum to Kellogg.

Mr. INGERSOLL. I think he said he might have done it. Give us the page.

Mr. MERRICK. I have not the page. I am speaking now from general recollection.

Mr. INGERSOLL. I think he said he might have done it.

Mr. MERRICK. I think probably that is so. I will accept that. Dorsey says he might have given that memorandum to Kellogg. The counsel will not accept that testimony. He says Rerdell manufactured the whole of it.

Mr. INGERSOLL. I think he did.

Mr. MERRICK. You think he manufactured the whole of it?

Mr. INGERSOLL. I do.

Mr. MERRICK. Then Kellogg did not tell the truth?

Mr. INGERSOLL. He was mistaken.

Mr. MERRICK. The counsel got his hand in charging down upon our witnesses, and having got through with them, he is now charging down upon his own. I have no objection to that. He says that Kellogg was mistaken. Kellogg looked at it carefully, examined it minutely, talked about the calculation of interest which he was directed to make upon it. He seemed to have a distinct recollection, and swore with positiveness that he had seen the first part of that paper before.

There were many other things in Mr. Ingersoll's speech which I had made a note of, but, gentlemen, I find that I am speaking so long that I am obliged to eliminate. I have illustrated how Rerdell is corroborated, and I have given from Mr. Ingersoll's argument not such ques-

tions as are incidental, but such as relate to the body and material parts of the case.

Before speaking of that memorandum, which I will leave suspended for the present, I call your attention to some few illustrations in the evidence of S. W. Dorsey's bad recollection. It is very proper in this connection, for I am now getting down to that part of my argument where I propose to take these two gentlemen, Dorsey and Rerdell, and put them arm in arm and follow them along together. I will only refer you to a few cases.

Mr. INGERSOLL. Before you go on with that, Mr. Merrick, I think you are mistaken about Kellogg's testimony. At page 3638 he says :

I would not want to say that I have seen this memorandum before, or a part of it at least, but these first three items I remember very distinctly Mr. Dorsey giving me a memorandum of to make on the books, which I made on the books.

Mr. MERRICK. All right; let it go. I do not care how it is, gentlemen; I am willing to take anything that is fair. I have more than enough.

Now, a few illustrations of S. W. Dorsey's memory, which he says is perfectly splendid; not only satisfactory to him, but elegant; to use his own language, gorgeous.

At page 3822: Don't remember whether he signed Peck's name to the proposal dated December 17, 1877, or not. The proof is that he did. Then there are some questions asked him about temporary service.

Page 3824: Contract of Peck's for temporary service from Camp Supply to Fort Bascom exhibited. Don't recollect whether he signed it. Don't recollect either proposal or contract.

Q. Don't you know that you would remember it if you had signed it?—A. *I don't know; I don't know anything.*

On page 3839:

Q. Did he—

Miner—

come to Washington on his own suggestion or on yours?—A. I think on mine.

Q. When did you make the suggestion?—A. I don't remember.

Q. What is your best recollection?—A. *I have no recollection.*

Q. What do you think?—A. *I don't think.*

That is S. W. Dorsey, gentlemen. On page 3840 :

Q. Of course you don't know. Does your memory suffer only an occasional impairment, or is it permanent?—A. It is a pretty fine memory.

Mr. INGERSOLL. Fair memory.

Mr. MERRICK. Yes.

It is a pretty fair memory; is satisfactory to me.

Page 3842: Don't remember of communicating with Peck; don't remember that Boone told him he would *not* go in on a salary.

Page 3849: Don't remember what salary was to be paid Boone.

Page 3853: Don't recollect that John W. Dorsey was ever employed at the United States Senate.

Page 3856: Don't recollect whether the proposal and bond and oath sent to Clendenning were filled by Boone under his direction. (See Boone, pages 1508-'9.)

Page 3857: Don't recollect that the name of the bidder was *not* to be put in. (See Boone, page 1488; the fact being the material fact in the whole transaction.)

Pages 3867-'68: Don't remember giving instructions as to the clause

for expedition in the subcontracts. (See Boone, page 1524, where the instructions were not only given, but the covenant was actually written by Dorsey's own hand.)

Page 3867 : Don't remember giving general instructions as to how subcontracts should be prepared. (See Boone, page 1523.)

Page 3868 : Don't recollect of exercising any authority about the business. (See Boone's testimony, pages 1508-'9-'12.) S. W. Dorsey exercised all the authority about the business, regulated the whole concern.

Page 3869 : Don't recollect that Boone submitted a form of subcontract. (See Boone, page 1524, where he not only submitted a form of subcontract, but where Dorsey changed the form by putting in another covenant.)

Page 3872 : Don't remember of writing the second clause for expedition in the subcontracts. (See Boone, page 1525, where he says he copied it in after Dorsey wrote it.)

Page 3875 : Don't remember how many amounts he changed on the bidding-book.

Page 3880 : Don't remember that Boone at any time told him to keep Miner and John W. Dorsey away from here, as they were stupid. (See Boone, page 1531, where he says that they knew nothing of the business; that is about the substance of it.)

Page 3883 : Don't remember whether Boone was to furnish any bondsmen. (See Boone, page 1525, where Boone was to furnish one bond, and did furnish one.)

Page 3886 : Has no recollection of writing John W. Dorsey that Mr. Vaile had "taken the whole business, and is to pay you \$10,000 for your interest."

Page 3887 : Don't remember whether he wrote John W. Dorsey more than one letter on December 9, 1878.

Page 3892 : Letter addressed to T. J. Brady, dated March 4, 1879, signed J. W. Dorsey, for John M. Peck and John W. Dorsey, exhibited. Don't remember of signing any such letter.

Page 3895 : Don't remember how the authority to speak for Peck and John W. Dorsey was communicated, whether by letter or power of attorney.

Page 3895 : Don't remember of putting any power of attorney on file in the department.

Page 3895 : Don't remember whether the power of attorney was given before the 4th of March, 1879, or not, whilst he was in the Senate.

Page 3896 : Don't remember giving Boone any instructions as to the number of trips and length of the routes upon which he was preparing bids. (See Boone, pages 1511-12, where Boone says he told him to tear up all bids he had previously made on routes of a different character; that the routes they were to bid for must be long routes and the service once a week.)

Page 3897 : Do not recollect that all bids for service over three times a week were destroyed. (See Boone, page 1512, where he says that all bids for that kind of service were destroyed by S. W. Dorsey's order and direction.)

Page 3910 : Has no recollection of ever seeing A. W. Moore but once. (See Moore's testimony, pages 1355, 1372-'73.) He says he has no recollection of ever seeing A. W. Moore but once. I will show you, gentlemen of the jury, that it was through him that Moore was employed; that he was the first man that ever heard Moore's name mentioned in connection with the business. I will show you that S. W. Dorsey

asked Boone for a good man to go to look after the business; that Boone told him he did not want to be responsible for the selection of a man; Dorsey told him to name to him the man; Boone then recommended Moore to S. W. Dorsey, and, without further ado, the next day Mr. Miner went and employed Mr. Moore. Dorsey recollects nothing about it.

Page 3912: Don't remember a conversation with Boone in reference to employment of A. W. Moore. (See Boone, page 1474.)

Page 3912: Don't remember asking Boone to recommend a fit person to go West and attend to this business. (See Boone, page 1474, where he says he did.)

Page 3916: Don't remember of inquiring of Moore about his trip to the West. (See Moore, page 1372)—and bear in mind the circumstance that Moore went West; Dorsey knew he was West; went West to look after this business. Dorsey says in reference to sending Rerdell out, that he was deeply interested in these routes, and yet when Moore came back from the West and came to Dorsey's house and Dorsey paid him \$250 on an order, if you please, from Miner, Dorsey says he does not remember ever asking him about those routes. His eye fixed on the West, his heart-strings entangled with a section of these routes; his pocket-strings entangled with a section of these routes, yet, when a man sent out to look after these routes comes back, he gives him \$250, and never asks him a word about these routes; don't remember that he ever asked him a word.

The COURT. Is there any evidence that the sureties on these bonds were secured by Mr. Dorsey?

Mr. BLISS. Mr. Boone swears that he procured Mr. Hoyt, and Mr. Dorsey states, I think, that he procured the others. On all the contracts in this indictment the sureties are Mr. D. W. C. Wheeler and Mr. S. N. Hoyt.

The COURT. I had observed that.

Mr. INGERSOLL. There are two sets of bonds on all these contracts.

Mr. BLISS. I am talking about the contracts; that is what his honor asked about. On the bids there are various sureties.

Mr. INGERSOLL. I think the evidence is that he secured Mr. Evans.

Mr. BLISS. On the bids, not on the contracts.

The COURT. I was thinking of the testimony of S. W. Dorsey in regard to one of the motives that influenced him in looking after the service on these routes, that the sureties which he had procured would become entangled or embarrassed probably by a failure, and that he would be in honor bound to see that the sureties met with no loss, because he had procured them.

Mr. INGERSOLL. I do not want the court to forget another point—that the sureties on the original proposals are bound during the whole contract term for carrying the mail according to the contract that should thereafter be entered into.

The COURT. No.

Mr. INGERSOLL. Oh, yes.

The COURT. The sureties on the proposals are bound only until the contract is executed.

Mr. BLISS. No, sir; all the way through. Colonel Ingersoll is right.

The COURT. I certainly had a strong impression the other way.

Mr. INGERSOLL. I know I am right, because I recollect arguing that point.

The COURT. You probably know more about it than I do.

Mr. MERRICK. Page 3916: Don't remember of inquiring of Moore about his trip to the West. (See Moore, page 1372.)

I will pass over some of these "don't remembers." Let us get down to something important in the "don't remembers."

Page 3920: Don't remember procuring passes for Rerdell to go West in 1878; and yet he says in another place he did.

Page 3920: Don't remember whether he gave Rerdell instructions as to building ranches or organizing post-offices on the Tongue River route.

Page 3920: Don't remember giving him any forms of petitions.

Page 3922: Don't recollect whether he told Rerdell the Tongue River route would be increased and expedited; he afterwards says possibly he did.

Page 3923: Do not remember whether he *opened* the account of J. W. Dorsey & Co. with the German-American Bank or not. Not a member of the firm; gives him \$3,000 for that trip, but don't remember whether he opened the account then, or whether it had been opened before; knows nothing about it.

Page 3927: Do not remember having a conversation with Rerdell and showing him a mass of correspondence addressed to J. W. Dorsey, J. R. Miner, and Peck, *but cannot say*.

Page 3928: Don't remember whether or not Rerdell went up to Miner's office in the third story and worked on those papers, when it is in proof that Rerdell did go there. It is proved by Rerdell and others that he was there working with Miner, and by Rerdell that he went at Dorsey's request. S. W. Dorsey was the only man with whom he had those relations which would justify him in asking him (Rerdell) to go and do that work.

Page 3928: Don't remember whether or not he employed another man as substitute when Rerdell left to go West. And yet it is in proof that he did employ Anderson; that Anderson took Rerdell's place to work on these routes after Dorsey sent Rerdell West, and remained there until Miner came back; and Miner himself says that he found Anderson there taking charge of the business.

Page 3934: Don't remember how many routes he took in the division of April 1, 1879.

Page 3936: At the time of the division don't remember whether a lot of blank affidavits were divided or not. That is a material fact, dividing up the profits of the robbery accomplished during the preceding year, and leaving the tools to carry on the robbery during the years to come, with covenants of mutual aid such as might be required. He did not remember whether they were divided up or not.

Page 3937: Can't say whether or not the oath on 38145, filed April 26, 1879, was originally a blank affidavit. And yet he filed it, and filled it up. He got the benefit of the money fraudulently taken from the Treasury on that oath.

Page 3937: Has no recollection of filling in the blank spaces.

Page 3938: He says he got all he could in the way of increase and *expedition*; had a contract for that; "that was my business," says he; "and in the way of increase and expedition I got all I could; that is what I had the contract for."

Page 3940: Don't remember of ever having drawn a cent on a mail route in his life.

Page 3945: Don't know whether he instructed Rerdell to fill up the oath on Toquerville to Adairville, *though it is possible he did*.

Page 3949: Don't remember the exact date that Bosler became interested.

Page 3949: Don't recollect directing that a statement be made out showing the character of these routes, for the purpose of showing to Bosler.

Page 3949: Don't remember that he told Rerdell to show Bosler the books, though it was a natural thing to do.

Page 3950: Don't remember whether the agreement with Bosler was in writing or not.

Page 3951: Don't remember how much money Bosler was to advance after the first advance of \$10,000 was made.

Page 3951: Don't remember how long after the first advance the second one was made.

Page 3951: Don't remember at what time Bosler's one-third interest began.

Page 3954: Don't remember whether he was to pay Bosler 1 or 2 per cent. a month on those advances. An interesting fact—he was to pay 1 or 2.

Page 3956: Don't remember whether Rerdell was present in New York or not at the first settlement with Bosler.

Page 3962: Don't remember of buying any account-books in the spring of 1879.

Page 3979: Don't remember whether or not he requested some one to go and see Rerdell on the night of the Albemarle Hotel interview. Note this, gentlemen: He had an interview with Rerdell at the Albemarle Hotel—an interview which left him in peril. Rerdell left him, but he pursued Rerdell on the wings of the lightning with two dispatches to be delivered to him in Philadelphia on his way to Washington; followed him with a letter, but don't remember whether he got anybody that night to go to him or not; came on here to Washington and *accidentally* met Bosler. But he don't remember whether, on that night when he learned the peril in which he stood, he got anybody to go and see Rerdell.

Page 3981: Does not remember whether Rerdell's affidavit was written before or after he arrived here from New York. Cannot swear anything about it.

Page 3982: Don't remember what steps he took to ascertain the truth.

Page 3985: Don't remember whether or not he prepared any part of that affidavit, although, on his examination-in-chief, he swore he never wrote a word of it from the beginning to the end, to use his own language.

The COURT. What page do you refer to there?

Mr. MERRICK. 3985, and see page 3733, your honor. He was being pressed on that affidavit, shoved into a corner, and when he got in a corner where he thought he could not get out, he said in reply to my question, "*Before I answer that I want to consult with my counsel.*" Not able to stand alone, seeing peril on all sides, he wanted an architect to erect a bridge in order to escape over the precipices with which he was surrounded. I will talk of that more hereafter.

Page 3986: Don't remember whether he wrote the words "Mr. President" in this affidavit or not. He had sworn that he had not written a word when examined in chief. His answers came as responsive as echo comes to sound when his own counsel was examining him. When I examined him, however, answers flew to the right, answers flew to the left, answers flew above, and answers flew below, and everywhere except in direct response to my questions.

Page 3986: Don't remember whether these words were written before or after Colonel Ingersoll was sent for.

Page 3986 : Don't remember whether or not they were written at his direction.

Page 3987 : Can't tell whether the last paragraph of the affidavit was in the original draft of the affidavit.

Page 3987 : Don't remember whether or not the original was intended for the President or the public.

Q. You have not said anything very absolutely. You said you thought so, and you think so yet?—A. Yes, sir. *Put Colonel Ingersoll on the stand*, and I guess he can tell you about it.

Why did not Colonel Ingersoll take the stand and tell about it when his client could not recollect?

Mr. INGERSOLL. I do not think it would have been proper for me, as attorney in the case, to take the stand.

The COURT. No; I do not think it would.

Mr. MERRICK. I hardly think it would.

Mr. INGERSOLL. That is the reason I did not.

Mr. MERRICK. My rule of professional ethics is rather a harsh one sometimes. When I find my client in an attitude where my testimony can protect and save him, I retire from his case as counsel, and take the stand for him as a witness, if I can do more good as a witness than I can as a lawyer.

Mr. INGERSOLL. I do not think he needed my testimony.

Mr. MERRICK. That is my rule.

I guess he can tell you all about it.

Q. I would prefer to get it from you.—A. You seem to question my testimony.

Q. No; pardon me. I am not *saying* that I question your testimony. I am trying to refresh your bad recollection.—A. *Oh, my memory is first rate.*

Q. First rate?—A. FIRST RATE.

He swears to that. That is part of his testimony. That is said under oath, just like all the rest.

But I will read no more. He has never had but one equal in a court of justice, and his name I do not recollect. He was one of those Italian witnesses, in the case so often referred to, the famous case of Queen Caroline. His frequent and persistent failures of memory were such that he cannot be believed. I say that on the record before this honorable court in this case and upon the testimony S. W. Dorsey has established such a character as to cause him to be disbelieved henceforth, and that whatever may have been his glory heretofore, yet his character is such that he cannot now be believed under oath in a court of justice. Take him along with Rerdell; balance one against the other, the pupil against the master. Take the iniquities perpetrated by the combination of the pupil and the master, and answer, gentlemen of the jury, which will you believe—the man who profited by the iniquity or the man who gained nothing; the man for whom the iniquitous work was done by Rerdell and to whom the price of Rerdell's crime was paid, without one single cent of that price going into Rerdell's pocket, or will you take Rerdell? Dorsey took him and led him along step by step and gradually steeped him in iniquity. He debauched him, and then used the character that he had debauched for the infamous practices that became necessary for his own pecuniary emolument.

The COURT. I am ready to adjourn whenever you are.

Mr. MERRICK. I do not want to tire the jury.

The COURT. Adjourn the court.

Thereupon (at 3 o'clock and 51 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

WEDNESDAY, JUNE 6, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen of the jury: Yes, Stephen W. Dorsey debauched him and used him for his own criminal purposes. Realizing that the iniquities he had practiced had not been for himself, but for his master; scathed and blistered by the ordeal through which he had passed on account of having faithfully served that master; having been convicted on one trial and his master having escaped a similar fate; feeling the deep injustice of such an unequal fate brought about not by facts and evidence, but by inequality of position and inequality in the possession of those means sometimes used to accomplish results even in the administration of the law, Rerdell determined to seek his safety by throwing himself upon the mercy of the Government and admitting before this jury that he was guilty of the charge made in this indictment, as the jury before which he had been first tried found him to be in their most remarkable verdict.

In what attitude, gentlemen, do these two men now stand before you with regard to their respective claims to be believed and credited, and with regard to the temptations that surround them to tell the truth or to conceal and falsify? Rerdell having pleaded guilty, and then having been put upon the stand by the Government, is in a position where whatever he may hope of response to his appeal for mercy depends upon whether or not he tells on the witness-stand the truth and the whole truth. You remember that he was asked by the counsel for the defendants whether or not he had ever been informed of a case reported in 99 United States, known as the Whisky cases; and he stated that his counsel had informed him of such a case. You remember that in the argument of Mr. Ingersoll a question was brought forward by him as to the temptation held out to Rerdell by the promises contained in that case, as declarations of the law of the land. You remember that the court said in the course of Mr. Ingersoll's comments on the subject that any equitable claim that he might have to the mercy upon which he had thrown himself depended upon his telling the truth, and that Mr. Ingersoll replied he had not told it, and would not be entitled to a favorable response to his petition in that regard. The court construed the case correctly, and I beg leave, in order to illustrate the attitude of these two men and to show the character of the temptation that surround them, to read you a passage or two from that case. On page 603 the Supreme Court of the United States, in speaking of cases where accomplices are introduced as witnesses, uses the following language:

Such offenders everywhere are competent witnesses if they see fit to voluntarily appear and testify; but the course of proceeding in the courts of many of the States is quite different from that just described, the rule being that the court will not advise the Attorney-General how he shall conduct a criminal prosecution. Consequently it is regarded as the province of the public prosecutor, and not of the court, to determine whether or not an accomplice, who is willing to criminate himself and his associates in guilt, shall be called and examined for the State.

* * * * *

Prosecutors in such a case should explain to the accomplice that he is not obliged to criminate himself—

As you remember I explained to Rerdell—

and inform him just what he may reasonably expect in case he acts in good faith and testifies fully and fairly as to his own acts in the case and those of his associates.

When he fulfills those conditions he is equitably entitled to a pardon, and the prosecutor, and the court if need be, when fully informed of the facts, will join in such a recommendation.

Further on, at page 605, the court says :

Cases undoubtedly have arisen where the accomplice, having refused to comply with the conditions annexed to his equitable right, has been subsequently tried and convicted, it being first determined that he has forfeited his equitable title to prosecution by his bad faith and false representations. Such offenders, if they make a full disclosure of all matters within their knowledge in favor of the prosecution, will not be subjected to punishment; but if they refuse to testify, or testify falsely, they are to be tried and may be convicted from their own confession.

Therefore, gentlemen of the jury, whatever hope Rerdell may have had of light from the seat of mercy shining upon his dark and unhappy career, was a hope at the time he testified resting in an appreciation of the fact that its realization depended upon his telling the truth upon the stand. The United States Government is not looking for equivocation, a straining of facts, or a manufacture of narratives in order to convict any living man. It is looking for the truth and the truth alone, in order that justice may be done. If an accomplice accepted by the United States as a witness testifies falsely, in whatever direction the falsehood may tend, that accomplice thereby forfeits his right to the expected mercy in hope of which he threw himself upon the court and the country. Rerdell, therefore, had every temptation to tell the truth. Rerdell had every inducement to tell the truth and he told nothing but the truth. He felt that he had been deserted by those whose duty it was to protect him, and as I have said, he felt that he was to be made to bear the whole burden of their criminal acts as well as his own criminal acts done in their behalf and for their benefit. He felt that whilst they were let to go at large unconvicted he had been sent to jail under the verdict of the jury, and he realized that that verdict had been set aside on the suggestion of the counsel for the United States, because it disgraced the records of the court in letting the master go free and limiting retributive justice only to the servant. He felt the inequality of the position so forcibly pressed upon you by Mr. Ingersoll in his address to the jury. He felt that of him no lawyer would say that it was to be remembered "*what he was and what he had been*;" that of him no lawyer would say the officers of the Administration disgraced the places they held, and to which he helped to elevate them by attacking him. He felt that of him no counsel could challenge court, jury, and the power of the Executive ever to convict him under any possible circumstances. He felt *alone* bearing the burden of another's sin, suffering the punishment for another's crime, and he threw himself upon the mercy of the court. There was no place on earth where his foot could rest in peace as long as he remained where he was. He had often started in the same direction and been called back by sentiments of friendship for these men and gratitude, as he supposed, to them. But the final hour for parting had come. It was not until the day before he was put on the stand that the Government agreed to accept him. Up to that hour I had peremptorily and positively refused. He sought to show his earnestness and his sincerity in every possible way. I may here say in passing as to the proposition said to have been made by him in reference to the challenges of jurors that I believe such a suggestion was made to Mr. Blackmar, and when communicated to me I repudiated it immediately, and told him not for an instant to entertain it. It never was entertained and never was to be acted upon. As to communications coming to Mr. Blackmar from him during the trial, I believe there never was any word that I have ever heard of or learned at that time

or since, after critical inquiry, except as to the handwriting upon papers offered in evidence.

Mr. HENKLE. You have no right to testify at this stage of the case.

Mr. MERRICK. This is a personal matter.

Mr. HENKLE. I know ; but you have no right to speak as you did.

Mr. MERRICK. Have I not the right, when counsel for the defense said that he sat among them without notice and communicated with the Government?

Mr. HENKLE. You have no right to state anything that is not in the testimony.

Mr. MERRICK. Why, then, did Mr. Ingersoll discuss the question? Cannot I reply? Mr. Ingersoll stated that he was with them, and they had no notice. Vaile himself, the client of the gentleman who has interrupted me, when he was on the stand stated that Rerdell had given him notice before he borrowed that money, about which there has been so much false sentiment, flummery, and nonsense. Vaile himself swears he had before that time had several talks with Rerdell upon the subject, and Rerdell told him what spirit was moving within him. John W. Dorsey had notice of his purpose when he wrote the threatening letter to Rerdell, and attempted to intimidate a witness for the Government, as he supposed, by saying that if he went on the stand or did anything to injure the defendants he would have him prosecuted for perjury, and some other unnamed crime. The defendants knew it when the counsel for the defendants, in his opening address to the jury, denounced Rerdell directly or, at least, by implication. The defendants knew it when the counsel for the defendants, in the progress of the case, before Rerdell went on the stand, told the counsel for the Government, in speaking of Rerdell, "Take care of your own witness." They knew it all the time, and they trusted him not. They had cast him out. The master sheltered behind the affidavits he had wrung from him felt secure from anything Rerdell might do or say. He had debauched this man first for his own benefit, and then he had made him swear to certain things for his protection, and having obtained from him the false affidavits he cast him off as a thing of rottenness, although he himself had made him rotten.

On the witness-stand, according to the law I have read to you, and as the judge himself pronounced it, this poor unfortunate had no temptation save to tell the truth. Of the necessity of getting rid of him, and of finally and ultimately crushing him entirely and burying him beneath the weight of the crime of Dorsey and himself, Mr. Ingersoll gives ample proof in spending three whole days in the denunciation of Rerdell. There is a time, gentlemen of the jury, in the life of every man of iniquity when he begins to feel that he must change, when he begins to feel, even for his temporal interest, that past criminality must be avoided in the future, and a different life pursued if he would taste at all one drop of happiness on this earth. But in the strange theology of the defendants there seems no place left for repentance, no place left to repair the wrongs done.

One of the most beautiful poets who has ever written tells of a peri who sat at the gates of Eden disconsolate because it could not obtain entrance. The only way in which an entrance could be obtained was by bringing back to Heaven from this earth that which Heaven most prized of all things that could be found among mortal man. The peri came and sought in every place for the gift it thought dearest to Heaven. It carried up the last sigh of a self-sacrificed life; it carried up the last drop of the patriot's blood, but each offering was rejected. Finally, on

a flowery plain near a village, a child was observed at play. When the bell sounded for the hour of prayer the little one knelt down and sent the incense of its heart to Heaven. A man with darkened face, with knit brow and wan countenance, marked with "deeds of blood and crime," stood by and saw that infant's pure offering to the Almighty Father. The past flitted through his mind, and, with tears streaming down his cheeks, he knelt beside that child and prayed. The peric caught up the penitential tears and bore them to the gates of Paradise. Wide open flew the gates. The end was accomplished. The task was done. One penitential tear outweighed all things man could offer to Almighty God.

How stands S. W. Dorsey in his temptations, gentlemen of the jury in comparison with Rerdell? Rerdell must swear to the truth to keep himself out of the penitentiary. Having pleaded guilty, the weight of his sentence or the pardon of the Executive which is to follow that sentence depends upon his telling the truth. How as to Dorsey? Dorsey's testimony is given to keep himself out of the penitentiary. The truth will send him there. He has every temptation to falsify, misrepresent, conceal, and lie. Whilst Rerdell must tell the truth to be protected, Dorsey must lie to be protected. I will show you how in your very faces he did conceal the truth; how in your very faces his counsel advised him to conceal the testimony; how in your very faces testimony in his pocket was concealed when he was on the witness stand, and I called for it, or if not in his pocket, within reach of his hand in his safe at his house. Before I am done with him, if you can believe him, you have an extent of credulity with which men have not been endowed in any other class than that of idiots.

Now, gentlemen of the jury, I come to S. W. Dorsey along with Rerdell, and to formulate the proposition which I propose to adopt as the main one in connection with Dorsey, I will say that I join issue directly with his counsel upon the assertion made by him that S. W. Dorsey had no personal interest in these routes prior to the 1st day of April, 1879, and having so joined issue I propose to show to you from the evidence in the case that S. W. Dorsey conceived and organized this conspiracy; that he was the master spirit guiding its operations throughout the period of its existence, profiting by its iniquities, participating in its crimes, directing its violations of law, and supervising all that was bad and evil in connection with it. Let us recur a little to what I may have said in order to prove these propositions. I shall pursue the facts systematically, diverging as I pass along only for the purpose of strengthening by corroboration the evidence that may lie in the direct path. Whatever helps that evidence I shall sweep into the direct path as I progress.

The first we learn of any connection of these parties with these routes is from some statement of John W. Dorsey that he and Peck talked the matter over in New York some time in the summer of 1877. John W. Dorsey, who had never heard of a mail route before, and Peck, who, according to S. W. Dorsey, had been a large contractor, *but without a contract*, and upon whom consumption was making that deep impression, even at that time, which told him that the end could not be far distant, had conversations on the subject. These conversations were merely speculative interviews in New York about what they might or might not do. In the fall of 1877 they visited Ohio, and there met with S. W. Dorsey, and with him they talked the matter over. Dorsey said that he told them not to go in; that they would endanger his reputation; that he was in the Senate. Here at the very start begins the falsehood

and the equivocation. He was in the Senate, and if his brother and his brother-in-law entered upon this enterprise their relations to it and to him would more or less compromise him in his high official position. He says, however, they seemed desirous to go in, and were pretty well determined, and although he had urged them not to go in for their own sakes, because it was a perilous undertaking, and not to go in for his sake, because there was danger that their action would peril his character, he immediately turned around and said, "I will help you all I can. Don't you do it; it will ruin you. Don't you do it; it will ruin me. But if you want to do it, in the name of Heaven go ahead, and I will furnish the money and I will run the machine." Is not that so? How does he reconcile those two inconsistent opinions? Is there any ordinary man that can reconcile them? Not one on the face of the earth. Next, what follows? "I think, gentlemen, if you are going into this business you had better have with you some competent man." "Whom shall we take? What do you say about it?" They did not know Miner then. Unfortunately for them they became acquainted with him afterwards. S. W. Dorsey did know him. Says he, "There is a man by the name of John R. Miner, who is the fellow you ought to have." He suggested Miner. S. W. Dorsey then came on to Washington. What do we next hear of him? He is in the Post-Office Department, and there he meets with a man by the name of A. E. Boone, who had at one time been connected officially with that department, and subsequently had been himself a mail contractor, *having eleven hundred routes, but never having had one expedited in his life, or thought of such a thing.* He said to Boone, "Now, Boone, I want you to come up to my house to-night. I have got something I want to talk to you about." Boone comes up, and S. W. Dorsey shows Boone a letter from either Peck or John W. Dorsey, he don't know which, asking him to arrange this business here in Washington, or something to that effect, and to get a man to help him. Dorsey then tells Boone that his brother and his brother-in-law had determined to go into this business. This is the fall of 1877. Said Dorsey, "They are going in with John R. Miner, of Sandusky, *or some other friend of mine,* and I want to make all the necessary arrangements throughout this business. What will you do about it?" "Well, I will undertake it for you." "Will you undertake it at a salary?" "No, I want an interest." And Boone says that it was then and there agreed between him and S. W. Dorsey that he (Boone) should have an interest. Boone's testimony will be found at page 1477, but I will not pause to read it, for I must hurry along as rapidly as I can. You will remember it; and you will remember that S. W. Dorsey, whilst at one time giving it an emphatic contradiction, at another time partially acquiesces in it, and says in another part of his testimony that Boone's evidence is much more reliable than his. Boone went to work under S. W. Dorsey and sent out circulars to the far West to get information about these routes, in order to bid intelligently. When he had got his information, he alone, or he with Miner, took the books of advertisement and marked opposite the routes what they would bid for each respective route. Having done that, this Senator of the United States, S. W. Dorsey, who had no interest in the routes at all, and who had advised his brother and brother-in-law not to go into the speculation, takes the bidding-book and reduces the prices at which the routes were proposed to be taken by Boone and Miner. That he reduced the prices on two routes is admitted, and Boone swears that all of them were altered, and Boone says that Miner told him that he was not responsible for the low figures, and

intended to keep the book as his (Miner's) justification. The master hand of Dorsey, the head-center of the conspiracy, had altered the bids; and Miner, knowing that Boone knew better than Dorsey their prospective losses by the low prices fixed upon the routes, declared that he intended to keep the book to show that he was not to blame for the danger that was to come to the conspiracy under those circumstances. When the bidding-book had been completed, and the bids were about to be put in, surely then you would think that a man who had nothing to do with it, but was only lending money to help his brother and brother-in-law, would stand to one side and leave the man he had employed, as the man most efficient, to run the thing without his help. But that was not the case. Boone certified to the presence of Peck when the bids were acknowledged, but he now swears that that certificate was not true, and that Peck never appeared before him to acknowledge a single bid. The certificate is dated as of Washington, and says that Peck appeared here before Boone. Boone says that is not so. S. W. Dorsey tells you that Peck was never in this city after 1876, I think.

What does S. W. Dorsey do now with reference to those proposals? S. W. Dorsey signs Peck's name himself, not by direction of Peck, not as Peck's attorney, but he forges the name of Peck and palms it off on the United States as Peck's genuine signature. (See proposal 5, Canyon City to Camp McDermitt; proposal 2, Eugene City to Bridge Creek; proposal 2 L, Dalles to Baker City; proposal 2 P, Julian to Colton.) There is the record of this man who had no interest in the routes and advised his brother and brother-in-law not to take them because their intermeddling with a public transaction might compromise his character in his high official position.

What next? There must be bonds on these proposals. S. W. Dorsey writes to Clendenning to prepare the bonds, and asks Clendenning to fill up one of those blanks, which was filled up in the specimen sent him. What was left blank? The place where the bidder's name should be was left blank. The bidder's name was not to appear, and that bond filled up without the bidder's name was good for nothing, under the law, and for a postmaster to certify to its due execution was a criminal act by statute of the United States. Yet this Senator Dorsey asks Clendenning to certify that a bond was filled up according to law, when he (Dorsey) knew that the certificate would be a lie and subject Clendenning to condign punishment under the statutes of the United States. Clendenning wrote him back a firm but positive letter, refusing to execute the Senatorial mandate, although he held a postmastership in the State of Arkansas almost entirely at the Senatorial bidding, Dorsey being Senator from Arkansas.

But before that, and before the signing of these bids, there was something else that occurred that was very extraordinary. Boone, when he had prepared the bids, exhibited the bids thus prepared to S. W. Dorsey, and what did S. W. Dorsey do? Do you remember, Mr. Foreman? Do you recall it? Have you the testimony about that in your minds, gentlemen? Do you recollect, Mr. Horigan, what he did when Boone showed him those bids? He said, "Take the bids and burn them, every one that is made upon a route where there is more than one trip a week, or where there is fast time." He wanted one trip a week, long routes, and slow time. Why? The prospective profit was in expedition. "Bid low; I have cut down your bids; we will take the routes at a low rate and lose, but all we lose to-day upon the original contract will be paid back four-fold to-morrow, when our good affidavit-makers come to the front and put in their false affidavits for expedition. Give

me routes, therefore, that are open to these speculative enterprises and open to the practicing of these frauds. Burn them, burn up your bids, where the routes are short, the time fast, or the trips numerous." And Boone says, "I did accordingly burn them up, obeyed his direction, and put the bids in on long routes, where there were few trips and the time was slow."

What else does this gentleman that wants to keep in the background do? "Boone, prepare me a subcontract," says he. Boone says, "I will do it." Boone was told to put in a clause providing for expedition pay. Boone put it in and read it to Dorsey. Dorsey then, with his own hand, wrote another covenant to be substituted for the covenant that Boone had put in. What says Boone about that? "This is an extraordinary covenant; I never knew a contract in my life to have this sort of a covenant in it." The act of 1878 had not passed then, authorizing the filing of subcontracts, and did not pass for some months afterwards. But no doubt Mr. Dorsey may have known it was coming. At least he knew the prospective revolution in the custom of the department to be achieved by Brady in that year, all of which I have shown to you; and Brady may have had Dorsey himself, and doubtless did have him, as one of his auxiliaries in that very revolution. But Dorsey tells Boone, "That covenant won't do; take this which I wrote with my own hand;" and Boone took it and put it in, and I identified the contract in which he had put it, when offered to him, as a contract made with Major by Moore, on the route from Redding to Alturas. It was one of the contracts that Dorsey gave to Moore when he sent him out to make subcontracts, as I will show you when I come to it. That was the paper we handed to Boone to identify. The defendants' counsel may not have seen how far and how widely that paper operated, for it operated to confirm Boone, operated to confirm Moore, and operated to bring Moore close into the bosom of S. W. Dorsey.

The employment of Moore by S. W. Dorsey is another fact showing S. W. Dorsey's participation in this business. In that connection, since it is contended that Moore was employed independently of S. W. Dorsey, and by Miner, let me read to you a little of what Boone says on that subject, on page 1474:

Q. State the conversation.

With S. W. Dorsey.

A. It turned upon the question of somebody going West to sublet these contracts awarded to John W. Dorsey, John R. Miner, and John M. Peck in the Western States, and whether I knew of a reliable person who could be sent West; one who could be trusted and relied upon. I said, "Yes, I do. I have ten traveling men in the field, and have had ten for the last year, and out of them you can make your selection." I told him I would prefer to have them select their own man, as if there was any mishap or anything to take exception to they would have nobody to blame but themselves. In that conversation I recommended Mr. Moore as being the most reliable of the ten agents we had in the field.

Q. When was the next conversation you had with either one of the defendants upon the subject of those contracts in connection with Mr. Moore, and with which one?—

A. I don't know whether there might have been some conversation had with Mr. Miner in reference to it before he had seen Mr. Moore; but anyway Mr. Miner called at the office of the company, of which I was secretary and active manager, to see Mr. Moore the next day.

And he made his contract with Mr. Moore. S. W. Dorsey is looking for a man to send West. S. W. Dorsey requests Boone to give him the name of a trustworthy man to perform the offices he wanted performed out West. Boone gives S. W. Dorsey the name of Moore, and Miner, on the next day, goes and employs him. Was not that done at S. W. Dorsey's suggestion?

But what more? I will not follow Moore all the way down, gentlemen; I must eliminate. I have eliminated a great deal, and I must eliminate a great deal more. What else was done? Moore goes out to the West to perform the duty which he had been employed to perform. He comes back by way of Denver, and there sees Miner, and has a conversation with Miner, to which I will refer. He returns here, and Dorsey pays him \$250 on a demand from Miner which Miner had given to Moore at Denver. Some days afterwards Moore receives one hundred and sixty-odd dollars from Miner, and they say that this receipt for one hundred and sixty-odd dollars specifies that it is in full for services, including the \$250 already received. That receipt, bear in mind, was to Miner. Moore signed it. Moore says it was a receipt for money paid for hotel bills and for telegraphing between the time he got the \$250 from S. W. Dorsey and the date when the money was paid, and he shows you conclusively that he did telegraph and correspond with a postmistress on The Dalles and Baker City route. If we are to take that receipt as expressive on its face of the entire and incontrovertible truth, what does it lead us to? The receipt bears the caption of Denver, not Washington City. But the money was paid here, and all the parties admit that all the money was paid here. It has a printed heading of Denver, Colorado.

What else is there in this connection that is confirmatory of Moore, gentlemen of the jury? When Moore left here it was agreed that his pay should be sent to his wife in Chicago; the money was not sent; the wife writes to Boone. What does Boone do? He mentions it to Miner. "Oh," says Miner, "go to Stephen W. Dorsey about it." He goes to Stephen W. Dorsey, and tells him that the contract under which Moore was employed required the money to be sent to his wife; that he has a letter from her in which she says that she has not received it; what is to be done? Dorsey says, "I will send it," and he sat down at once and wrote the check and sent it. He admits that he wrote the check and sent it to this woman out West, in response to her letter.

Here is that original receipt, gentlemen, which I referred to a moment ago. It has a printed heading of Denver, Colorado. Like the Chico letter, which had the printed date of 1878, and Dorsey forgot to alter the date to 1879, for it was written in 1879, and not in 1878. That is all the answer to the Chico letter. This receipt is dated Denver, Colorado, July 24.

Mr. CARPENTER. Your witness swore that it was not written in 1879.

Mr. MERRICK. I say the letter was written in 1879, and I will show it when I come to it. If I make an incorrect statement, the counsel can correct me, but not by introducing other matter.

Mr. CARPENTER. That is the only proof in the case, and he says it was in 1878.

Mr. MERRICK. Is that right, your honor?

The COURT. He is asserting that the evidence is different from what you have stated it to be.

Mr. MERRICK. I have stated one thing, and he states another.

The COURT. You can meet that when you come to it, though.

Mr. MERRICK. Again, to confirm Moore, Dorsey in his conversation with Moore, tells him the reason for wanting long routes with few trips and slow time—because the *money was in the increase and expedition*. He tells Moore in the spring of 1878 precisely what he had told Boone when the bids were being prepared; and that this was the fact of the transaction is shown in a previous part of my argument, in which I have demonstrated how they turned losing into gaining routes.

He tells Moore that 40 per cent. of the expedition is a good contract for the subcontractor. Moore's subcontract with Major, which Boone identifies as in the form he had prepared at Dorsey's bidding, was made for 40 per cent. exactly, in obedience to Dorsey's instructions. S. W. Dorsey instructs Moore to assure subcontractors that the service would be increased and expedited. S. W. Dorsey denies this. Dorsey instructs Moore to assure the subcontractors that the service would be increased and expedited. Dorsey swears that he never had three words of conversation with Moore. Now, what is the proof?

Major says, at pages 1438 and 1442, that Moore told him that there would be increases and expedition, and that he was authorized to make that statement by Senator Dorsey. Did Moore lie to Major at that time? Why should he have done so? It is admitted that he was there as the representative of an interest in the routes, and the only question at issue is whether he was there as the representative of S. W. Dorsey, and whether S. W. Dorsey was interested in the routes. If Dorsey at that time had not authorized him to make this representation, why should he have made it? Testimony of what occurred at the time is better than recollection now of what may have passed in conversation then, and especially better than the recollection of a man who, on some sixty-odd important inquiries in reference to the material and substance of the case, which any man would have recollected, answered the counsel for the Government that he "don't recollect," while in response to his own counsel in his examination-in-chief his memory was bright and accurate enough.

At page 1368 Moore sublets the Redding and Alturas route to Major, and tells Major that there would be one additional trip before July 1. Bear in mind, gentlemen, that we are now coming to some of the prophecies, the realization of which in precise accuracy exceed the wonderful realization of the prophecies of those who claim to be and were inspired. Let us see. He tells Major that there would be one additional trip before July 1, and a daily mail and expedition as soon as he will send on the petition.

Major, at page 1442, testifies that, as represented by Moore, one trip was added before July 1, then three trips and expedition, and then another trip. Why, you could not with greater accuracy prophesy the time of the rising and setting of the sun, or foretell more surely the circuit he will perform to-morrow. Here is vision reaching into the future, and the realization of that prophetic vision and of the hopes and expectations bodied forth in that prophetic vision, coming to actual fruition within the time he said it would. How could Moore have conceived such ideas in his own head? He knew nothing of the matter except what he learned from Dorsey. At page 1433 Major says:

Q. You did not want it—

That is, the contract—

at the price it was given by the Government?—A. No, sir; I did not want it. I stated to him—

Moore—

that I did not think it would pay horse-feed—

That is, at what the Government had let it—

I did not want it at all. He went on to tell me that he could get the trips increased, and I asked him what assurance he had for that. He then pulled out a power of attorney and read it to me, signed by Miner, Peck, and Dorsey, and said that that was his assurance that he could do this. He furthermore said that Senator Dorsey was the ringleader.

Then occurs some discussion about it.

Q. Who else?—A. Senator Dorsey. He said he was the ringleader of the institution. Mr. MERRICK. Never mind that.

That was thrown out, and Major goes on to say that he only took this contract at the price at which the Government had let it, which would not pay horse-feed, upon Moore's assurances of increase and expedition, and in the hope that thereby in some way it would be made a profitable contract.

Moore tells McBean out there at the same time, I believe, that they can get the increase and expedition on the Canyon City and Camp McDermitt route. That was his second visit; he went out a second time. He said that the increase and expedition which they would get would run the service up to \$50,000. See how accurate he was, gentlemen of the jury, about the future of that service. The record evidence shows that the total pay on this route, after increase and expedition, was \$50,166.66. He only missed the exact figures of his prophecy of \$50,000 by \$166.66. Don't you think they had figured it up pretty well, gentlemen, to understand it so thoroughly?

McBean testifies, at page 1611, that Moore represented to him that the service would be increased and afterwards expedited. But he was wrong, for they both came together, not one following the other.

Moore says, at page 1362, that S. W. Dorsey gave him letters and passes. Dorsey says that he never had three words of conversation with Moore, you recollect.

Major says, at page 1439, that Moore showed him passes, including an annual pass for John W. Dorsey. You know from the testimony that S. W. Dorsey had these passes. You know that, from his position and the relation he sustained to the railroad companies in the West, he was the only one of these defendants who could get these passes. You know that he admitted that he gave Rerdell passes, and that he gave his other agents passes, but he denies that he had any conversation with Moore; and yet Moore is in possession of the same passes which S. W. Dorsey admits he gave to his other agents when he sent them to the West. Moore's statement in reference to the passes is confirmed by Major, who says that Moore exhibited to him the passes. Who lied, Moore or S. W. Dorsey? You must not forget who S. W. Dorsey was, nor cease to recollect what he is!!!

Miner tells Moore, at page 1372, that there may be a loss on the service in Eastern Oregon, but expedition would leave a profit; Moore replies that the more increase there was and the more expedition, the worse off they would be,—a fact in such transactions as I have explained to you so distinctly that you cannot fail to understand it; and I am sure you recollect it, *for a losing contract could never be turned into a gaining one, and the loss would continue to be greater on each expedition.*

The COURT. That would depend on the affidavit.

Mr. MERRICK. Of course it would. I mean if the order of expedition is made strictly under the law. The proposition with which I started in this case, gentlemen, rises in our path at every step to assert itself and avow its truth, and will continue to do so until we go through this argument to the end, and it will go with you to the jury-room, and if you appreciate the facts and act within your solemn obligations—as I know you will—it will speak, in your verdict of guilty, as the largest and most important element that led your judgments to that conclusion.

What does Miner say now confirming what I have said to you about this matter of expedition which his honor says depends on the affidavit?

Miner tells Moore that expedition depended upon the oath of the contractors, and that they were "*all good affidavit men.*" Expedition lose? Oh, no, Mr. Moore, you should recollect that though losing it may be, under the law, and though the proportions cannot be changed, and the preservation of the proportion is the rule that must regulate the increased compensation under the law, "*that practically expedition depends on the affidavit, and we are all good affidavit men.*"

Mr. BLISS. And he says they proposed to make a good thing out of it.

Mr. MERRICK. Read it.

Mr. BLISS. [Reading from page 1372:]

And they proposed to make a pretty good thing out of it.

Mr. MERRICK. How could that have escaped me? Probably it was merely for the purpose of having Brother Bliss emphasize it by reading to you. I must have left it out purposely.

THEY WERE ALL GOOD AFFIDAVIT MEN, AND THEY PROPOSED TO MAKE A PRETTY GOOD THING OUT OF IT.

Moore says, at page 1372, that S. W. Dorsey asked him to telegraph to Baker City and make new service to The Dalles and find out if the service had started.

I think I will dispense with any further reading of Mr. Moore's testimony. I have corroborated him enough, and I think he can stand alone as against Mr. *Non Mi Ricordo* S. W. Dorsey and the acrobatic Miner combined.

Another circumstance illustrating Dorsey's connection with these routes in 1878, and which he now admits, is this: Boone being one of the copartners of J. W. Dorsey & Co., and having charge of this whole matter in 1878, but being doomed or destined to be turned out, has possession of all the papers. Miner is not here. Peck, of course, never was here. John W. Dorsey is out on Tongue River, and Boone is left, the sole representative, to manipulate and manage these routes. Now, what does S. W. Dorsey do? He says, "Rerdell, go down to Boone's and get those pigeon holes and those papers and bring them here to me." Rerdell, in obedience to that command, went down to Boone's house and got the case and the papers in the case and brought them to S. W. Dorsey's house; took from Boone every record in the matter which he had in charge, and for the management of which he was then the only man in Washington City, Miner being away, Peck being in New Mexico taking care of his physical health, and John W. Dorsey being out West putting the service on Tongue River. Now, S. W. Dorsey says it was because Miner was coming back. But Miner had not come. Why, if he had no interest in the matter himself, did he not wait until Miner came and let Miner dissolve Boone's connection with the papers as well as with the conspiracy? No. He does not wait for Miner. He acts himself, acts through his own man, Rerdell, a man who was used by him wherever any infamous thing was to be done, or wherever anything was to be done in which S. W. Dorsey desired that his hand might not be seen. Rerdell goes and gets the papers. Immediately after, Rerdell is sent out West by Dorsey. Do you remember when he gave him that \$3,000, deposited to the credit of John W. Dorsey & Co., and authorized him to draw on the firm account? That was the time, immediately after those papers came; and up to the time that he went West, Rerdell managed the business there in S. W. Dorsey's house, and when Rerdell went away, what became of the business, Miner not having then arrived? Why, S. W. Dorsey employed Anderson to do the business and put him

in charge of the papers that were up in the third story of his house, in Miner's office, and when Miner came here he found Anderson working in the employ of S. W. Dorsey upon those routes. And yet we are told that S. W. Dorsey had nothing to do with these routes.

Allow me, gentlemen of the jury, in this connection to call your attention very briefly to S. W. Dorsey's connection with one particular route. I shall do it very briefly, although I could occupy a good many minutes. At page 1100 Anthony Joseph, subcontractor on the Ojo Caliente route, says that in the month of December, 1878, he received a letter from S. W. Dorsey to put service on the route on the 1st of January, 1879. That is his testimony. Subsequently, on the following Tuesday after that testimony, he corrects his statement, and says that the letter was from John W. Dorsey; that he has come to that conclusion by refreshing his recollection from a letter written on January 15 to John W. Dorsey, and one to S. W. Dorsey on January 20. His correction admits that he was in direct communication upon that subject with S. W. Dorsey. Even if the letter of December was not written by S. W. Dorsey, yet from Mr. Joseph's correction made on the following Tuesday it is evident that he was in direct communication with S. W. Dorsey upon the subject, because he says that his recollection was refreshed from letters written on January 15 to John W. Dorsey and one to S. W. Dorsey on the 20th of the same month. The letter of January 20, 1879, above referred to, I now propose to analyze and see whether Stephen W. Dorsey did not write it, and whether he was not regulating the service on that Ojo Caliente route:

I hereby beg leave to inform you that in compliance with the letter of advice from Mr. John R. Miner, written at your request, I have put stock on the mail route No. 38145, from Ojo Caliente to Parrott City, of which your brother is contractor. [Page 1122.]

Miner wrote him a letter, in which letter Miner tells him it was written at the request of Stephen W. Dorsey, asking him to put service on that route, and he replies, saying that "in obedience to that request in a letter written by Miner I have put stock on this route." Whether Joseph had a letter from John W. Dorsey or not, it is conclusive that Miner wrote this letter at S. W. Dorsey's request.

There is also a letter from Joseph, dated January 15, addressed to John W. Dorsey in Washington, and there is another letter from Joseph, and it is a singular circumstance, that in a letter which he first said he received from S. W. Dorsey, but which he now says was from John W. Dorsey, there should be a statement that John W. Dorsey *was sick or absent at the time*, if S. W. Dorsey *had not himself in fact* written the letter. Now, in that letter, which he says originally was from S. W. Dorsey, and subsequently says was from John W. Dorsey, is this statement:

I write this letter because John is sick or absent.

If S. W. Dorsey did not write that letter, such an expression in the letter is certainly a most remarkable circumstance. S. W. Dorsey had manifested before that time, and as far back as June 10, 1878, his great interest in this route by a letter of that date to Brady (page 1079). June 10, 1878, S. W. Dorsey writes to Brady in reference to this very route, in which he explains certain conditions around and about the route and routes contiguous thereto, and suggests that the route be continued and expedited and increased, manifesting his interest in the route as far back as that date. With these suggestions I will dismiss the subject.

And now I come to one of the most important features of this case, the relations of S. W. Dorsey with these transactions prior to the 1st day of April, 1879. I now ask your patient attention, gentlemen of the jury, to the evidence on this subject. I will discuss it calmly and as briefly as I can, and I will sustain my proposition by the evidence, and I do not believe that there is one of you who, when I am through with it, will have a shadow of a doubt upon your mind as to the fact that, prior to April, 1879, Stephen W. Dorsey was interested with these men in their conspiracy, and a joint owner of these routes with them. When I have established that fact to your satisfaction, gentlemen, that is the end of this case. It seems that Rerdell had some relations with Miner and Vaile in the fall of 1878 or the following winter, and not being able to settle the pecuniary liabilities arising out of those relations amicably and among themselves, on the 29th day of May, 1879, Rerdell institutes a suit against Vaile and Miner, partners doing business under the firm-name of Vaile, Miner & Co. In order that you may fully understand this I will even go so far as to read his declaration filed in that suit, and which will be found at page 2244:

The plaintiff sues the defendants for that defendants, partners under the firm-name of Vaile, Miner & Co., engaged in the business of carrying the United States mails and operating stage lines in certain of the Western States and Territories, employed plaintiff to assist them in their business at a yearly salary of \$1,000, payable quarterly. Under such contract plaintiff commenced work for defendants December 1, 1878, and continued in their service and employ to the 1st day of April, 1879.

From the 1st of December, 1878, to April 1, 1879.

Plaintiff had demanded payment of the amount due him April 1, 1879, to wit \$333 $\frac{1}{3}$, but they did not, nor did either of them, pay the same.

And the plaintiff therefore brings this suit. Now that declaration was accompanied by an affidavit. You are all familiar with this class of suits and the rule in reference to an affidavit accompanying the demand of the plaintiff:

DISTRICT OF COLUMBIA,
County of Washington, ss :

Montfort C. Rerdell, being first duly sworn, deposes and says that he is the plaintiff named in the foregoing declaration; that the said firm of Vaile, Miner & Co. was, on December 1, 1878, composed of H. M. Vaile and John R. Miner, and has continued so composed to the present time, and none other, as he is informed and believes; that defendants are engaged in carrying the United States mails and operating stage lines in certain Western States and Territories; that defendants, both of them being present, employed plaintiff to assist them in their business, and promised to pay him the sum of \$1,000 per year, payable quarterly; that under such employment plaintiff commenced work for defendants December 1, 1878, and continued to work for them until April 1, 1879, performing such services as he was called upon to perform; that no portion of the sum due him for his said services, to wit, \$333 $\frac{1}{3}$, has been paid, and that there is due the plaintiff from the defendants, and he has a just right to recover against the defendants, exclusive of all set-offs and just grounds of defense, the sum of \$333 $\frac{1}{3}$, with interest and costs, as claimed in said declaration.

MONTFORT C. RERDELL.

Subscribed and sworn before me May 29, '79.

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR.,
Assistant Clerk.

Now, what follows, gentlemen of the jury? Here is their plea:

In the supreme court of the District of Columbia, June 24, 1879.

MONTFORT C. RERDELL	}	Law No. 20823.
<i>vs.</i>		
H. M. VAILE AND JOHN R. MINER.		

The defendants Vaile and Miner for pleas, say:
1st. They are not indebted as alleged.

2d. That they did not promise as alleged.

And for a third plea these defendants say that said plaintiff was at the time of the commencement of this suit and still is indebted to the defendants in the sum of two hundred dollars (a bill of particulars hereto annexed), with interest from May 1, 1879.

L. G. HINE,

Attorney for Defendants Vaile and Miner.

Now comes a remarkable paper, the bill of particulars :

Montfort C. Rerdell to Vaile, Miner & Co.

May 1, 1879. To cash paid C. T. Perkins at your request..... \$200 00

The defendants Vaile and Miner, each speaking for himself, on oath, say that they are not indebted to the plaintiff on any account whatever; that they never had any business transactions with him of any kind or nature; that true it is the defendants Vaile and Miner, *with one Stephen W. Dorsey*, at one time employed him for a short time to aid in certain mail routes, but say that he was fully paid for his said services; that they not only paid him the full amount he claimed to the time he discontinued his services, but, at his request, paid Charles T. Perkins *two hundred dollars* on his account, and said plaintiff is indebted to them in said sum, with interest thereon from the 1st day of May, 1879, exclusive of all off-sets and just grounds of defense.

H. M. VAILE.

JNO. R. MINER.

What follows :

Personally appeared before me this 24th day of June, 1879, H. M. Vaile, and made oath that the foregoing statement by him subscribed is true.

CHARLES W. WALTER,

Justice of the Peace.

And next :

Personally appeared before me, this 27th day of June, 1879, John R. Miner, and made oath that the foregoing statement, by him subscribed, is true.

C. S. BUNDY, J. P. [SEAL.]

What do you think of that, gentlemen of the jury? What do Vaile and Miner there swear to? They there swear that Vaile and Miner, *with one Stephen W. Dorsey*, employed Rerdell; that is, that the firm was Vaile and Miner, *and Stephen W. Dorsey*. Will you believe these men, as they swore then, in 1879, before the hot breeze of dire necessity had so parched their brain that recollection failed, or will you believe them now in the midst of the disasters of their failing memory and their struggle to get before this jury something that will hold them back from the doors of the penitentiary? They now come into court and swear that Stephen W. Dorsey was not a member of that conspiracy and had no interest in those routes, and that the only members of the firm were Vaile and Miner. In 1879 they came into court and swore, in a suit brought against Vaile and Miner, as the sole members of the firm, that Stephen W. Dorsey had helped to make the contract, and had, together with Vaile and Miner, employed the plaintiff from the 1st of December, 1878, to the 1st of April, 1879, when, according to the theory of the defense, S. W. Dorsey's interest never commenced until the 1st of April, when the routes were divided. According to Mr. Ingersoll's declaration, he had not a particle of interest prior to that time. Yet on a contract where the work was to be done between the 1st of December, 1878, and the 1st of April, 1879, Vaile and Miner come into court and swear, in 1879, with freshness of recollection, that Stephen W. Dorsey was liable with them for that employment for services to be done in mail matters by Rerdell between the 1st of December and the 1st of April. Will you take the Vaile and Miner when, without apprehension of peril to themselves, without temp-

tation to falsehood further than a few dollars could be a temptation, they were swearing in a court of justice? Or will you take the Vaile and Miner pursued by the law, seeking to visit upon them retributive justice, frightened from their propriety it may be, struggling in the hope of getting free from the penalty their crimes deserved, and showing by their testimony that their memories have failed? Which Vaile and Miner will you take—the Vaile and Miner swearing in 1879, or the Vaile and Miner swearing here in 1883? You cannot take them both, for they stand as four men—the Vailes and Miners of 1879 and the Vailes and Miners of 1883 looking each other full in the face; the Vaile of to-day gives the lie to the Vaile of 1879, and the Miner of to-day gives the lie to the Miner of 1879.

Let us go a little further and see in the development of the proceedings of 1879 whether there are any particulars that would give us greater justification and inducement for taking the men of that period rather than for taking the men of the present period. I have read their oath. That ought to be enough. Let us go a little further. On the 29th day of May, 1879, the day the suit was brought, H. M. Vaile wrote a letter. Now, gentlemen, do not let your amazement disturb you, but through your amazement listen to it patiently. It is found on page 2246:

[National Hotel, F. Tenny & Co., Proprietors.]

WASHINGTON, D. C., May 29, 1879.

S. W. DORSEY, Esq.:

DEAR SIR: Rerdell has to-day sued us, "Vaile, Miner, & Co.," though alleging the firm to be only "Vaile & Miner," for what he claims wages.

Though alleging the firm to be only Vaile and Miner. Rerdell was not going to bring Dorsey in. He was in Dorsey's employ, you recollect, keeping the books.

He certainly has not properly considered this action of his, as you will readily see. If it goes on it will expose, to an extent, our private matters in which you are interested. It will draw forth—

What? It will draw forth—

WHO ARE THE REAL PARTIES OF "VAILE, MINER & CO.," AND IT CANNOT BE HELPED. In view of all the facts in the case he cannot recover anything, and will draw himself into serious difficulties. It seems to me you had better advise him to dismiss his action at once, as we must answer in twenty days. I do not suggest this, fearing that he could ever get a judgment against us, for he cannot, but to save the poor fellow himself from trouble.

There was Vaile's big heart.

He was in the employ of the District government at the time he claims to have been in our employ, and this may involve him in trouble. A man cannot serve two masters at one and the same time. He has wronged one.

He claims pay for four months, \$333.33. Your own judgment will suggest many embarrassments evidently not occurring to him. I have deemed it my duty to notify you of his action before answering the complaint, and unless it is dismissed I must answer inside of twenty days.

Trusting you may see this as I do,

Yours, very truly,

H. M. VAILE.

P. S.—I will delay answering as long as I can.

Gentlemen, is not that conclusive testimony, if H. M. Vaile can be believed as to what he said in 1879? Mr. Ingersoll asks the jury how was it if Dorsey was engaged in these transactions that when they were quarreling Vaile did not threaten Dorsey? Why did he not threaten Dorsey? Dorsey being in the Senate a threat from Vaile would have scared him. He did threaten Dorsey. What private griefs they had, alas, we know

not. Prior to April, 1879, we know not what private conversations may have occurred. It is more than likely that Vaile did threaten Dorsey, and that Dorsey said, "Do your worst. I am a Senator, but you are a conspirator with me. We are united in fraud. Move if you dare. I will pull down the pillars and let the roof of the temple crush us both." That would have been a wild proposition. Vaile signs this letter in a way that you sign letters written to your intimate friends; not "yours, &c.," as upon a matter of business; not "yours, truly," but, "yours, very truly." It was the language of friendship, the language of intimacy, the language of pleasantness. In that letter so signed he says:

If this suit goes on it will expose to an extent our private matters in which you are interested.

What private matters in which Dorsey was interested? Were there any other matters between him and Vaile except mail matters? It has been shown to you here that they came together at a certain time in October, afterwards entered into these contracts and quarreled in December, then parted to meet again on the 4th of March to separate forever. They had no private matters but the mail transactions. Has anything come out from either of them under the searching cross-examinations to which we have subjected them that is remarkable in reference to those private matters? We have tried to get at all their private matters in connection with the mail, but we have got at no private matters that justified this expression:

If this suit goes on it will expose to an extent our private matters in which you are interested.

There were then private matters connected with the mail, or private matters which we have not learned on this trial, private matters that he threatened Dorsey would be exposed if this suit went on. "Stop the suit or our private matters in which you are interested will be exposed." Then there were private matters connected with the mail, the exposure of which Dorsey had reason to fear. Vaile knew that he feared exposure. What is the next sentence of the letter?

It will draw forth who are the real parties of Vaile, Miner & Co.

"Rerdell has sued Vaile and Miner as the members of the firm. He has sued Vaile and Miner as constituting the entire firm. That is not so. That is not the fact. If this case goes on, bear in mind that it will draw forth who are the real members of that firm." What did that mean when addressed to S. W. Dorsey but this: "You are a member of that firm. Over your iniquities I have allowed the veil to remain where you wished it left. I have let no man lift that veil to peep under and see what was there. I have let that veil remain over your crimes, and your associations with me because it was so desired, but now if this suit goes on that veil will be removed, and the fact will be exposed to the world that you whilst in the Senate of the United States were in a conspiracy with me and Miner to defraud the Government which you were put in office to protect. Beware S. W. Dorsey!" Concealment cannot live in the testimony of this case. Facts must come out.

Again I say, as I said yesterday, quoting from Mr. Ingersoll: A lie will fit nowhere. A truth is in harmony with every truth and makes uniform consistency throughout the world. What truth fits with this statement of Vaile's? The simple, naked, unadorned truth developed by the whole testimony in the case that S. W. Dorsey between the 1st of December, 1878, and the 1st of April, 1879, was a coconspirator with Vaile and Miner. That truth fits the facts developed in this case; but the lie told by Vaile and Miner that Dorsey was not at that time con-

nected with them does not fit. There is a ragged edge. You cannot get it in. The wind whistles through the crevices that are left, and down comes the structure. Put in the truth and it is a compact, solid, smooth, and entire mass perfect in its harmony.

But, gentlemen, I am not yet done with this matter, and will follow it on right now and see if I cannot further confirm it. I first submit that the fact sworn to by Vaile and Miner is confirmed by John W. Dorsey's experience on the Tongue River route. I will turn to John W. Dorsey's experience on the Tongue River route as one of those incidental things that I told you lay a little off my path, but which confirm the truths that lie directly in the path and which I will bring in as I pass by. Boone testifies that John W. Dorsey swore to the proposals before him in blank, and that the other parties filled them up and inserted the date of the jurat on the day they were finally completed. That is not denied. Boone testifies again that John W. Dorsey told him, pending the investigation in 1879, that this business did not suit his taste, and that he wished he was back home. That is not denied. Moore testifies that John W. Dorsey told him in March or April, 1878, that his brother had him here on some business that he did not know anything about, and he wished he was back home. He was in with Vaile and Miner. That is conceded. John W. Dorsey says his brother had him here on some business he did not know anything about and says, "I want to go home." Pity for him he had not gone home! Pity for him he ever left his home! He never would have left it, probably, had not his aspiring brother dragged him forth to make a dummy of him and helped corrupt him as he had corrupted Rerdell, profiting by the false affidavits of the brother of his own blood; debauching his own family, teaching them to make money for him and themselves by the ways of vice and iniquity and crime.

Coll McLellan testifies, on pages 2656-59, that when they were in camp at Beaver Creek on the route between Bismarck and Fort Keogh John W. Dorsey told him, in July or August, 1878, that in about three months he expected a tri-weekly service, and in three months afterwards a daily service; that they were expecting to lose money on the weekly service, but when it was increased and expedited they expected to realize \$150,000; they expected to get the increase through the influence of his brother, Senator Dorsey; *that they had organized a ring here in Washington, and the witness understood that they had an understanding with the Second Assistant Postmaster-General.* This man McLellan testified that John W. Dorsey told him of the increases and expeditions that were to come, and the why and wherefore they were to come was this: "I have a brother in the Senate. We have organized a ring in Washington, and there is an understanding with the Second Assistant Postmaster-General." Standing solitary and alone that declaration of a man coming down through a series of years might, as Mr. Ingersoll has said, not receive a great deal of credit. The word spoken goes out on the air and it can never be recalled. Thereafter it may never be rewritten, and may not make its true and real impress on the mind that hears it. The waves of time rolling over the memory may partially efface some of the characters that word imprints, so that when years afterwards it is read it does not sound precisely as it was spoken. Give them, therefore, the benefit of every doubt which may arise in reference to the entire accuracy of testimony in regard to conversations long since passed. Give me the benefit of every confirmatory circumstance that shows the testimony now repeated to be an accurate transcript of the words then

uttered. Let us go on. Now, as I say, McLellan confirms Vaile and Miner, for Vaile and Miner swear that Dorsey was in with them at that time. John W. Dorsey tells McLellan of the ring that was composed of Vaile and Miner and S. W. Dorsey.

The COURT. No. That does not refer to the same time, I think. Vaile and Miner's affidavit refers——

Mr. MERRICK. [Interposing.] To the period from the 1st of December, 1878, to the 1st of April, 1879. This is August, 1878. It is the same ring. John W. Dorsey was out there at their bidding; John W. Dorsey was out there doing the service for these very men that employed Rerdell in December. Not Vaile. He was not in then. He came in directly afterward. It was Miner's route. Vaile came in mysteriously, and charitably took up the burden of these losing routes immediately afterwards. Strange to say, the increase and expedition, sworn by those men as promised by John W. Dorsey, came on the 23d of December, 1878. Isaac Cable testifies that he helped John W. Dorsey in building the ranches. When they were at Beaver Creek in the latter part of July, 1878, he heard a conversation between him and McLellan. The men had made a "kick" for their pay. Dorsey said that they did not expect to make any money then; that they took these contracts low to keep out small bidders, knowing that there would be increase of service, and that they would get the increase through the influence of his brother, Senator Dorsey; that *there was a ring in Washington*; and that if the service was increased as was expected the pay would be \$150,000 at the end of the year. McLellan testified to the conversation in which John W. Dorsey told him that a ring had been formed here in Washington to deal with these routes. Isaac Cable testified that he was present and heard the conversation, and that John W. Dorsey did say there was a ring here to take care of these routes. Vaile and Miner swear that S. W. Dorsey was in combination with them upon these routes. The records written from time to time in the Post-Office Department show that these routes were manipulated by a ring. Thomas J. Brady, breaking through the restraint of all law, trampling under foot every obligation of personal honor and legal authority, enlarged the pay upon these routes from forty-odd thousand dollars a year up to four hundred and seventy-odd thousand dollars a year. The ring gave forth its sound as merry as a marriage-bell. It tinkled at the very breath of one of the conspirators. But whilst it sounded the announcement of the birth of their immense fortune plundered from the Government, it was sounding the death-knell of the honesty of the officials of the American nation.

The COURT. We will take our recess now.

Mr. CARPENTER. If the court please, before the recess I would like to correct a statement of Mr. Merrick's. I have the record. The only evidence as to the time of the reception of the Chico letter is by Rerdell himself. On page 2275, in his examination-in-chief, will be found the statement——

Mr. MERRICK. [Interposing.] I did not say that there was any proof. I said that my conclusion was that it was written in 1879.

Mr. CARPENTER. Very well. I want to show what the proof is.

Mr. MERRICK. May it please your honor, is that proper? Does he correct anything I have said? Does he correct any misstatement?

Mr. CARPENTER. The statement is that it was written in 1879.

Mr. MERRICK. I do not say that is the proof. The letter is dated in 1878. It is supposed to have been written in 1878, and I say that from circumstances I expect to show that it was probably written in 1879.

Mr. CARPENTER. All the more reason then why I should read the testimony.

Mr. MERRICK. No, sir; because there is no answer.

The COURT. Not after Mr. Merrick has made this correction.

Mr. MERRICK. He is going to read precisely what was read by Mr. Ingersoll in his argument.

Mr. CARPENTER. But, if the court please, he intends to show it was written in 1879. Rerdell says it was not.

The COURT. Wait until he gets to that point.

Mr. CARPENTER. He never will get to it.

The COURT. Then it is not worth while to make any correction about the matter.

Mr. CARPENTER. You will see the evidence is it was received in 1878.

Mr. MERRICK. It don't make any difference.

Mr. CARPENTER. You don't dare to have the record read.

Mr. MERRICK. I do not intend to have any reply to me.

Mr. CARPENTER. There will be as many replies as you make misstatements.

Mr. MERRICK. Show me a single misstatement.

Mr. CARPENTER. I am trying to.

Mr. MERRICK. I have made no misstatement.

Mr. INGERSOLL. I just want to call attention to this: While the evidence is it was received in 1878, Mr. Rerdell swears positively that he did not receive it in 1879, and positively that he did not receive it in 1877, and positively that Dorsey was not here in 1878, and positively that he was here in 1879.

Mr. MERRICK. The ship is wrecked. It is the last plank the pirates cling to.

Mr. INGERSOLL. Rerdell is your last plank.

Mr. MERRICK. You will see he will float above your doom.

Mr. INGERSOLL. He will sink with your last plank. He is a rotten plank.

The COURT. This is entirely out of order.

Mr. MERRICK. This is recess, I believe.

Mr. INGERSOLL. I should not have replied if Mr. Merrick had not said what he did.

Mr. CARPENTER. We will apologize.

The COURT. We will take our recess.

At this point (1 o'clock and 7 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. MERRICK. With submission to the court and gentlemen of the jury: Cable, as I have said, states that the men, to use his own language, had made a "kick" for their pay, and it seems from his testimony that it was in consequence of that disturbance among the men, by reason of their apprehension of danger in reference to their pay because of the low price of the route, that the conversation took place between Dorsey and McLellan, in which Dorsey stated to McLellan in the hearing of Cable that they had taken the route at this low price, that it would be expedited, and that there was a ring in Washington City of which his brother was a member. In confirmation of that John W. Dorsey writes to Rerdell on September 27, 1878, and states that the men are *clamor-*

ous for their pay. This shows a condition of things in September among the men in reference to their pay which is confirmatory of the conversation had previous to that time, and of the circumstances out of which that conversation grew. On page 2239 the letter referred to will be found :

M. C. RERDELL :

DEAR SIR : I have just returned from the prairie, but did not find the money here to pay off the men, *and they are clamorous for their pay.*

It is therefore evident that the men were disturbed about the probability of being paid, because they knew the contractors would not get from the Government enough to pay them on the rate of pay the contractor was then receiving, and that naturally laid the basis for the conversation in which John W. Dorsey quieted these apprehensions by telling the men the fortune that was in store through the manipulations of the potential ring that stood behind him in Washington City. I may remark here, in passing, that this route was increased to three trips and expedited on December 23, 1878 (page 2139), and on August 11, 1879, it was increased to six trips (page 2151), making their pay \$70,000, where it had originally been only \$2,350. John W. Dorsey testifies that as to this conversation, which I have already read to you, so far as increase and expedition are concerned, he did not know anything about it until Rerdell came out there. If Rerdell told him about these prospective benefits, how did Rerdell get the knowledge ?

Rerdell swears he got it from S. W. Dorsey. He could not have evolved it from his inner consciousness. He must have got it from somewhere. If, then, John W. Dorsey can be presumed to tell the truth, that he got his information from Rerdell, it is confirmatory evidence of Rerdell's statement that Rerdell got his information from S. W. Dorsey at the time S. W. Dorsey sent him out there.

Howard T. Lambert, who was a carrier on the route, testifies that Dorsey told him in September that the route would be expedited ; and again, on page 2179, that he had another conversation with John W. Dorsey in January, 1879, and Dorsey told him that it was not his fault that the road was not equipped ; *that his brother was running that part of the business, and that his brother was putting up the money for it.* One peculiar circumstance in these conversations is the statement detailed by McLellan, who testified, on page 2657, that John W. Dorsey told him at one time that he did not care whether they got through on time or not ; that they expected to draw the pay just the same.

Before I pass from this route in this connection, I think it proper that I should repeat to you that it is a recognized fact in the testimony that the route ran through a wilderness without population where the huntsman scarcely went and where the red man found his home in safety from the intrusions of the white man, and that those who went upon the route needed, and actually had, a military escort, and that the military mail had been carried at a merely nominal sum. [To Mr. Bliss.] How much ?

Mr. BLISS. I do not think that appears in the evidence.

Mr. CARPENTER. There was no military mail carried.

Mr. MERRICK. At any rate, the route ran through a perfect wilderness.

The COURT. There was a military mail——

Mr. BLISS. [Interposing.] It appears in the evidence that there was a military telegraph, and it also appears in evidence that there were special mail messengers.

Mr. MERRICK. That is it—special mail messengers.

Mr. BLISS. But as to the military mail, that was on the Canyon City route.

The COURT. One witness testified that he carried the mail for several months seventy-five miles of the distance.

Mr. BLISS. Not on this route. That was McBean on the Canyon City and Camp McDermitt route. There was a military mail on that route, and the rate of pay appears in evidence. There also appears to have been a military mail on the White River route, but the rate does not appear in evidence. There appears to have been a special mail by a messenger on the Bismarck route with no evidence of the amount.

Mr. MERRICK. There was a special mail for the benefit of the military. There was no population and no need of a mail except for the military. General Miles and General Sherman and these military men who testified about the route you must bear in mind would gladly picket the whole national frontier from Alaska to the boundaries of Mexico with the auxiliaries and agencies of the Post-Office Department to save the Army.

Now, gentlemen, I respectfully submit that John W. Dorsey's experience on the Tongue River route and these conversations with McLellan and with Cable corroborate the statement under oath of Vaile and Miner, that S. W. Dorsey was in this combination manipulating the department here in Washington. These conversations state that they had an arrangement with Brady and that they had a ring; that S. W. Dorsey was the leader. Miner and Vaile swear that S. W. Dorsey was a member of that concern of Vaile, Miner & Co. practically. That is the result of their oath. What other confirmation is there of the fact that S. W. Dorsey prior to April 1, 1879, was in this organization and the leader of this conspiracy? We have S. W. Dorsey's letter of March 4, 1879, found on page 3892. On the 4th of March, 1879, the date that Dorsey ceased to be a Senator of the United States, he writes to T. J. Brady, Second Assistant Postmaster-General, as follows:

SIR: Being duly empowered to act for John M. Peck and John W. Dorsey, mail contractors, I hereby enter in their behalf my protest against the acknowledgment of any subcontracts or powers of attorney now on file in your department, or which may hereafter be filed in the name of H. M. Vaile, or in the name of any other person.

These subcontracts or powers of attorney were made and filed without the knowledge, authority, or consent of said Peck and Dorsey, and in their behalf I demand that they be canceled on the first day of April, and that no other subcontracts to any person whatsoever, shall be accepted by you upon any mail routes in the names of said Peck and Dorsey, except those in the Indian Territory, unless such subcontract shall be accompanied by a power of attorney given by said Peck and Dorsey after the date of this letter.

I am, respectfully, yours,

S. W. DORSEY,
For JOHN M. PECK.
JOHN W. DORSEY.

This was his first act when he ceased to be a Senator. You will recollect that he could not remember when he got the power to write that letter or how he got the power; whether it was given verbally or in writing, and whether his power of attorney was prior to the 4th of March or after the 4th of March; yet on that day he assumed open control of the matter. Let us see what Vaile further says in this year of grace 1883, in confirmation of what he says in 1879 as to S. W. Dorsey's connection with these transactions. Let us see whether Vaile has not by accident been led into denouncing himself as guilty of perjury on the stand when he stated that S. W. Dorsey had no interest in the routes. On page 4018 I find the following in Vaile's testimony:

Q. Now, can you recall when you had the next meeting with reference to an adjustment of the differences between you?

He had met Dorsey at the German-American Bank in December 1878.

A. I have no recollection of meeting him again until about the 5th or 6th of March.

1879.

It is possible I may have met him during the winter, but I have no recollection of it.

Q. March, 1879?—A. 1879.

Q. Where was that?—A. At his house.

Q. What took place between you?—A. A separation.

Can bodies not united be separated? If a separation took place it was a separation of united bodies. "What took place between you and S. W. Dorsey—not between you and Miner, not between you and Peck, not between you and John W. Dorsey, but what took place between you and S. W. Dorsey?" *A separation.* If they had never been united how could they separate?

Let us go a little further. He did not understand the force of the language he was using, for truth sometimes may well up even from unwilling lips:

Q. I want to know whether you quarreled or not?—A. We did.

Q. What was the result of it?—A. We divided the routes and divided the debts.

By the COURT:

Q. What time was this, did you say?—A. About the 6th of March, immediately after S. W. Dorsey went out of the Senate; I think it was on the 6th of March.

Immediately after it became no longer material to Dorsey that he should have a cover thrown over his transactions here he separated from Vaile, who had been to him a veil indeed; but a veil that only heightened and made more distinct that which it pretended to conceal.

I know I intended to reach here immediately after the 4th and get it fixed in some way.

By Mr. HENKLE:

Q. I want to know, from the state of feeling between you and Senator Dorsey, whether you had determined that you would *not go on in business with him or not?*

Brother Henkle also had lost sight of the force of language for the moment in the current of truth rushing through his mind. Let me read that question again:

Q. I want to know, from the state of feeling between you and Senator Dorsey, whether you had determined that you would *not go on in business with him or not?*

Then they *had been* in business together. They were going to stop that business in which they had been united together. He would not go on any longer. This team had been pulling one wagon side by side, and one horse said, "I am going to jump out of the traces; I will not pull with that other horse any more." He had been pulling with that other horse, or else he would not say, "I will not pull any more."

A. I had.

I had so determined.

Nothing on earth could have made me go on with him.

"I have gone far enough. I have run him through his Senatorial term, pulling side by side, neck to neck, that common wagon, laden

with our common spoil. Now he is out of the Senate. We will dump down the load and divide the robbery, but I will not pull with him any longer. It is true, after we do divide we will covenant to help each other to rob more on the same basis; but I will not pull with him any more in that wagon. Take the old wagon and pull it with one horse, or hitch in Peck or John W. Dorsey or anybody you like; I am going to hitch Miner along with me." Now the next question:

Q. Then you were determined to have a separation?—A. That was my determination.

"Divorce or death. We had been married. We have tried it. We have got enough of it. We must separate. One of us must go out. The thing won't work."

Q. And you say it was with that view that you called upon him at his house?—A. It was.

Q. And you made Lim a proposition which he accepted?—A. He at first refused, but subsequently accepted it.

Vaile swears here to the very identical thing that he swore to in 1879 in Rerdell's suit; that Dorsey was one of their concern and united with them. Now, let us see what Miner has to say about this business. Miner testifies with regard to the matter on his examination-in-chief. I read from page 4169:

Q. I want to know now if you had any conversation with Senator Dorsey late in the winter, or at any time in the winter, in which he said anything about what he proposed to do with Vaile when he got out of the Senate.

Mr. MERRICK. I object.

The COURT. Have you any proof on that subject?

Mr. MERRICK. Not a particle.

Mr. HENKLE. No, sir; but it is in the same line. I want to show that Dorsey in the winter said to Miner that when he got out of the Senate he was going to kick Vaile out of this whole concern.

At another place in the evidence Miner testifies that this is what Dorsey told him. Now, we have both of these men, may it please your honor, testifying to their unhappy union, testifying that their afflictions in that union were such that they could no longer continue that union, at least in the close relations which that union had established from 1878 down to April, 1879. Vaile came on to get a separation, and was determined that he would not go on with Dorsey. He found Dorsey ready, with his mind prepared, having made it up in December, January, or February, to kick Vaile out of the whole concern. That was a very pretty family quarrel as it stood; but it was a *family quarrel; they were all in the family*.

I think, gentlemen, that what I have now gone over conclusively establishes beyond the possibility of a doubt the connection of S. W. Dorsey with this conspiracy from the period of its inception down to April 1, 1879. If Dorsey was not connected with it, then his statement to Miner that he intended to kick Vaile out is untrue, for he would have to be on the inside, I suppose, in order to kick another man out. Vaile's statement that he wanted a separation and would not go on with Dorsey, and Vaile and Miner's oath in the Rerdell suit, that if the suit went on the testimony would develop who were the *real* parties of Vaile, Miner & Co., taken in connection with Dorsey's directions to Boone, with Dorsey's management and control, with the fact that Dorsey furnished the money, all make it perfectly apparent beyond a doubt that S. W. Dorsey was the central figure of this organization prior to April 1, 1879. This is confirmatory of Rerdell's testimony and condemnatory of the testimony of S. W. Dorsey, who swears to the contrary.

Before I come to consider what transpired at the settlement in 1879, I propose to devote a few minutes to the consideration of another circumstance in reference to S. W. Dorsey, which, if I mistake not, must in your judgment blot him out of this case as a witness, except in so far as his appearance on the stand confirms your judgment of his guilt. I say to you now that I am entering upon a proposition in maintenance of Rerdell's statement, and I propose to show that S. W. Dorsey has convicted himself beyond the hope of redemption. My proposition is this: That when a defendant in a criminal case takes the witness-stand, in the exercise of his privilege to testify under the statute of the United States, and refuses to answer questions put by the Government counsel, or, which is the same thing, refuses to bring forward written evidence shown to be in his possession, every presumption is against him, and the jury will regard such refusal as evidence showing that if the questions were answered or the written testimony were produced it would convict the accused. You will readily appreciate the wisdom of such a construction, for when a prisoner at the bar takes the stand he takes it under the implied pledge that he will deal fairly and frankly and disclose everything. When an ordinary witness, not a party to the case, takes the stand and refuses to answer, his refusal to answer may affect himself alone, and the court may deal with him by the exercise of judicial authority to punish him for contempt of court and coerce an answer. But when a party to the case, a prisoner at the bar, takes the stand and refuses to answer or to produce a paper, which is the same thing as refusing to answer, the court cannot punish him and compel him to answer or to produce the paper. Any such exercise of judicial authority would be regarded as cruel and harsh, in the first place; and in the second place, it would arrest for the time the regular order of the judicial proceeding. We must therefore accept the refusal, and the jury is bound to draw its conclusions according to the logic of common sense from such refusal.

The presumptions that arise from the refusal of a defendant to produce books and papers admitted to be in his possession depend to a certain extent upon the position that the defendant occupies as a witness in the case. The general rule in civil cases as to the presumption arising upon a failure of a party to produce a paper material in the case is well understood, and is well explained in the case of *The Life Insurance Company against The Mechanics' Fire Insurance Company*, 7 Wendell, 31. I do not know that I should pause to consider and to read any of the cases to which I have references. Perhaps my Brother Bliss will look at them and see if there is anything that will help to enlighten my argument; if so, I will be obliged to him.

THE COURT. You hardly propose to discuss questions of law before the jury, I suppose.

MR. MERRICK. Oh, no. I will read them merely as part of my argument, desiring at the same time, if I state any proposition of law that is not correct, that your honor may exercise your discretion and say I am right or wrong.

If the secondary evidence is imperfect, vague, or uncertain, every intendment and presumption should be against the party who might remove the doubt by producing the higher evidence. But, first, some foundation must be laid by general evidence of contents.

MR. HENKLE. The law on that subject is to be given by the court, and not by counsel.

MR. MERRICK. Law is just the thing you don't want. Am I not to have any law at all?

Mr. HENKLE. Not in your argument to the jury.

The COURT. As the court has repeatedly intimated to counsel on both sides at the commencement of the argument, counsel may discuss the subject to the jury, assuming such principles of law as the counsel believe to be correct. If the proper request is presented the court will instruct the jury upon any questions of law afterwards.

Mr. HENKLE. I understood your honor to decline to allow Mr. Ingersoll to argue questions of law.

Mr. MERRICK. Not this question. That was another question.

Mr. HENKLE. Mr. Merrick is arguing a question of law, as I understand it, to the jury.

The COURT. I understand him to disclaim any purpose of that kind, but merely that he is stating the law as he assumes it to be.

Mr. HENKLE. I have no objection to Mr. Merrick's stating to the jury what he claims to be the law, but I think he has no right to discuss the law to the jury.

Mr. MERRICK. I can give my reasons for my claim, can I not?

Mr. HENKLE. No. I think your reasons should be addressed to the court.

Mr. MERRICK. Then I will embrace my reasons in my general propositions and address them to the court. I must have some law to go on with.

Mr. HENKLE. The question my brother is discussing to the jury is a question we dispute entirely. We claim the law to be clearly the other way.

Mr. MERRICK. And the facts too, do you not?

Mr. HENKLE. Yes; all the facts. We *know* the facts are the other way.

Mr. MERRICK. That is what I thought.

Mr. HENKLE. I thought you thought so.

The COURT. It is hardly worth while to be reading authorities to the jury on propositions of law. You can assume what you believe to be the law upon this point and proceed to apply your law to your facts.

Mr. MERRICK. All that I mean to do, if your honor please, wherever I read a book is simply to save myself from formulating the proposition.

The COURT. If that is your purpose, you have a right to do it.

Mr. MERRICK. That is all. I find my propositions better formulated in some of the books than I can formulate them. I merely read. What I read is not authority. The jury must take their law from the court. Gentlemen of the jury, when I read a book, because that book looks like a law-book, it is not necessarily the law. You must take your law from what the judge says. The judge, in the exercise of his judicial power, and in the performance of his duty, will instruct you what the law is, and advise you in reference to the facts. Such is the decision of the Supreme Court of the United States.

Mr. CARPENTER. How do you know the court will advise the jury as to the facts?

Mr. MERRICK. The Supreme Court of the United States prescribes that as the office of a judge.

Mr. CARPENTER. There is no such law.

Mr. MERRICK. There is a great deal of law you have never read.

Mr. CARPENTER. Then there are two of us.

Mr. MERRICK. The Supreme Court of the United States lays it down as the right and the duty of the judge to instruct upon the law, and

in his judgment where the facts are complicated to advise and counsel about the facts. The jury may follow the advice or not as they please.

The COURT. It is a matter of discretion with the court. If the case had not been fully tried and the facts fully discussed, and the court thinks that it may be of service to the jury in collating the facts and bringing them together and presenting them to the jury, it has the privilege to do so. That, however, is for the court to determine for itself.

Mr. MERRICK. Certainly, it is not obliged to do it.

The COURT. If the court is of the opinion that its assistance to the jury in regard to the facts is unnecessary of course the court will not interfere with the jury.

Mr. CARPENTER. That is not what I complain about. I want to know why the counsel assumed to say what the court would do.

The COURT. The court may do it or it may not.

Mr. CARPENTER. That is what I supposed; but he says the court would.

Mr. MERRICK. I presume it will.

Mr. CARPENTER. Ah!

Mr. MERRICK. That is not the point between us. The point was as to whether the court could do it or not. What the court will do is not a question of law. You said there was no such law.

Mr. CARPENTER. You assumed to say that the court would advise the jury as to the facts, and I asked you how you knew it.

Mr. MERRICK. And I answered you.

Mr. CARPENTER. No. The court has said you are mistaken. You do not know at all.

The COURT. I understood Mr. Merrick's proposition to be this: That the Supreme Court of the United States had laid it down as the duty of the court.

Mr. MERRICK. In a complicated case.

The COURT. The court has to decide as to the proper case.

Mr. CARPENTER. [To Mr. Merrick.] I thought you were in error about it.

Mr. MERRICK. That is the law and I am glad you have learned it.

Mr. CARPENTER. I thought you were in error about it.

Mr. MERRICK. I am glad you have learned it. It may serve you on a future day.

Mr. CARPENTER. I am one of those people who can learn.

Mr. MERRICK. Your friends are glad you know the fact.

Mr. CARPENTER. They all do know it.

Mr. MERRICK. Hope springs eternal in the human breast.

Mr. CARPENTER. So I judge from the way you go on.

Mr. MERRICK. A party defendant cannot claim the advantages of the position of a witness, and at the same time avoid its duties and responsibilities. If he becomes a witness he is, as is stated in one of the decisions of the supreme court of Massachusetts, in a more disadvantageous position than another witness, because he then has upon himself all the responsibilities of a witness and a party.

The COURT. In other words, he is at liberty to claim no protection or indulgence in his capacity as a witness in consequence of his being at the same time a party in the case.

Mr. MERRICK. No, sir.

The COURT. His privilege as a defendant will not protect him against his obligations as a witness. If he goes on the stand he has that disadvantage.

Mr. MERRICK. Yes, sir. As to his obligations I find a proposition,

which I am discussing in part, well formulated in the case of *The State against Ober*, 52 New Hampshire, page 464 :

His object in taking the witness stand was to show himself innocent of this offense by testifying that he had not kept liquors for sale within the year, and putting himself in such a position, and declining to testify except to such matters as would tend to exculpate him, and refusing to answer direct and material inquiries raised in the case, was a matter of great significance, which it was the right if not the duty of the State's counsel and of the court to bring prominently to the attention of the jury.

In the case of *The Commonwealth against Webster*, 5 Cushing, 316, I find the proposition put in this shape :

Where probable proof is brought of a state of facts tending to criminate the accused, the absence of evidence tending to a contrary conclusion is to be considered, though not alone entitled to much weight, because the burden of proof lies on the accuser to make out his whole case by substantial evidence.

The burden is on the Government all the time. It never shifts.

But where pretty stringent proof of circumstances is produced tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they existed, and show, if such was the truth, that the suspicious circumstances can be accounted for consistently with his innocence, and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting would tend to sustain the charge.

Mr. HENKLE. Now, your honor, that is precisely the reverse of what is decided in 17 Wallace.

Mr. MERRICK. Not a bit of it. Not a bit of it. 17 Wallace only holds that the burden of proof is always on the Government.

Mr. HENKLE. I wish you would address your argument to the court upon these disputed points of law.

Mr. MERRICK. Then why does the counsel interrupt me when I state my propositions, by telling the court that I am contradicted by the Supreme Court of the United States.

Mr. HENKLE. Because you are reading from an authority—

Mr. MERRICK. [Interposing.] I am stating my proposition. I am presenting a decision and reading it as my proposition.

Mr. HENKLE. I do not think you have a right to do that.

Mr. MERRICK. Why ?

The COURT. You can ask the court for an instruction on that point.

Mr. MERRICK. Ask the court. He will give you an instruction.

Mr. HENKLE. Yes ; but my learned friend is making an impression on the jury.

Mr. MERRICK. Certainly I am, and I hope I am making a good one.

The COURT. He has been trying it for a week.

Mr. HENKLE. He has been trying it for two weeks.

Mr. CARPENTER. On the same question his honor ruled that Colonel Ingersoll must address the court.

Mr. MERRICK. No, sir. Colonel Ingersoll was addressing the jury and claiming that they had a right to decide upon the law and the facts, and the court said counsel could not discuss the question in reference to the admissibility of a piece of testimony, and he had to stop.

Mr. CARPENTER. It was precisely the same question in regard to the non-production of the books ; identically the same question.

Mr. MERRICK. No, sir. It was in regard to the admissibility of testimony, and the court said he could not argue that to the jury at all ; that such a question was exclusively for the court.

The COURT. Now, Mr. Merrick, go on in your own way.

Mr. MERRICK. Then, your honor, keep that row quiet [referring to defendants' counsel].

The COURT. Please not to interrupt him any more. He can state his

propositions. Of course I cannot concede that he has the right to argue questions of law to the jury, but he disclaims any purpose of that kind, and says he is merely using books for the purpose of stating his position.

Mr. HENKLE. He is reading authorities.

Mr. MERRICK. I am not reading from any book.

Mr. HENKLE. You quoted from a book.

Mr. MERRICK. It is not in quotation marks.

Mr. CARPENTER. A very nice way to whip the devil around the stump.

Mr. BLISS. They do not like the whipping.

Mr. MERRICK. Now, gentlemen, I will go back.

But where pretty stringent proof of circumstances is produced, I say—and strange it is that the supreme court of Massachusetts agrees with me, and says precisely the same thing in precisely the same words—*but where pretty stringent proof of circumstances is produced tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they existed, and show, if such was the truth, that the suspicious circumstances can be accounted for consistently with his innocence, and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting, would tend to sustain the charge.*

Now, these same propositions are formulated in other books, to which, since there is some objection, I will not refer. They will be laid before your honor.

The COURT. It will hardly be proper to repeat the same proposition by reading book after book.

Mr. MERRICK. I appreciate that.

The COURT. And so accumulate what would seem to be authority.

Mr. HENKLE. That is what he has done.

Mr. MERRICK. Is that so?

The COURT. I suppose General Henkle would hardly contend that that is so.

Mr. MERRICK. He is very much frightened; he would not say so under ordinary circumstances, but he is not fully responsible now for these little things.

Mr. HENKLE. What am I frightened at?

Mr. MERRICK. I shall argue these questions to the court, of course. I have stated my view of the law to the jury. Now, I will state to the jury one other proposition of law, or formulate it in a different shape. From my reading of the law, and from a careful examination of all the authorities, I have come to the conclusion that the proposition of law which I will now read to you is the law applicable to the facts in this case.

When a defendant in a criminal cause becomes a witness on his own behalf, and has been notified to produce books and papers admitted by him or shown to have been in his possession, and which, if produced, would have been competent evidence in the cause, *and upon cross-examination such defendant witness reiterates his refusal to produce such books and papers*, the jury is entitled to presume that such books and papers, if produced, would have disclosed evidence disadvantageous to such defendant, and such failure casts suspicion on all the other evidence adduced by said defendant, and is a circumstance tending to prove his guilt.

Mr. CARPENTER. I guess that won't do.

The COURT. Please read that proposition again.

Mr. CARPENTER. He says that is not in any book.

Mr. WILSON. The only book that it will ever appear in will be Mr. Merrick's speech when it is printed and bound.

Mr. MERRICK. Did not the court ask that very ornamental gentleman to keep quiet?

Mr. WILSON. I will keep quiet.

Mr. MERRICK. I know he will not do it. [To the court.] Shall I read it to you, or shall I hand it to you in writing?

The COURT. I do not know whether I ought to express an opinion about it. I understand your proposition to be this: That if you give notice to a defendant to produce a certain book, and he fails to produce it, you have a right to infer that the book would contain evidence against him.

Mr. MERRICK. No, sir.

The COURT. If that is your proposition I cannot assent to it.

Mr. MERRICK. No, that is not the proposition.

Mr. WILSON. The proposition goes further than that, if I understand it.

Mr. MERRICK. I do think, your honor, that I ought to be allowed to go on.

The COURT. I want to understand that proposition.

Mr. MERRICK. I will tell you.

Mr. CARPENTER. I would like to have the stenographer read what he said.

The COURT. I requested Mr. Merrick to read again the proposition that he made.

Mr. MERRICK. I will do so:

"When a defendant in a criminal cause becomes a witness on his own behalf, and has been notified to produce certain books and papers admitted by him or shown to have been in his possession, and which, if produced, would have been competent evidence in the cause"—

That is the first—

"and, upon cross-examination, such defendant witness reiterates his refusal to produce such books and papers, the jury is entitled to presume that such books and papers, if produced, would have disclosed evidence disadvantageous to such defendant, and that such failure casts suspicion on all the other evidence adduced by said defendant, and is a circumstance tending to prove his guilt."

Now, the broad expression "books and papers" may be too large and too latitudinarian, but it can be brought down to specific papers. The prayer is predicated not alone of giving notice to produce, your honor, but also of the witness's answer on the cross-examination, and I will illustrate now, as I go along, in my argument to the jury, the application of this rule of law.

The COURT. You had better not undertake to defend your rule of law to the jury, because that would be arguing—

Mr. MERRICK. [Interposing.] Oh, no, I am not going to defend the rule of law; I am going to argue the facts; that is all.

The COURT. You, of course, have a right to assume any proposition to be law, for the present.

Mr. MERRICK. Certainly; I am not going to argue it.

The COURT. I give you my own intimation, though, that I will have to be convinced of the correctness of that proposition.

Mr. MERRICK. Yes, your honor. If, for instance, a defendant has a paper in his possession—that is the meaning of the proposition—which relates to the transactions of the case, and he is notified to produce it, and does not produce it, and then he takes the stand and is asked

on cross-examination to hand that paper in and does not do it, then the jury has the right to presume that, if produced, that paper would show evidence disadvantageous to him, and these authorities here on the table sustain that proposition.

The COURT. Well, I have never seen them.

Mr. MERRICK. Now, gentlemen, I will discuss the facts, and it is a matter of fact as well as a matter of law.

The COURT. Before you come to that, Mr. Merrick, I will repeat now what I have said before: That if a party, having documentary evidence in his possession, has received notice to produce that, and he fails to produce it after acknowledging that he possesses the paper or document, the other side may adduce secondary evidence to prove its contents. His having failed to produce it in obedience to the notice will create a strong presumption that the secondary evidence is true. But there is to be no unfavorable inference drawn against the defendant on account of his mere failure to produce a book or a paper.

Mr. MERRICK. On notice.

The COURT. On notice.

Mr. MERRICK. I agree to that.

The COURT. The unfavorable evidence arises out of the secondary evidence. The secondary evidence will stand as competent evidence against the defendant; and the defendant having failed to produce the primary evidence in the first place, in compliance with the notice, the secondary evidence is the best evidence, and, whatever that is worth, it must be against him, and be against him the stronger because of his having failed to produce the primary. But there is no presumption to arise against the defendant merely from his failure to produce books in evidence.

Mr. MERRICK. Oh, no, not at all.

The COURT. His failure to produce the books in evidence raises a strong presumption in favor of the secondary evidence as the true evidence in the case. That is the doctrine, I think, I have laid down before.

Mr. MERRICK. Yes, sir, that is it; and I do not differ from the Court in that a particle; nor does this prayer express a particle of difference from that position. The unfavorable inference does not arise from the non-production on the notice; it is on the cross-examination. That is what I say. Suppose on cross-examination the witness refuses to answer—I do not want to argue this now—but it is on the cross-examination. I put in the word “notice,” though it is really a word unnecessarily inserted.

When a defendant in a criminal cause becomes a witness on his own behalf, and has been notified to produce books and papers admitted by him or shown by evidence to have been in his possession, and which, if produced, would have been competent evidence in the cause, *and further than that, upon cross-examination*, such defendant reiterates his refusal—and so forth.

The only reason for putting in a notice was to let him know that when he came to be cross-examined he had better be ready, for that is a matter about which he will be interrogated. It gives him notice that he will be interrogated about that upon cross-examination. I was not talking about the notice. I claim nothing under that. It is simply under cross-examination that I claim. Suppose a witness comes on the stand and swears, “I did not kill Robinson,” and he testifies all along that he did not kill Robinson. The prosecution says to him, “Here is the knife that was taken from his body; did you not have that knife in your

possession on the night he was killed?" "I decline to answer the question."

The COURT. He is obliged to answer it, and on cross-examination you may interrogate him as to his books.

Mr. MERRICK. Then you cannot put him in jail; you cannot constrain him to answer, because you stop the trial.

The COURT. After all, it is a question of the weight to be given to secondary evidence under all the circumstances.

Mr. MERRICK. It is a question of the weight to be given to the evidence of the witness who thus testifies.

Mr. CARPENTER. Oh, no.

Mr. MERRICK. When a witness answers one question and refuses to answer another, what weight can you give to the testimony of such a witness as that?

The COURT. Oh, well, that is a general rule as to all cross-examinations.

Mr. MERRICK. That is all I am contending for.

Mr. CARPENTER. The court decided that he was not bound to produce them.

The COURT. Yes; the court decided that he was not bound to produce them on notice.

Mr. MERRICK. Certainly not.

The COURT. But the consequence——

Mr. MERRICK. [Interposing.] The consequence of his non-production was the right to offer secondary proof. When he comes to his cross-examination, he takes the consequences then of the impression which his refusal as a witness may make. Now, what was the fact in this case under the notice? I asked for the books. They refused to produce them, and it was stated on the other side that we could not have the benefit of a notice in a criminal case, which the court overruled. On pages 2364 and 2365:

Mr. DAVIDGE. As we have declined to produce the letter-books, I think you might close.

* * * * *

Mr. DAVIDGE. You need not trouble yourself about our books or papers. *When we think fit to produce them we will do so.* We do not intend to *HELP the prosecution* in this matter.

On page 2388:

Mr. MERRICK. If I smoke out that book it will not, and if you do not bring it in the inference will be that you are afraid to do so.

Mr. INGERSOLL. That inference will be a terrific thing.

At page 2391:

The COURT. That you will not produce it, then the court will assume that you have it.

* * * * *

The COURT. You have had a notice to produce it, and the answer is——

Mr. INGERSOLL. *That I will not.*

Page 2392:

Mr. DAVIDGE. No party on trial can be required to adduce anything *in aid of the prosecution against him.*

The COURT. Is it possible that that is the law?

Page 2393:

Mr. DAVIDGE. I repeat that the law of this land does not require a party upon trial in any manner to furnish any *evidence against himself.*

Page 2395:

Mr. DAVIDGE. Well, you cannot make the humblest defendant say one word, turn a key, do a single act in the direction of *helping the Government against him*. He has a right to stand within the sacred circle of the law, and tell the Government, "*Do your worst.*" And that is *just what we are telling this Government*, "*Do your worst; we will not help you; we know you are bent on sacrifice; you have got the instruments, you think; if you have, put them in operation; we propose to suffer the sacrifice, if the time should come. But it never will come,*" your honor, "*but we do not propose to put ANOTHER KNIFE in your hand or to help you in any manner.*"

Pages 2397 and 2398:

The COURT. I will assume that the witness is credible, &c. * * * You have received notice to produce it, and have refused. You say that your refusal is not to be taken as an admission that you have the books. On the contrary, I think the authorities differ from you.

Page 3717:

Mr. MERRICK. We asked for the stub-book.

Mr. DAVIDGE. You will have that, too.

Mr. CARPENTER. You may get more stubs than you want.

Mr. Davidge says, "You will have that, too," but we never got it.

Now, the court says that no letter in the letter-book is to be read or looked at that does not refer to this subject; that nothing in any book is to be looked at—bear this in mind—except it refers to this case. I am reading these extracts to lay a foundation for what I am going to say.

On page 3907, on Dorsey's cross-examination:

Mr. INGERSOLL. It is very evident you will never see one of them. You would not get them even if they contained nothing but poetry about spring.

Do you believe we would not? When we asked about the stubs do you believe we would not have been allowed to see them if they had not contained something in them that was damaging? Remember that this is on Dorsey's cross-examination. When I asked for some of those books he was on the stand, sworn to tell the truth and the whole truth. After he had testified in his own behalf, upon examination by his own counsel, he comes into my hands for cross-examination, and I ask him to let me see that part of the letter-book where two pages had been torn out, and he refuses to do it. Now, I asked defendants' counsel this:

Will you produce the books containing those two mutilated places?

Mr. Ingersoll replies:

We will not.

The court had said that the places referred to were the only part of the books we could look at; that we could not turn over the leaves and look at anything else.

Page 4438:

Mr. MERRICK. Have you made an examination of the stubs of the checks?

Mr. INGERSOLL. Yes.

Mr. MERRICK. You are going to keep them, are you not?

I had called for the stubs of those checks.

Mr. INGERSOLL. Yes.

Page 3917:

Q. In looking for the letters of May 13, 1879, and December 9, 1878, in your books, did you examine the index to your books?

That is, for letters addressed to Bosler and to John W. Dorsey.

A. I did not ask Colonel Love that question. I don't know whether he did or not.

Mr. MERRICK. Will you allow us to see the *index only*?

Mr. INGERSOLL. We will not.

Mr. MERRICK. Will you allow us to see the index to the book of December 9, 1878, under the letter D?

December 9, 1878, under the letter D, was all I wanted.

Mr. INGERSOLL. No.

I am addressing these questions to Dorsey on the stand.

Mr. MERRICK. Will you allow us to see the index to the book of May 13, 1879, under the letter B?

Mr. INGERSOLL. No.

Mr. MERRICK. I give you notice to produce the indices of these two letter-books.

The WITNESS. I am not sure that the book is indexed.

We proved by Gibbs that he had indexed the book. Now, that is the way the fact stood. On cross-examination, this defendant, Stephen W. Dorsey, testifying in his own behalf, having sworn to certain things, was asked to produce the record in his possession bearing upon those things. Having sworn that certain letters were not written, I asked to see the index, under D, of a certain date in December. "No, you can't see it." I then asked to see the index of his letter-book, under the letter B, of a certain date in May, 1879. He will not let us see that. Admits it to be in his possession, but will not produce it. Now, what is the inference from that answer and that conduct of this witness on the stand?

The COURT. The only inference is that your secondary evidence stands.

Mr. MERRICK. That is under the notice. But when the defendant himself refuses to answer a question or produce a paper, what is the inference, as a matter of fact? I am not speaking of law; I am speaking of it as to its effect upon the testimony of the witness generally.

The COURT. He is on the stand as a witness, and you are cross-examining him as a witness, and he is not obliged to produce the books.

Mr. MERRICK. He is obliged to answer the questions, is he not, your honor?

The COURT. Yes, he can answer the questions.

Mr. CARPENTER. I believe he did.

The COURT. He did answer the questions, but his refusal to produce the books, previously announced, as well as announced on his cross-examination, leaves you in no other position than that you have your secondary evidence to stand upon, strengthened by the fact, reiterated, that he will not produce his books.

Mr. MERRICK. I suppose that the jury must determine in reference to the credibility of the witness and how far they can regard his statements as important from all that he says, and all that he does not say, and from his appearance on the stand.

The COURT. Undoubtedly, that is true.

Mr. MERRICK. That is all that I mean. They must determine from the appearance of the witness and what he says; and this cuts up the argument, unless your honor will allow me to argue the law to you, which you do not wish to hear now.

The COURT. I think it would not be fair to the other side.

Mr. MERRICK. I do not suppose it would.

Mr. HENKLE. Unless you let us reply.

The COURT. Yes; but that would interrupt the course of argument.

Mr. MERRICK. Of course, and the other rule is laid down. I must assume my propositions of law, and argue my case upon those propositions. I have read my proposition of law as formulated in a case, and also read my proposition as formulated by myself.

Now, as a proposition of fact—I am reasoning upon facts—what shall the jury do with a certain piece of evidence, as matter of fact? What shall the jury believe, from a certain deportment of a witness, as matter of fact? Suppose you accuse a man of murdering John Robinson—the illustration I have just used—the defendant on the stand, swearing to tell the truth, and swearing he did not murder John Robinson, and you knew that there was a knife found in the body of Robinson which belonged to this man who killed him, and this man had got possession of the knife after the killing and after a witness had seen the knife in the body of the dead man, so that he could identify it again, and the murderer is on the stand to be examined, and you ask him: “Did you not have on that night a certain knife? Have you got that knife now?” “I have got a knife in my pocket.” “Will you let me have it and look at it?” “No.” What would you infer? Your witness, already examined, had specified certain marks upon the knife that he had seen, had described it. What would you infer from the defendants’ refusal to bring out the knife and show it? That if he did bring it out and show it to you it would condemn himself. This is ordinary logic on fact.

Mr. Ingersoll stated in his speech that he did not produce these books because he did not choose to give a chart for Rerdell to stake out his testimony by. That was the reason given in his speech for their non-production. I must say that I hope the counsel did not intend to deceive the jury as to his reason. But when I called for the stubs of the checks and the indices to the two letter-books, it was long after Rerdell had testified, and the Government had closed its case. Why did he not bring them in then, when S. W. Dorsey was on the stand on cross-examination? The reason for their non-production before Rerdell testified might have been a very good reason. Mr. Ingersoll says that his reason for not bringing in the books and papers was as I have just stated. But, gentlemen of the jury, that was on the notice. When S. W. Dorsey came upon the witness-stand to be cross-examined I asked him, after Rerdell had testified and had been dismissed, and the Government’s case had closed, to let me look simply at the index of his letter-book under the letter B for a letter dated December 9, 1878, and then I asked him to let me look at the index to his letter-book, under the letter B for April 13, 1879, and Mr. Ingersoll, in each case, replied: “I shan’t let you see it.” Now, if Mr. Ingersoll had not known at the time that there was something criminating in that paper, in its relation to the proof already offered, would he have refused to produce it? Put yourself in the attitude of counsel. The learned counsel was asked about the stubs of the checks, on Dorsey’s cross-examination, and after Rerdell had testified, “Have you examined the stubs of the checks?” He says he has examined them. “I suppose you will not produce them?” “No; we propose to keep them.” Now, he tells you that he had examined the stubs of those checks. This was after Rerdell’s testimony, when Rerdell’s testimony could not be staked out by that chart, for it was already in and was already staked out. Counsel had examined the stubs and knew what evidence there was in them, and in what language those stubs would speak if produced in court. Do you believe that unless the counsel had known that those stubs would have spoken language condemnatory of his client, he would not very gladly have said, “Here they are, make the most of them?” He looks with earnestness to the welfare of his client, and cherishes an active and sincere wish to do all in his power to benefit that client. Without judging of other men by myself, I say to this jury that if I had been called upon to produce

a paper on the cross-examination of my client, charged at the bar of criminal justice, which paper I had previously examined and found to contain nothing detrimental to him, I would have felt recreant to my duty as his lawyer if I had not brought the paper before the court. Mr. Ingersoll's anxiety in the interest of his client has been manifested throughout this case; no one questions his ability and his capacity to judge of the bearing of evidence; and yet, knowing the inferences which any rational man would draw, he says, "I have examined the stubs of those checks, and you shall not see them." Why? Not meaning to find fault with his conduct as counsel, I should feel that I had no excuse for refusing to produce those stubs, except the excuse that, on examination, I had found that they would criminate my client. And if that is not common sense, there is no such thing as common sense.

The learned counsel on the other side showed his uneasiness, showed his appreciation of his peril in not producing those papers by the subterfuge he resorted to in the proposition he made, knowing, as he must have known, that the proposition could not be, even if acceded to, carried out by the court. Why did he make such a proposition, except that he knew that there was danger from his non-production of those books? He proposes that there shall be three men appointed by some process or other.

Mr. INGERSOLL. I said the court might appoint three that we would select.

Mr. MERRICK. The court might appoint three that we would select and they should take the books and examine them—an extra-judicial proceeding altogether that no court in Christendom could recognize! If done in a criminal case it would vitiate the whole trial; it would have been substituting three men for the jury. The counsel knew that perfectly well. His honor stated that he would not carry it out if it was agreed to by both sides. Moreover, how were you to swear those three men? You cannot administer an oath, make it binding and subject the affiant, if he swears falsely, to the pains and penalties of perjury, unless the law authorizes the oath to be administered. It would have been a mere sham to swear three men to do something which the law could not, by any possibility, recognize. But why propose those three men? Here were twelve men already sworn, sworn to do justice, and lawfully sworn. Was he afraid of you, gentlemen of the jury? Why not let you look at the books?

The COURT. No; the matter would have been brought to the court first, because the court has to decide upon the question of the admissibility of evidence.

Mr. MERRICK. Of course. Pardon me for passing your honor by; it was in the heat and rapidity of argument. The books would have had to be submitted to one man and one man alone, his honor on the bench, venerable in the discharge of the duties of his high magistracy, and whose integrity no man questions. Why, then, propose that three men should be selected, who, in some corner, should examine those books, instead of laying those books before the only man appointed by the law to say whether they should go to the jury or not? Knowing, too, that if this one man, this venerable magistrate, passed the books as evidence, or the indexes to the books, that they would go to twelve citizens sworn to try this case. Why talk about some petty tribunal of three men who could not be sworn? And when the judge had examined those books himself, what he might have seen that was not proper to be made public he would have locked up in his breast and allowed that breast to be cut open before he would have disclosed the secret. What he found proper

to go to the jury would have gone to the jury, and that alone. The proposition, then, which the counsel made comes back to visit upon his head the very consequences which it was sought to avoid. For his non-production of those check-books, and of the indexes to those books, I say, necessarily raised the inference that they contained what we say they contained, and even other things far more damaging. The non-production of those stubs and of the indexes of those letter-books, as called for, cast a cloud over the whole testimony of his client as not sincere, open, frank, and in good faith. And he now comes forward and says that he had seen them himself, and would not let you have them; and then after that he shows his appreciation of the peril he is in by the subterfuge he adopts in order to escape that peril. Instead of escaping a peril by the subterfuge, the fact is apparent to you that it was but a subterfuge, and therefore it makes it more distinctly manifest that he knew his peril and feared your judgments.

I can not doubt but that he was willing to trust the judge. He knew that the books would go to the judge, and the judge alone at first, and only such parts as were competent and proper evidence would then go to you. But he did not adopt that course. Why? Because he knew that would be the ruin of his client. But to escape the imputations and consequences of his non production, he gets up a subterfuge in order to delude you into the belief that he was willing, under certain circumstances, to produce the books. But, gentlemen, there were no circumstances on God's earth that could have brought that stub-book into court, none that could have brought in the indexes of those letter-books; and, as the court says in reference to one point of law, the secondary evidence must stand unimpeached, which is, that the index would have referred to a torn place where Rerdell says there should have been this letter of Rerdell to Bosler and this letter of Dorsey to Bosler.

Mr. INGERSOLL. I do not understand that the court has so decided. A letter-book is secondary evidence itself, and a notice to produce a letter-book would simply amount to a notice to produce secondary evidence. I never understood the court so to decide.

Mr. MERRICK. The index is primary evidence, your honor.

Mr. INGERSOLL. No; but the letter-book itself is secondary evidence, and I never understood your honor to decide that we must respond to notice to produce secondary evidence.

Mr. MERRICK. I am not talking about the notice; I am talking about cross-examination.

The COURT. No; I have not decided that point, because it has not been made.

Mr. MERRICK. That point has not been made.

Mr. INGERSOLL. But that point was made; I made it long ago, and your honor decided it exactly as you decided the other.

Mr. MERRICK. Mr. Ingersoll was not in when the court last spoke about it.

The COURT. I was speaking with my mind directed particularly to the stub-books and the index. The courts have held that copies of letters made by the press are themselves secondary evidence.

Mr. INGERSOLL. Yes, sir; I am only taking exception to the remark made about the letter-books, not about the stub-books.

Mr. MERRICK. Let it apply to the stub-books.

Mr. INGERSOLL. No; I do not want it to apply to the stub-books. I object to the remark about the letter-book, because the letter-book itself is secondary evidence, and notice to produce secondary evidence does not entitle proof to be given of the contents of that secondary evidence.

Mr. MERRICK. The index is not secondary evidence; the copy is. The index is another thing. He paraded a parcel of checks here. We did not care about the checks. We wanted the stub-books. Why? Let them bring in all the checks they like. But the stub-books, according to Rerdell's testimony, would have shown what checks he charged to mail, and who got the money on those checks; in some instances. May be we would have found a check to J. B. B. for \$2,000, which Dorsey, on the stand, stated he had never drawn, whilst the witness Bissell swore he saw him draw it and took it from his own hand.

Mr. INGERSOLL. That is not the testimony.

Mr. MERRICK. The check was passed directly to witness. He testified that he got it first, and then it was agreed that Tankersley should take it and get the money on it, and he gave it to Tankersley at the table, and that is the way the check was disposed of.

Mr. INGERSOLL. No; the testimony was that he did not know that any check was drawn to him, and his final recollection was that it was probably given to Tankersley.

Mr. MERRICK. Oh, no; you will find that Bissell stated it exactly as I have stated it.

Mr. INGERSOLL. I will read from page 4433, at which I just happened to open :

Approximately how much, from the circumstances?

That is about the amount.

A. From the circumstances surrounding the check itself, my recollection would be that the check was for a sum in the neighborhood of \$2,000, but I would not say, and never have stated, that the check was for exactly \$2,000 or any other specific sum, because I had no recollection of it. The whole sum itself was not payable to me; it was payable to four different gentlemen, I think, and the check was collected by a gentleman other than myself, and the proceeds were by him afterwards distributed. My recollection as to the amount of it, of course, is indistinct and uncertain. I do not know that it was for \$2,000, or for just how much it was.

Q. Where was it drawn?

The WITNESS. Do you mean in what town?

Q. In what locality?—A. In Leadville.

Q. Did you see S. W. Dorsey sign the check?—A. Yes, sir. Now, remember, that I do not swear positively that it was a check, or that it was a draft. My recollection is that it was a check, but I saw him sign, it whatever it was. It came into my hands for a second, and then passed to the other gentleman, who afterwards collected it, and paid to me my distributive share of it.

Mr. MERRICK. That is just my recollection.

Mr. INGERSOLL. Wait. He says further in his cross-examination, on page 4434:

Q. Do you not remember that it was given to Tankersley, and that Tankersley collected it?—A. My recollection is this, Colonel Ingersoll, stating it generally: That upon the occasion it was suggested that the instrument be made payable to me, and that my initials were asked by Senator Dorsey; and my recollection is that, before the delivery of the instrument, Mr. Dorsey himself, as I recollect it, asked would it not be just as well to let Tankersley (or "Tank," as we familiarly called him, he being an intimate friend of mine) collect it; and I said, "It makes no difference to me." As I recollect it that instrument was signed by Mr. Dorsey, and it was passed directly to Judge Tankersley; and after Tankersley got it, my recollection is that he passed it to me and I simply glanced at it and passed it back to him.

Now, we will come down to the question as to whom it was made:

I can only give you my best recollection, Colonel, in regard to that matter. I do not know positively which it was.

That is, as to whether it was a draft or a check.

Q. Do you recollect on what bank it was drawn?—A. Oh, no.

Q. Do you know where the bank was situated on which it was drawn?—A. I have no recollection of that at all.

The COURT. That is a little aside.

Mr. MERRICK. That is just as I stated it to be.

Mr. INGERSOLL. No ; it is not as you stated it. He did not say that Dorsey gave the check to him.

Mr. MERRICK. He did say so ; you read it yourself.

Mr. BLISS. Let me read one passage you omitted.

Mr. INGERSOLL. I have not read it all.

Mr. BLISS. Directly before where you commenced.

Mr. INGERSOLL. I did not see it.

Mr. BLISS. [Reading from page 4433:]

Q. Judge Bissell, did you ever see a check drawn by S. W. Dorsey in favor of J. B. B. ?—A. According to my recollection, I saw a check drawn by Mr. Dorsey, and my recollection is that it was drawn to J. B. B. or bearer ; that is my recollection, sir.

Mr. MERRICK. Then he goes on to say that it was passed to him and he handed it to Tankersley.

Mr. INGERSOLL. He finally says he does not know to whom it was drawn.

Mr. MERRICK. So I stated, precisely.

Mr. INGERSOLL. I do not think you did.

The COURT. He states that as the fact according to his best recollection ; he was not altogether positive about it, and I presume, from the circumstances at the time when the check was given, there might have been some little obscurity in his memory.

Mr. BLISS. There was some attempt to try to make him say that it was a small amount, some \$1,500, but he declined to do so.

Mr. INGERSOLL. They tried to prove that it was given to Bissell.

Mr. MERRICK. That may be so. You have got that in.

Mr. INGERSOLL. You tried to prove that it was given to Bissell.

Mr. MERRICK. Rerdell says that Dorsey told him that it was given to Belford and it was charged to mail. It was not given to Belford, but was given to Bissell at the gaming-table.

Mr. INGERSOLL. I object to that. There is no evidence about that gaming-table. You cannot find that in the testimony.

The COURT. There is no such evidence.

Mr. MERRICK. That is my inference from his testimony.

Mr. INGERSOLL. Rerdell does not say that.

Mr. MERRICK. No, sir ; but I infer it from Bissell's testimony.

Mr. INGERSOLL. Rerdell does not say what you said before.

Mr. MERRICK. I say I infer that from Bissell's testimony.

Mr. INGERSOLL. You said that it was Rerdell who stated that.

Mr. MERRICK. Can't I speak of my inferences ?

Mr. INGERSOLL. Oh, if you speak in a Pickwickian sense, all right.

Mr. MERRICK. But Rerdell says that Dorsey told him it was given to Belford.

Mr. INGERSOLL. He does not say that.

Mr. CARPENTER. It is not in the record.

Mr. MERRICK. Look for it.

Mr. CARPENTER. You will never find it.

Mr. INGERSOLL. That is my recollection, that he did not say it.

Mr. MERRICK. That it is charged to mail.

Mr. INGERSOLL. That is another matter.

Mr. MERRICK. May it please your honor, will you protect me from this continual growl and snarl ?

Mr. CARPENTER. The counsel states that Rerdell said that Dorsey told him that the check was given to Belford. There is no such testimony.

Mr. MERRICK. Look and see.

The COURT. That is my recollection.

Mr. MERRICK. That is my recollection.

Mr. CARPENTER. I will find the testimony.

The COURT. You may be correct.

Mr. MERRICK. I have disturbed these gentlemen upon the other side so much that they can't help manifesting great uneasiness.

The COURT. Adjourn the court.

Thereupon (at 4 o'clock and 5 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

THURSDAY, JUNE 7, 1883.

The court met at 11 o'clock a. m.

Present, counsel for the Government and for the defendants.

Mr. CARPENTER. If the court please, before Mr. Merrick proceeds, I desire to call attention to the question I raised yesterday. Mr. Merrick says in his speech :

Rerdell says that Dorsey told him it was given to Belford and was charged to mail

I stated yesterday that there was no such statement in the testimony of Rerdell. The testimony of Rerdell is very brief upon that subject, and I will read it to show there is nothing of that kind in it. I read from page 2384 :

Q. State them.—A. One to Samuel Jones and one to James B. Belford, member of Congress.

Q. What was the charge to James B. Belford?—A. Two thousand dollars.

Q. Money or what?—A. The amount was taken from his check-book.

Q. Did you charge it?—A. I did.

Q. How much was it?—A. Two thousand dollars.

Q. What was it for?—A. It was simply marked "charge to mail account" on the stub of the check-book.

Q. Was it for money paid to him, or for horses or chariots, or what?—A. I do not know that.

Q. When was that?—A. That was in the summer of 1879.

Q. What month?—A. I could not tell you that; probably July. I think it was July.

Q. Is that your best opinion?—A. That is my best recollection. I think it was in the month of July.

Q. Was there a check given to Mr. Belford?—A. There was.

Q. On what bank was it drawn?—A. Drawn upon the bank of Middleton & Co.

Q. For how much?—A. Two thousand dollars.

Q. Drawn to his order or drawn to bearer?—A. That I could not tell you.

Q. Did you hand him the check?—A. I saw the check.

Q. Did you hand him the check?—A. I did not.

Q. What was written on the stub of that check?

Then came a discussion, and that is all he said about it. Now, on page 2400 the whole testimony was ruled out by your honor. Your honor stated that it had nothing to do with the case, and ruled it out against the exception of the defendants. The whole testimony of Rerdell in regard to Belford was stricken out, and then weeks afterward Bissell was brought here to confirm what had been stricken out of the record. I will read, briefly, what your honor said on the subject:

The COURT, Very well; then the answer was not responsive to the question. It does not belong in this case, and I think it ought to go out.

Again :

It is not right to cast an imputation upon a respectable name without his having an opportunity to meet it, if possible.

Mr. INGERSOLL. He will have plenty of opportunity probably to meet it.
The COURT. Not in this case.

Again :

It is not a fact in the case at all.

Again the court :

I do not regard it as a fact in the case, because there is no case on that matter of Belford's.

Again, on page 2401 :

We will eliminate that answer, because it does not involve anything in this trial.

There is no such thing in the testimony. It was all stricken out, and afterwards Bissell was brought here to corroborate a record that did not exist. The evidence of Bissell, I submit to the court, ought to be stricken out now.

The COURT. Bissell was not brought here in regard to the testimony in respect of Belford, but in regard to what Rerdell said in connection with the check, as I understood it.

Mr. CARPENTER. As Rerdell never said anything except what I have read, and as there is no J. B. B. and nothing about Dorsey telling him anything on the subject, I think the testimony of Bissell ought to be stricken out of the record. It is not a fact in it, and is not responsive to anything in the record. However, I have said all I wish to say about it.

The COURT. The testimony of Bissell will remain in the case.

Mr. CARPENTER. Very well.

Mr. MERRICK. Rerdell, subsequently in his testimony, speaks of the check as bearing the initials J. B. B.

Mr. CARPENTER. He does not, and you cannot show it.

Mr. MERRICK. Our friend, Mr. Carpenter, is very much in the habit of positive contradiction.

Mr. CARPENTER. Show it.

Mr. MERRICK. I cannot stop in the midst of my argument to contradict a man who does not seem to know what the record contains. Mr. Ingersoll, in his speech, commented on this subject, and stated that Rerdell had said so, and that it originated with him.

Mr. CARPENTER. You are utterly mistaken. Mr. Ingersoll denied that Rerdell had said any such thing.

Mr. MERRICK. He said it originated with him.

Mr. CARPENTER. He said Rerdell never said a word about it.

Mr. MERRICK. Rerdell did.

Mr. CARPENTER. He did not.

Mr. MERRICK. There is no use of this discussion.

The COURT. We will not go any further into the matter now.

Mr. CARPENTER. I think when counsel states it is so, and I deny it, he ought to exhibit the record.

Mr. MERRICK. I decline to take the trouble.

Mr. CARPENTER. We were obliged to do it.

Mr. MERRICK. You were obliged to take unnecessary trouble probably.

Mr. CARPENTER. You will never find it.

Mr. MERRICK. I will look and bring it in court to-morrow. In reference, gentlemen of the jury, to the subject of Mr. Belford and the check to J. B. B., charged to mail according to the stub-books, I desire to make in passing a single remark. Injustice may possibly have been done Mr. Belford by either the misapprehensions of the witness, the

representations of Dorsey to the witness, or in some other way. Unfortunately Mr. Belford's name was introduced into the case as connected with these mail transactions. I endeavored to keep it out, and it was upon my own suggestion that the testimony in regard to him was finally stricken out. I think it due to Mr. Belford to say that there is no testimony in the case nor any that has been stricken out of the case that in any way implicates or involves him in the slightest degree in these star-route transactions. He is an honorable and a prominent gentleman, occupying a high position in public life. Rumors affecting him with regard to transactions that have so universally excited the odium of the entire people of the country may be calculated to do him some damage, and I make these remarks in reparation for any wrong that may have occurred and as an assurance of my just and correct appreciation of his character as a public man and as a citizen.

The COURT. In regard to that matter the evidence of Rerdell was as to what Dorsey told him.

Mr. CARPENTER. I beg your pardon. I have just shown your honor he did not say Dorsey ever told him a word about it. I have just read the record and showed your honor he makes no such statement. Rerdell does not say so. That was the point raised yesterday, and your honor said you thought I was wrong, and so I referred to the record and showed your honor this morning that I was right, and that he did not say that Dorsey told him one word about it. I read every word of Rerdell's testimony about that check.

Mr. MERRICK. Mr. Carpenter is entirely mistaken. There is other testimony.

The COURT. We will pass it over until to-morrow morning.

Mr. CARPENTER. When they find something else I will admit I am wrong. I do not see how anything else could have occurred, because it was then stricken out of the record. I do not think your honor would have allowed further interrogation, and as a matter of fact, I think there was not any.

Mr. MERRICK. Can you doubt, gentlemen of the jury, that if the books which I called for on the cross-examination of Dorsey contained nothing criminating him, that they would have been produced? Can you doubt, gentlemen of the jury, that if the stub-books of checks had contained nothing confirmatory of Rerdell and nothing indicating what checks had gone to "mail" that those stub-books would have been promptly exhibited to your inspection or to the inspection of his honor on the bench? I presume there is not a man among you that entertains a doubt upon that subject, not even one of the possible, *hoped for two or three deliverers*.

Now, gentlemen, what is the proof in reference to the contents of those stub-books? Torrey says, on page 3619, in reply to a question, as follows:

Q. Were there any other accounts in those books except those in relation to mining, ranches, and railroads?—A. There was a mail account.

Talking about the books that he had obtained from Kellogg, and was posting up.

Q. Did you keep that?—A. I entered up the twenty-eight or thirty checks that Mr. Rerdell drew and charged them to mail account.

Q. To what account were those posted?—A. They were posted to mail account, where it said "mail" upon the check-book; that is, upon the stub.

The checks to which he refers here you will recollect were checks

drawn in February and March, when Rerdell took those check-books on to New York. For although Dorsey swears that Rerdell had access to those check-books *only for a few days in 1879*, it appears that a year or two subsequently he had the check-books in New York on two occasions, and there drew numerous checks at Torrey's office, according to Torrey's statement. S. W. Dorsey testifies upon the same subject, as follows:

Q. When was the mail account opened?—A. I think April the 1st, 1879.

Q. The stubs of that date show mail charged upon that day, do they not?—A. Some of them do.

You recollect that Dorsey says that it was in April, 1879, that he employed Rerdell to take charge of this matter. Rerdell was prepared upon the stand to identify the checks at any time which had gone to make up the sum that Dorsey took to the Post-Office Department and carried into Brady's room. *The stubs would have shown what checks had been charged to mail on that particular day.* They would have shown what checks on that day were charged to mail; and showing what checks on that day were charged to mail would have confirmed Rerdell in reference to the checks drawn for the benefit of mail on that day. This is what Mr. Ingersoll found when he examined the stubs of those check-books, in my humble opinion, and this is what kept the stub-books from your inspection, for an inspection of the stub-books, developing that fact, would at once have been fatal to the defendants' case.

You will bear in mind, gentlemen, that in this apparently long digression upon an important point I am simply showing the connection of S. W. Dorsey with these transactions. I think I have shown it to your satisfaction, but something still remains which in the full performance of my duty I am obliged to bring to your attention, and further thereby to trespass upon your patience. The subject of which I now propose to speak is one certainly somewhat remarkable. I cannot, myself fully untangle it and reconcile the evidence. But if there is confusion it is confusion made between the brothers Dorsey and confusion made between the conspirators, and the difficulty of its solution arises from the impossibility of getting from them the facts that would make that solution possible. I refer to the advancing of money by S. W. Dorsey in 1877 and 1878 upon these routes, and to the advancement of money in the same direction by John W. Dorsey. Mr. Ingersoll, in his opening address to the jury, said, on pages 445 and 446:

Gentlemen, he did pay John W. Dorsey \$10,000, and he did pay the same amount to Peck, and from that day to this John W. Dorsey has never had the interest of one solitary cent in any one of these routes. He was simply paid back the money that he expended. Not another cent. John M. Peck never made by this business one solitary dollar. He simply received back the money he had expended.

Now, so far as John M. Peck is concerned it is not in proof that he ever put in one solitary cent. So far as John M. Peck is concerned, if Stephen W. Dorsey ever did pay him the \$10,000 it was clear gain to John M. Peck. Let us see what the money transactions were of S. W. Dorsey and John W. Dorsey. Bear in mind that S. W. Dorsey testifies, and so does Boone, that he, S. W. Dorsey, advanced all the money necessary for this business in the year 1878; that Boone expended the money as Dorsey let him have it in paying for printing, for stamps, and for other purposes incidentally and directly connected with these transactions, until Dorsey's bill ran up as against the concern, according to his estimate of what he had done, to some \$13,000 I think. *He testifies that no money was paid to him.* Now, let us see what John W. Dorsey says. I read from page 4111 of his cross-examination:

Q. Why did you not retire when you learned that Peck was no longer able to fulfill his part of the business?

This was in November and December, 1877, I think.

The COURT. The bids were not in then.

Mr. MERRICK. No; the bids were not in. Before the bids were put in, when the business was in its inception, you recollect John W. Dorsey got a letter from Peck that he could not go on. S. W. Dorsey says Peck's sickness prevented him from getting any bonds in Arkansas, and therefore he had to get them. Peck wrote to J. W. Dorsey that it was impossible for him to fulfill his part of the understanding.

A. I had gone so far I did not feel like doing it.

Q. Had you put in a cent?—A. I put some money in the business.

Q. To whom did you give it?—A. I sent it to S. W. Dorsey.

Q. I may be mistaken, but I understood S. W. Dorsey to say that he advanced the money.—A. THAT WAS A PRIVATE ARRANGEMENT BETWEEN HIM AND ME; THERE WAS TO BE NOTHING SAID ABOUT IT AT ALL.

Gentlemen, what does that mean? S. W. Dorsey says that he advanced the money. John W. Dorsey then said that he sent money to his brother, S. W. Dorsey. Being further interrogated about it he said *that there was a private understanding between him and S. W. Dorsey, and there was nothing to be said about it at all.* Here we have some secrets they did not choose to disclose when on the witness-stand.

Q. What was a private arrangement?—A. My furnishing that money.

Q. How much did you furnish him?—A. I don't know; I paid different sums at different times.

Q. As much as \$5?—A. As much as \$500.

Q. When?—A. Some of it was sent in about the 1st of December.

Q. How much?—A. I think it was \$500.

Q. How sent?—A. By draft.

Q. On what?—A. I could not say now; it was a draft on New York.

Q. By whom?—A. I got it in a bank at Chicago.

You recollect when he was out in Chicago he got that draft.

Q. What bank?—A. I could not tell now.

Q. What time in the year was that?—A. That was in December.

Q. What year?—A. 1877.

Q. What expenses had been incurred here at that time needing money. Give me the details of it?—A. I think there was \$300 paid for postage stamps.

That was to send Boone's circulars out West.

Q. What else?—A. Printing, stationery. I don't know what else.

Q. Tell the jury why it was that you did not give that money directly to Boone to pay those expenses, instead of giving it to S. W. Dorsey?—A. I was not here to give it to Boone. I did not know anything about Mr. Boone.

Q. You did not know anything about Boone?—A. No, sir; not at the time.

Q. You came here directly after you received that draft?—A. No, sir; it was two or three weeks.

Q. And at that time you knew nothing about Boone?—A. No, sir.

Q. You did not know that Boone was doing anything in the transaction at all?—

A. Yes, sir. I had not known anything about him personally at all.

Q. When was it definitely settled that Miner would go in?—A. Some time in November, I think. I cannot recollect just the time.

Q. It was settled that Miner was to go in before anything was done here, was it not?—A. Yes, sir; I think so.

Q. Nothing at all was done here before it was understood that Miner should come in?—A. No, sir.

Q. When did Miner come on here?—A. I could not tell you, from my personal

knowledge, Mr. Merrick. All I know on that point is what he told me when I got here.

Q. Do you know when he got here?—A. No, sir; I don't know certainly of my own knowledge, but it was some time before I came. I should think some time in December.

Q. You knew Peck was not here?—A. Yes, sir; I knew he was not.

Q. Was Miner here at that time?

At the time he sent the draft to S. W. Dorsey.

A. I think he must have been; yes.

Q. To whom did you send the draft?—A. I sent it to my brother.

Q. Why did you not send it directly to Miner?

His partner here.

A. I did not know anything about Mr. Miner. There was no contract between us at that time, only verbal.

He would not send the money to Miner because, although Miner was his partner, he was his partner only in the covenants of a verbal contract. Let us go on and see how he reasons a little further:

Q. Did you not say that Peck was made a partner with him in October?—A. There was a verbal agreement made somewhere about November.

Q. Is it because you did not have a written contract with Miner that you did not send him that money?—A. That was the reason; that was the only reason I know of; I think that is the reason why I did not do it.

Q. Had not you and Miner, even at the time when you were in Chicago, already made a written contract to pool your interests, and were you not then all acting under a verbal contract?—A. Under a verbal contract, certainly.

Q. Were you not spending your money under a verbal contract?—A. Yes, sir.

Q. Was it not under that verbal contract that debts were incurred for expenses?—Yes.

Q. If that was the case why did you send the draft to S. W. Dorsey, and not to Miner, with whom you had the contract?—A. Because I did not intend to put any of my money where I could not control it. I did not want to put it in the hands of a stranger.

His partner a stranger! His partner here, incurring debts in the name of the partnership firm, for which he was to answer under the verbal articles of partnership!

Q. Was Miner a stranger to this transaction?—A. He was a comparative stranger to me; we had no written contract at that time.

Q. Was not Miner here authorized to act for both you and Peck?—A. I suppose he was.

Q. And incur debts for you?—A. Yes.

Miner was authorized to act for him and Peck, and authorized to incur debts as a copartner; and yet this man dares to insult the intelligence of the jury by standing here as a witness and saying that, although Miner was so authorized to involve him to an unlimited extent in debts and liabilities, he would not send him a draft for \$500 because he was a perfect stranger and there was no written contract, but sent it to his brother, Stephen W. Dorsey.

Gentlemen, to refer again to the philosophy of Mr. Ingersoll, a lie won't fit anywhere. This lie cannot fit. Now, let us go on and see what further we can learn:

Q. Did you then have any distrust of Miner?—A. No, sir; not particularly.

Q. Did you believe he would steal your money?—A. No, sir; I don't know as I did.

Q. Did you believe he would spend it unwisely?—A. I don't know what I did believe about it. I did just as I did because I thought it was best.

Q. Did you not know he was here acting under your authority in this mail business?—A. We were acting together, I suppose.

Q. You knew that, did you not?—A. Yes.

Q. Did you ever send S. W. Dorsey any other money?

Now, he wanted to get out on the \$500 draft. That was all he had spoken of first. I asked him:

Q. Did you ever send S. W. Dorsey any other money?

Observe how he dodges around.

A. No, sir.

Q. Did you ever pay him any other money?—A. Yes, sir.

He never *sent* him any other money.

Q. Did you ever pay him any other money?—A. Yes.

Q. Where?—A. In Washington.

Q. How?—A. Paid him in currency.

Q. How much?—A. If it was \$500 I sent him then, I paid him about \$2,000.

He says *paid* now, recollect.

Q. On the 1st day of September you had \$2,500 in your house?—A. No.

Q. October?—A. Yes.

Q. If you had that cash on hand, and an understanding that money was to be advanced by you to others in this mail business, why did you not use that money through your partner here, instead of borrowing from your brother, the Senator?—A. I did not borrow it.

Q. You did not borrow?—A. No, sir.

Q. Who did?—A. THAT WAS A CONFIDENTIAL ARRANGEMENT BETWEEN HIM AND ME.

What sort of a confidential arrangement? S. W. Dorsey swears that he was advancing money in the way of loans to these parties. His brother, John W. Dorsey, comes in and swears he was not advancing money in the way of loans; that they were not borrowing. When I asked him further about it, and pressed him down, his testimony is as follows:

Q. You did not borrow?—A. No, sir.

Q. Who did?—A. That was a confidential arrangement between him and me.

Where is the lie? It is lurking somewhere in this testimony. First he says he sent Dorsey \$500, and leaves you to understand that that was all. Then when pressed he says his partner Miner was here, with authority that could overwhelm him with obligations and swamp the concern with debts, and then he says that Miner was a stranger to him, and he sent the money to his brother because he did not want to send it to a perfect stranger and put it beyond his control. Then I asked whether that \$2,000 was advanced to S. W. Dorsey. "No," he says, "not advanced; I *paid* it to him; I gave it to him." Then when asked, for the purpose of getting at the fact, whether he did not borrow it, he answers, "That was a confidential arrangement between S. W. Dorsey and me." Yes, gentlemen, these arrangements were all confidential; they took each other into their confidence. Now, the United States Government, that they have robbed for their emolument, wants to be taken into their confidence too. We want them to admit us into that confidence, and we have pretty well got into that confidence, although this man throws up the evasive barrier of this answer in order to keep us from ascertaining what he knows.

Now, let us go a little further, for it becomes interesting as we progress:

Q. Did not your brother write to you for money?—A. No, I know he did not.

Q. He did not?—A. No, sir.

Q. Did you know that your brother was advancing money on your account at that time?—A. I do not; I might have known it, but I don't know whether—

Q. [Interposing.] You, "might" have done anything.—A. I don't know as I did; I am not certain about it. [Page 4118.]

"Not certain about it." This man, whose fortune was not so large that he could deal with big sums without remembering them, who kept his \$2,000 in his house to keep his creditors from getting at it, whilst his brother was advancing thousands of dollars, according to his testimony, swears that he does not know.

I don't know as I did; I am not certain about it.

Is not certain whether he was liable to refund to S. W. Dorsey anywhere from \$10,000 to \$15,000. Do you believe it? Common sense revolts at the idea of believing such a thing.

Q. You never did furnish Miner any money, did you?—A. No, sir.

Q. You gave it to your brother?—A. I let him have it.

Now see what comes next:

Q. The money you put in the mail business you put in through your brother?—A. Yes.

Q. You never gave Boone any money, did you?—A. No, sir; only as I used it to pay the expenses and for putting on service, and also postage.

Q. He was your partner?—A. Yes, sir.

Q. Did you use it for that purpose?—A. It was used for that purpose.

Q. Did you use it for that purpose; did not your brother use it for that purpose?—A. I told him—

Q. [Interposing.] I do not care what you told him. Did you, or did he? He did, did he not?—A. Yes; he advanced the money ostensibly, but really I did.

Now see where he comes out:

HE advanced the money ostensibly, BUT REALLY I DID.

Disentangle it, gentlemen, if you can. I can only disentangle it and make it harmonious by my theory that here was a conspiracy, and S. W. Dorsey was putting in some of his money and John W. Dorsey was putting up some of his, and that the private understanding between them was to equalize the advances when they came to distribute the profits of their robbery. That was the private understanding. There was, as you see, a private understanding, the details of which he never communicates to the court and jury, and finally says that S. W. Dorsey *was ostensibly advancing the money, but really John W. Dorsey was advancing it.*

Gentlemen of the jury, I desire to call your attention for a short time to the Rerdell red books and the memorandum 31 X. There has been a great deal of discussion around this memorandum 31 X, and a great deal of discussion about those red books, of which Mr. Ingersoll, in the indulgence of his favorite entertainment of fixing up funerals, has put one at the head and the other at the foot of Rerdell's grave.

The inquiry arises in the mind of the jury, first, was that memorandum written by Dorsey, or was it written by Rerdell? Followed by the inquiry, were there ever any such red books containing the entries to Smith and Jones of money paid to Brady? Was there ever a book kept by Rerdell, as Dorsey's clerk, in which there was an account of Smith's, said Smith personating Thomas J. Brady? If the books are shown to exist, if you are satisfied from the proofs that the books do exist, and are satisfied from the proof that there is a charge in those books against Smith, then, gentlemen of the jury, that proves the genuineness of the memorandum. Why? For the reason that Rerdell says the entry in the book was made from this memorandum. If I prove the shadow of the memorandum on the books, it necessarily follows that the substance existed when that shadow was cast. Were there any such books as Rerdell has testified to, and did they contain the entry to which I have referred?

I may say frankly to you here and now, gentlemen of the jury, that I consider that I have argued this case and am done with it. If you are not convinced now, there is nothing, probably, that I shall say that will help to convince you. Nevertheless, in my position as representing the Government of the United States, it becomes my duty to my country, to the people, and to the Government that has placed this trust in me, not to leave any point undiscussed or any errors uncorrected. I feel oppressed with the consciousness that I am engaged now in a work of supererogation, for I am thoroughly satisfied in my mind and in my heart of hearts that when I quit the subject of the affidavits and left the record to go into the consideration of the parol and confirmatory proof, I had sitting before me a jury which ought to be convinced beyond a reasonable doubt of the guilt of every one of these defendants.

Did Rerdell have such books? Did such books exist? You will remember what Rerdell swears about the books. I make that remark, gentlemen of the jury, not with a view of resting the proof of the existence of those books upon Rerdell's testimony, but I take his testimony as the assertion of a fact to be proved by somebody else. You will bear in mind, therefore, what he asserted to be the fact—that when Dorsey ordered him to open a mail account, he gave him, among other things, this memorandum, and told him to make those entries in the book, and that subsequently he asked him if he had made that charge to Thomas J. Brady; that Rerdell said there was no account to Brady; that Dorsey replied, "To William Smith, then; damn it, don't you know that William Smith is Brady?" Bear that in mind. Bear in mind also that Dorsey swears that he never had any account with *any man named William Smith*. He also swears that he never had any account with Brady; of course he does. But the important feature of his testimony, in this connection, is that he never had any account with William Smith, never had any dealings with William Smith. Therefore, if William Smith is on those books it is no really existing William Smith with whom Dorsey ever dealt, for he never dealt with a William Smith. Bear that in mind.

Now we have the groundwork laid in Rerdell's assertion and in Dorsey's contradiction; and on that assertion and that contradiction we must proceed to search for the truth in the circumstances of the case under the operation of the logic used by common sense in the ordinary affairs of life.

The first circumstance to which I propose to call your attention is this: That, in 1879, at the time Rerdell says Dorsey gave him that memorandum, he employed Rerdell; that at that time Dorsey says he gave Rerdell exclusive and entire control of this whole business, and when asked whether or not he did not manipulate a certain affidavit, you recollect, he says, "I don't remember, but I am not sure." I asked, "Why are you not sure?" "I AM NOT SURE, FOR THE REASON THAT RERDELL HAD EXCLUSIVE CHARGE OF ALL THIS BUSINESS." You remember it. He had put him in exclusive dominion, and given him unlimited authority in the matter of these mail transactions. Now we have the relation established. If that was the case, and that relation existed, as Dorsey says it did, is it not reasonable to suppose that Dorsey told him to open a set of books?

What is the testimony directly upon the subject? In the fall of 1879, as I have told you, when Congress met, owing to the revolution in the custom of the department by which Brady had made the exercise of his power under this exceptional law a regular habit, it became necessary that he should apply for a deficiency to meet the drain upon the appropriations made in behalf of the department. Brady, there-

fore, went to Congress and asked for an appropriation of two millions of dollars. An investigation was instituted, and that investigation was tolerably severe, though not by any means thorough. Commencing in December, 1879, it proceeded through the winter months and the spring into the summer of 1880. Brady was a witness before that investigating committee. Miner was a witness before that investigating committee. Various persons connected with these contracts were witnesses, and Rerdell was summoned as a witness. The skies were lowering; the clouds were threatening; Brady and all his associate conspirators in these transactions were living in daily and hourly peril. And now, with Rerdell summoned as a witness, the peril threatened the lofty head of Stephen W. Dorsey. Ay, gentlemen, neglectful, thoughtless lightning threatened to strike that anointed skull. What was to be done? Rerdell, faithful to the trust reposed in him by his master, says, "I must protect myself; I must protect my master; I am, it is true, on a salary of \$3,000 a year, and that is all I get; I have no interest in these mail transactions, but my master has; he is not here in this hour of peril, and I must protect him; they have asked me for my books; what, in the name of Heaven, shall I say. I do not want to commit perjury; or, whether the moral obligation is enough to restrain me or not, there stand the doors of the penitentiary ajar ready to receive me if I do. How shall I escape perjury and yet save my master? How shall I do it?" And he says he went to Brady and told him of the peril—a natural thing for him to do, but it is quite immaterial whether he did it or not. He went to Brady and told him of the peril, told him of the books he had. Brady said, "Why was Dorsey such a fool as to keep books?" and suggested to have the books copied and have the criminating entries left out. Whether that conversation occurred or not is immaterial. In my judgment, the circumstances confirm the fact that the conversation did occur. But whether he determined to have the books copied at the instigation of Brady, or whether he concluded to have the books copied on his own suggestion, in order to protect Dorsey from the peril with which those books threatened him, is immaterial. Enough, gentlemen, that he concluded *to have them copied*.

Donnelly was the friend of Dorsey, his intimate friend; he had been working for him; and although an office-holder, it was manifest to any one of you who watched him on the stand, that as I wrung the truth from his bosom it came followed by his tears. He kept the books late in the spring of 1880. He had first seen those books in 1879. How came he to see them in 1879?

Q. Under what circumstances did you see it—

The book that he kept—

in the summer of 1879?—A. Mr. Rerdell called me in to examine a set of books for him and straighten them out.

Q. What did you do in consequence of that call from him?—A. I straightened them out—balanced them. [Pages. 2636, 2637.]

His testimony shows that this was done in August, 1879. Rerdell, having opened the books in April, 1879, had had managed to get them confused, tangled, and goes to Donnelly, an experienced book-keeper, and friend of Dorsey's—he goes to Donnelly, because he was Dorsey's friend, and his friendship is shown by the borrowing of money and the notes—and asks him to straighten out those books. Donnelly takes the matter in hand in 1879, and straightens them out. Donnelly first saw the books in 1879, and after that he kept the books, assisting Rerdell, making entries in the books from memoranda furnished by Rerdell, and was

paid by Rerdell out of Dorsey's money, as I claim, \$25 a month for keeping those books.

Now, what was the next important transaction of Donnelly in connection with those books? The copying of them in 1880. He describes the books as a set of small books, covered with red morocco leather, a journal and a ledger, bearing that inscription on the outside, the contents relating to mail business. They had a number of names and accounts in them, to wit, "S. W. Dorsey, Mr. Rerdell, mail account, expense account, profit and loss account, J. W. Dorsey account, Donnelly's own account, William Smith account, and others." Donnelly kept those books from the fall of 1879 to the spring of 1880, when he made the copy. He describes the outside of the books that came to him in 1879, and he describes the inside of the books; he gives the kind of cover and style of the books, all agreeing with Rerdell's statement in reference to them; the contents of the books all agreeing with Rerdell's statement in reference to them. Donnelly knew the contents; he had looked at them time and again in 1879 and 1880, and he had made entries in them time and again. Now, in 1880 he is told to make a copy. What sort of a copy was he to make? Let us see what he says upon that subject. At page 2637 I asked him:

Q. Was it an exact copy of the book 1—A. It was not.

Q. What was left out?

He left out some accounts by Rerdell's direction; there were pencil marks drawn through to show what accounts were to be left out.

Q. What accounts did you leave out?

He left out the William Smith account, which was for about \$30,000. So also says Rerdell—William Smith personating Thomas J. Brady, and that account was for about \$30,000. So says Donnelly; and that in making the false copy by Rerdell's direction he left out the William Smith account, because that was the tell-tale that would have brought run upon Dorsey.

He says two or three other accounts were left out, carried to profit and loss, and the books balanced. He worked, he says, on those books two evenings and all of one night, "*from sundown to sunrise.*" Why did he sit up all night to make those books? Does a man work all night as a matter of amusement? Was there not some emergency pressing upon him to work all night? Ay, gentlemen. What was that emergency? Rerdell had been summoned, as he says, to appear before the investigating committee and bring these books. Rerdell had pleaded sickness, was pretending to be sick, in order that he might get time to have the false copies made, which false copies he could take up and throw on the table of the committee and say, "There are the books you have called for; there are S. W. Dorsey's books; turn over the leaves and find any criminating entries if you can." He could not play sick more than a few days, and therefore says he to Donnelly, "Work evenings; sit up all night; let me have the copies speedily; danger is coming; the wolf is at the door; and lo, I must be ready to protect the household of my master."

What further does Donnelly say to confirm Rerdell?

I bought books to copy in as near like the others as possible.

He took the originals, their color and size, and he says he went to Adams' bookstore and bought two others as near like them as he could get. What more did he do? He made balance-sheets at that time. So

far for the copying of the books. Now for the balance-sheets. I believe the balance-sheet was the shroud in which the oratorical undertaker wrapped Rerdell, and I believe he wrapped him up after he put him in the coffin. He made a balance-sheet to see that the books were right. He says, "*I made the balance-sheet about the 20th of September, 1879; I also made a balance-sheet for the quarter ending December 31, 1879.*" That was the balance-sheet needed by Dorsey in New York when he was there making his arrangements with Bosler. That was the balance-sheet that was there. We had no confirmation of the fact of its presence there, but there is the proof of its creation here. At the end of that quarter he made a balance-sheet for the quarter ending December 31.

And that, gentlemen, is Donnelly's testimony in full. That was all of it. Cross-examination changed no part of it. There it stands boldly out. Unless Donnelly is guilty of perjury, unless he is one of the many men that Mr. Ingersoll proposed to kill and succeeded in killing, the proof is strong and conclusive, and confirmatory of Rerdell's statements about those books. Too many witnesses, gentlemen, have to be destroyed by the defendants. Mr. Ingersoll says, "Take Rerdell and Moore out of the case and there is nothing left." Take them out; there is plenty left. Take out every witness there is, and, standing upon the record alone there is plenty left. Take out Rerdell and take out Moore wherever they stand alone, but you cannot break down the proof which corroborates their testimony. You must take out Donnelly also, for Donnelly swears to the existence of those books, and swears that he kept them from 1879 to the early spring of 1880, and copied them in the late spring or early summer of 1880, and that they contained the William Smith account showing that he had received some *thirty thousand dollars*.

What else, gentlemen of the jury, have we about those books? They are not to be got rid of by a sneer, or a trope, or a metaphor. Charles E. Gibbs (page 2643) says that "Rerdell asked me and Mrs. Gibbs to do some work on some books for him between Christmas, 1879, and March, 1880." Next, he says he indexed three letter-books—the indexes that we asked to be allowed to see, but which they would not show us. The index would have shown the letter of Dorsey to Bosler, in 1879, giving him an account of the condition of the routes and how much percentage was to be paid to Brady. The indexes would have shown the letter of Rerdell to Bosler telling him of his trouble about those books in 1880. All pointed to the fact that such letters were sent, and thus confirmed Rerdell in his statement. No, gentlemen, we could not see the indexes for the reason that criminating testimony was in the indexes, and it was the duty of the counsel, knowing it to be so, to keep them out of court, as it would have been his highest obligation, if the indexes had not shown such criminating evidence, to bring them into court. I say that if those indexes and those check-stubs did not show criminating facts, and counsel examined them, they were false to their duty when they failed to present them to the jury on my demand. If they did show criminating evidence, their course may be regarded as wise and proper.

"Rerdell asked me and Mrs. Gibbs to do some work on some books for him between Christmas, 1879, and March, 1880. I indexed three letter-books, and Mrs. Gibbs"—Did what? *Copied a journal*. He had occasion for another copy of those genuine books. What was the journal about? The journal was on star route business. "Mrs. Gibbs made a copy, and I verified it." What accounts were in the books? M. C. Rerdell had an account there, S. W. Dorsey, John W. Dorsey, Mr. Steele all had accounts there; it was shown to you that Steele was an agent of Dorsey's, and had an account with him in regard to mail

matters; Mr. Smith had an account there, and Jones and others. Now, he is asked, on page 2646 :

Have you any doubt about your recollection of the name of Smith?—A. Not the slightest.

As one of the parties on that book; and yet Dorsey swears he had no account with any Smith on the face of the earth. Those were the same books that Donnelly had copied, and now Gibbs comes in to confirm Donnelly. Why did you not call his wife, Mr. Merrick? you may ask. Gibbs says she copied them.

The COURT. Donnelly did not copy those books until after that.

Mr. BLISS. He kept them before.

Mr. MERRICK. Between Christmas, 1879, and March, 1880. Donnelly did not copy them until the spring or summer of 1880. Donnelly was in a public office, and, as you see, when he came to copy them in the summer of 1880, had a good deal of trouble to perform the undertaking; had to sit up all night to do it; had only a short time in which to do it; and, therefore, Mr. Rerdell got Mr. Gibbs, who was not so busily employed, to make the first copy, which was a true and correct one. Donnelly had then been keeping the books.

The COURT. No; at that time Donnelly had had no connection with those books.

Mr. MERRICK. No; pardon me. You did not probably catch what I said, that in August, 1879, Rerdell took the books to Donnelly to straighten them out, and then Donnelly afterwards kept them for Rerdell.

The COURT. Until the spring of 1880.

Mr. MERRICK. Until the spring of 1880; but this transaction relates to a period between—

The COURT. [Interposing.] 1879 and 1880.

Mr. MERRICK. No, no; beginning about January 1879, and extending to March, 1880.

Mr. BLISS. No, I think you are wrong; it was Christmas, 1879, and March, 1880.

Mr. MERRICK. Christmas, 1879, and March, 1880.

The COURT. I did not understand. I thought you said from January, 1879, to March, 1879.

Mr. MERRICK. No, sir.

Now, you may ask why I did not call Mrs. Gibbs. I always consider it, gentlemen, an exceedingly delicate thing for a lawyer to put a lady upon the witness-stand, and I never do it unless I am obliged. Not because, as some might think, they will have their own way, but because it is a delicate thing to do. But I gave you my reason when Gibbs was on the stand. You remember I asked him about the condition of his wife. She was sick, and had lately lost an infant. Her nerves were broken down, her body weakened, and he thought it would be perilous to bring her here. That was enough for me. For me there is nothing more sacred on this earth than a woman in distress.

Further upon the subject of these books, Mrs. Cushman was living in Rerdell's house in 1881, after the affidavit of 1881. Rerdell went West, and he wrote to Mrs. Cushman to look for that book and get it and take care of it, and Mrs. Cushman testifies that she did so, and identified the book.

Now, what further in confirmation of Donnelly? Torrey is writing up some books in New York. He cannot make them balance. This was in 1880, I think. He is writing up some of the books of Kellogg for

Dorsey in 1880. What does Torrey do when he cannot make them balance? He writes to Rerdell. Why does he write to Rerdell about Dorsey's books? He has some books there which he is balancing and he cannot make them balance. What does Rerdell? Rerdell goes to Donnelly, who had kept these books, and they look over these books, and they find that the difficulty is whether a certain item was 25 cents or \$25. Donnelly and Rerdell made out the correct record, they being the original book-keepers, and sent it on to Mr. Torrey. Torrey, who, Dorsey swears, was his book-keeper, cannot balance the book without the help of Rerdell and Donnelly, and he gets that help and does balance the books.

Now, gentlemen of the jury, let me ask you one simple question, addressing it to your common sense. Do you believe that in 1879, when Donnelly first saw those books—for I have now conclusively proved their existence—Rerdell was then preparing testimony to destroy Dorsey? For, if this is true, that those books existed in 1879, that the account of William Smith was in those books, and that he was there credited with \$30,000, then it is true that in 1879, when Rerdell made those entries in that book, or caused them to be made, he was preparing testimony to destroy his master, unless the entries were made, as Rerdell says they were, by Dorsey's direction, and to conceal Thomas J. Brady under the name of Wm. Smith. Do you believe Rerdell was then laying so deep and infamous a plan? It is not enough to say that he is faithless now; it is not enough to say that he may have done this yesterday or last summer when he was thinking of coming over to the Government and asking mercy for his crimes; it is not enough to do that. You must go back to 1879, and say that the demon of malice, ill-will, and hatred, had entered his heart then, and that his brain was then designing and scheming to create false testimony to be used in 1883 to destroy Dorsey. And yet, from that day, 1879, down to the last trial of this case, this poor, debauched creature, Montfort C. Rerdell, followed at the heels of Dorsey like a faithful dog, doing his bidding in every crime that could put money in his master's pocket. Tell me that this man, who had done those things in 1879 and since, had conceived the design of preparing the nitro-glycerine which, on the first day of December, 1882, when this trial began, was to explode and destroy his master! It is ridiculous. No ornamental rhetoric can even make it respectable and decent.

I have said to you—and you will agree with me—that if you find the existence of the books and the existence of the entries in the books, then the memorandum is proved, because the entry in the book is the shadow, the memorandum is the substance, and the shadow could not have been cast until the substance had come into existence. There is something very peculiar about that memorandum.

Allow me to ask you to consider, for a moment, the statements of Kellogg and Torrey in reference to the kind of books they kept. Who kept Dorsey's mail account if Rerdell did not? Kellogg says, on cross-examination, at page 3651, that in the spring and summer of 1879 he kept Dorsey's books while Dorsey was in the Senate; he acted as his private secretary; kept all his accounts; did not keep his mining accounts, but kept his ranch accounts; kept all his books; had a mail account in the books which was a small account; *knew that Rerdell had charge of Dorsey's mail business, and he (Kellogg) had nothing to do with it* (page 3652). Had nothing at all to do with it except to make a few entries; could not tell the dates at which the entries were made, nor the year. Rerdell was looking after those mail contracts of Dorsey; he never interfered with his business at all, or inquired anything about it; he knew

nothing whatever about the routes in which Dorsey was interested; had nothing to do with the mail business; that was in Rerdell's charge. Such was Kellogg's statement.

What does Torrey, the other book-keeper, say, at page 3617? He knew that Rerdell was acting with Dorsey, because Rerdell came to New York with a check-book on Middleton & Co., and made some checks there. Rerdell took the check-book to Washington. This was in February, 1880. He was there in March, 1880, with the check-book. He remembered writing but one letter about the little matter of 25 cents or \$25. As I told you just now, he wrote to Rerdell because he could not balance the books. He wrote up Dorsey's books from certain books that he had there, and from the books that Rerdell brought to the office, and found that there was a difficulty in reference to an item as to whether it was 25 cents or \$25. He says it was after February 7, 1880, that he wrote; cannot tell whether it arose from something else than the account in the check-book (page 3618.) Don't know whether Rerdell kept any books or not (page 3621). On page 3623 he says: *The first entry he ever made in the books in relation to mail was February, 1880; did not keep the account of John W. Steele with Dorsey; that was a mail account. Did not keep any account with Rerdell on the books; that was a mail account. Did not keep any account with Reeside; that was a mail account. Did not keep any account with any of the men employed by Dorsey in the mail business. "THE MAIL BUSINESS WAS ENTIRELY OUT OF MY PROVINCE."* The books of Kellogg that he balanced referred to the ranch accounts and personal accounts of Dorsey, and referred to nothing else, gentlemen of the jury.

Now, take it and make the most of it. You have the existence of the books conclusively proved by Donnelly and Gibbs. You have the fact from Kellogg that he kept a very small mail account. You have the fact from Torrey that he kept no mail account, as I have read to you; that mail matters were under Rerdell's control. And that Kellogg's accounts related merely to ranch matters and personal accounts, and nothing else.

Now, gentlemen, here is this famous memorandum (31 X), about which I say there has been some talk. Mr. Kellogg says he thinks he has seen the first part of this memorandum before, and that that part of it was in Dorsey's handwriting, down to "profit and loss," if I mistake not; the last part in his opinion is not. Now, gentlemen, will you please compare the "S" at the beginning of "S. W. D." in the first line, with the "S" at the beginning of the last line?

Mr. CARPENTER. Do I understand you to say that Torrey kept no mail account?

Mr. MERRICK. I think Mr. Torrey says that he kept no mail account. I will read to you what he says, as I read it to the jury a moment ago.

Mr. CARPENTER. On page 3600, and—

Mr. MERRICK. [Interposing.] Allow me to read it. You asked me a question, and I will answer it.

Mr. CARPENTER. I wanted to give you a reference to the page.

Mr. MERRICK. The first entry he ever made in the books in relation to mail was in February, 1880.

Mr. CARPENTER. Who?

Mr. MERRICK. Torrey. Did not keep the account of Steele with Dorsey; did not keep any account with Rerdell. Both of those were mail accounts. Did not keep any account with Reeside, another mail account. Did not keep any account with any of the men employed by Dorsey in the mail business. "The mail business was entirely out of

my province." The books of Kellogg that he balanced referred to ranch accounts and personal accounts of Dorsey, and referred to nothing else.

Mr. CARPENTER. Very well; now on page 3600, and——

Mr. MERRICK. [Interposing.] May it please your honor, I object to going into any controversy whilst I am engaged in closing the case.

The COURT. [To Mr. Carpenter.] Do you say that Mr. Merrick has misstated it?

Mr. CARPENTER. I say that Mr. Merrick says that Mr. Torrey says he did not keep mail accounts. I say he did.

Mr. MERRICK. I have just read it, which shows that what you state is not correct.

Mr. CARPENTER. He won't allow me to correct him.

Mr. MERRICK. Allow me to read.

The COURT. No; I will not. Mr. Merrick, stop.

Mr. MERRICK. I have just read it.

The COURT. [To Mr. Carpenter.] Mr. Merrick has not misstated the evidence, according to your own admission. You do not rise for the purpose of correcting any misstatement. You rise for the purpose of bringing to his attention some other piece of evidence.

Mr. CARPENTER. Not at all.

The COURT. And that is inadmissible.

Mr. CARPENTER. He has stated distinctly that Mr. Torrey says he did not keep the mail account. Torrey says he did.

Mr. MERRICK. I read from Mr. Torrey's testimony where he said that the mail business was entirely out of his province.

The COURT. You cannot bring in any other evidence. If Mr. Merrick has misstated any piece of evidence he is liable to correction. But under the guise of correcting him you have no right to introduce evidence on your side of the question.

Mr. CARPENTER. I do not. I simply want to read what he said.

Mr. MERRICK. Haven't I read correctly what he said?

Mr. CARPENTER. No, sir.

Mr. MERRICK. Turn to the page. I say this is correct. It was copied precisely from his testimony.

Mr. CARPENTER. I do not propose to quote it.

The COURT. I want to know whether Mr. Carpenter says that Mr. Merrick has misread it.

Mr. CARPENTER. I do say that Mr. Merrick said that Torrey kept no mail account, and Torrey says he did.

Mr. MERRICK. Have I misread the evidence? Turn to the page. I say it is exactly as I read. May it please your honor, turn to the page of the record. I read from a paper. I say that Torrey says that the first charge he made to mail account was in February, 1880.

Mr. CARPENTER. If the court please, I am not quarreling with that. Mr. Merrick stated to the jury that Mr. Torrey said he kept no mail account. I say that Torrey says he did.

Mr. MERRICK. Very well; let him read it; I consent; let us get on.

Mr. CARPENTER. I read from page 3619:

Q. Were there any other accounts in those books except those in relation to mining ranches, and railroads?—A. There was a mail account.

Mr. MERRICK. Now, sir, will you turn to the next page, the very next question, and see whether I misrepresented the evidence?

Mr. CARPENTER. Not at all.

Mr. MERRICK. The very next question is:

Q. Did you keep that?—A. I entered up the twenty-eight or thirty checks that Rerdell drew, and charged them to mail account.

Mr. CARPENTER. You corrected Mr. Ingersoll when he was making his argument, but you object to any correction of yours.

Mr. MERRICK. No, sir; I object to being unnecessarily interrupted, and above all I object——

The COURT. [Interposing.] It seems to me that this matter is perfectly plain.

Mr. CARPENTER. I suppose the defendants have some rights.

The COURT. Torrey says, on page 3612, that the books he kept there were what were called the new books.

Mr. CARPENTER. Yes. He did not begin to keep the books until January, 1880.

Mr. BLISS. And the statement is that Rerdell came over there at one time and drew some twenty-eight or thirty checks, and these are the checks he says he entered up.

The COURT. That is the evidence.

Mr. MERRICK. That is the evidence. He kept no mail account except that.

Mr. CARPENTER. He says he did.

Mr. MERRICK. Such a degree of perversity about it is not the result of a mistake. It is willful.

I have given the jury the pencil memorandum and asked them to look at the "S's." Look at the first "S" in the name of S. W. Dorsey, and at the "S" in the name Smith and see if they are not alike. Gentlemen, it does not often happen that you can find a proper name in two papers that you are comparing; but if you look in 18 X, which is in Dorsey's handwriting, and look at the word "Smith" after "Fort," you will see the likeness. I think, gentlemen, you will observe that those two Smiths belong to the same family.

[After a pause, while the jury examined the papers.]

Now, gentlemen, I want you to compare the word "expense" in the memorandum with the word "expensive" in the letter 30 S, which is just in the middle of the line, and with the words "extended" and "exclusive" in 40 and 41 F. I call attention to the peculiar formation of the "E." It is a Greek "E," and the "x" is just a cross. I call your attention also to the loop of the "p."

Mr. BLISS. 40 and 41 F are the two drafts in pencil of petitions forwarded by Dorsey to Anthony Joseph. 30 S is a letter transmitting an oath on route 38113, if I am not mistaken.

Mr. MERRICK. Gentlemen, I now show you 3 T. Look at the letter "S" in the "Second Assistant." It is the same peculiar "S."

[The jury here examined papers submitted to them, after which:]

Mr. MERRICK. It is now 1 o'clock, your honor. I find I have been somewhat delayed, and if it is not disagreeable to your honor I must force my own strength and proceed after recess, unless the jury should wish to be discharged for the rest of the day. I do not want to protract my argument beyond to-morrow by any possibility, if I can help it.

The COURT. I hope not.

Mr. MERRICK. That is sufficient to make it certain.

The COURT. We will take our recess now, gentlemen.

At this point (1 o'clock and 3 minutes p. m.) the court took its usual recess.

AFTER RECESS.

The COURT. I did not intend, Mr. Merrick, to be understood in the remark I made just before recess that the court was tired of hearing you; but only that for your own sake I hoped you might be able to close your speech to-morrow.

Mr. MERRICK. I did not understand the remark in any other way. I am a little fatigued, your honor, but I will force my strength and endeavor to get through by to-morrow. Certainly I want to get through.

The COURT. You have had a great deal of work to do, and whatever is worth doing at all is worth doing well. I do not want to curtail you.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen of the jury: I shall trespass upon you a little further to ask from you a closer examination of the pencil memorandum in connection with other papers of S. W. Dorsey's, premising, however, the suggestion that you will bear in mind what Torrey says as to keeping the books, and that he only entered the checks drawn by Rerdell, and kept no mail accounts. Kellogg kept a very small mail account. What that was we do not know. None of the books were brought in. You will observe that there is upon the memorandum a direction to open accounts with S. W. Dorsey and with John W. Dorsey and J. M. Peck for cash loaned, an expense account and a cash account. Those items are all conclusively shown to be in Dorsey's handwriting. A doubt arises from profit and loss down to the end of the memorandum. Now, there was an expense account and a cash account shown in Rerdell's book, and there were no accounts similar to those shown in any other book connected with the mail transactions. It is therefore apparent (and although disputed, it is uncontradicted) that Dorsey ordered an expense and cash account opened somewhere, and that both accounts were in Rerdell's book.

Now, gentlemen, take the memorandum and look at the "M. C. R.," and compare the formation of the letters "M. C. R." in that memorandum with the letters "M. C. R." here [exhibiting another paper].

Mr. INGERSOLL. What paper are you showing?

Mr. MERRICK. I am showing now 34 X. That is a letter which Dorsey says he wrote to Paddock.

The COURT. A letter of introduction.

Mr. MERRICK. This is one of the letters of introduction. You will see the hand, in making those letters, follows the same course from the point of initiation to the close.

Mr. GREENE (a juror). These comparisons are extremely confusing to me. We were shown this memorandum by Mr. Ingersoll for the purpose of comparison. As far as I am concerned, as I am not an expert, I am confused by the comparisons.

The COURT. There is no dispute about the first three items.

Mr. MERRICK. There is no dispute about those, I believe. Now, gentlemen, here is 18 X, which is the letter to Clendenning. The "R" in that, you see, is exactly the same as the "R" in the memorandum. I am showing these papers merely to prove by comparison that that memorandum is in Dorsey's handwriting; but the proof outside of this comparison, which is stronger and better, is that I have shown the books to exist and to contain the shadow of this very memorandum. The books were made up from this memorandum.

[A pause here ensued while the jury compared the papers.]

Mr. MERRICK. Now, gentlemen, I will trouble you with one more, although I hold a number of them in my hand. I propose to show you 83 X, which is another letter to Clendenning, and to show you 39 F.

Mr. INGERSOLL. What is 39 F ?

Mr. MERRICK. A letter to Joseph, written from Kansas City.

Mr. INGERSOLL. I think that was written by a shorthand reporter.

Mr. MERRICK. Yes ; but it contains a postscript in Dorsey's own hand. I am going to show them the postscript.

Mr. INGERSOLL. That is right.

Mr. MERRICK. I show you these two letters, gentlemen, and ask you to observe the "D's" in them, and at the same time compare them with the two "D's" in the disputed part of the memorandum. I think you will say beyond all question that Dorsey made the four "D's." The same hand made them all beyond the possibility of a doubt.

The FOREMAN (Mr. Crane). The handwriting in these letters is different. [Indicating two letters.]

Mr. MERRICK. Dorsey says they are both his.

The FOREMAN. Then he writes two hands.

Mr. MERRICK. I think he does write two or three hands. That is a fair conclusion. I think it is quite plain that he does.

Mr. INGERSOLL. If the court please, I do not know any evidence of that kind. We admit that the pencil memorandum resembles Dorsey's handwriting or else it would not have been much of a forgery.

Mr. MERRICK. Mr. Boone swears as to two papers that they are in Dorsey's handwriting, disguised.

Mr. INGERSOLL. The point as to the memorandum is : How does it come to resemble Rerdell's handwriting ?

Mr. MERRICK. I understand that. That is no point. The question is : How does it come to resemble Dorsey's handwriting ?

Mr. INGERSOLL. No ; It resembles Dorsey's because it is a forgery. The question is : How does it come to resemble Rerdell's handwriting ?

Mr. MERRICK. If Rerdell was attempting to cheat and could imitate Dorsey's handwriting he would not make a memorandum that would resemble his own.

Mr. INGERSOLL. He certainly would make one that resembled Dorsey's, but he slipped up on the "M. C. R."

Mr. MERRICK. If he was intending to cheat he would not make one that resembled his.

Mr. INGERSOLL. He happened to.

Mr. MERRICK. Well ; I will not present any more papers to you, gentlemen. It is not necessary. From what I have said in reference to the accounts in the books the subject-matter is quite conclusive. I am through with the papers. I want his honor to look at them. [Papers exhibited to court.]

I will now pass on to Rerdell's visit to New York. After his interviews with the officers of the Government he went, on the 12th day of June, 1881, according to the evidence, if I am not mistaken, to New York for the purpose of obtaining these red books. He found Mr. James on the cars on his way to New York. Arriving in the city of New York on Monday morning he went to the Albemarle Hotel. It is not necessary to follow him up one street and down another, and I do not care to do so especially as the prosecution were not allowed to introduce evidence in that regard which they offered. Of course that is not a subject of comment. At the Albemarle Hotel he met Dorsey. He had a conversation with Dorsey at the Albemarle Hotel which is in part detailed by both of them, but not with any very great precision. Rerdell says of the interview, on page 2281 :

On going up to his room I found Dorsey in bed. As soon as I got in he got up. I saw that he was very much excited as soon as he saw me. He immediately com-

menced saying that I had turned traitor to him, and that I had been holding interviews with the Postmaster-General and with the Attorney-General.

That is a fact. He had been holding interviews with the Postmaster-General and the Attorney-General.

I cannot give all he said, because I became very much excited as well as he. He was furious. I left the room. As I was going out of the room he said to me, "I wish you would come back here as soon as I get dressed, in a little while." Without replying I left and did not return to his room any more.

That is Rerdell's account of his interview with Dorsey. Dorsey's representation of that interview is that it was as calm as a summer's morning; that they parted in perfect amity; no furious exhibition of passion, no existence of passion. He asked Rerdell why he had left his post without letting him know, I believe. Who tells the truth in reference to the character of that interview? Gentlemen, that can only be determined by the subsequent circumstances developed in the case. Dorsey heard no more of Rerdell from that time forth until on the evening of that day he received a telegram from him dated in Jersey City. Dorsey's statement of the contents of the telegram will be found on page 3789:

Q. Do you remember what the telegram contained—have you any memory of it?—
A. I can remember the substance of it, I think.

Q. Well?—A. *I think he says: The affidavit story is a lie. Confidence is lost between us. I have been faithful to every trust, but I now resign my place. Send somebody to take charge of the books.*

Rerdell's statement in reference to the telegram does not very materially differ from this and will be found on page 2284. He says the telegram was as follows:

The affidavit story is a lie, but all confidence between us is gone. I resign my position and will turn everything over to any one you may designate.

They differ in their statement of the contents of this telegram only in one particular. That particular is, that Dorsey says the telegram contained these words:

I have been faithful to every trust, but I now resign my place.

Rerdell omits the words, "faithful to every trust," but states in his evidence that he wrote three or four telegrams before sending one, having tried in thus writing three or four to get one to suit him. One contained the expression which Dorsey says was in the telegram he received; but Rerdell says it was not in the telegram he sent. Rerdell said nothing in his telegram about books. He said:

I resign my position and will turn over everything to any one you designate.

Dorsey says the telegram stated:

Send somebody to take charge of the books.

Thereby betraying himself by a reference to the books. Now, in reference to the interview at the Albemarle Hotel, having read you what Rerdell said, I will read you what Dorsey said, on page 3789:

You may state whether you had any conversation with him at that time; and, if so, what it was.—A. I do not know that I could repeat the conversation that I had with him. He came in there, about as he says, early in the morning. I had had an intimation the night before that Rerdell was engaged in some scheme with the Government, but did not know what it was. He came in and began to tell me what Salisbury and Parker and other people were going to do, and advised me to come back to Washington. I had left here, you understand, intending to go out to my ranch and not come back at all. I had got through, and was there settling up my business. I told him I did not want to come back here; that I did not want anything to do with it; that I was amazed that he had left his post—his business—to come over there

without any knowledge on my part, as he had not written or telegraphed me about it. I told him to go out and get his breakfast and come back and I would talk with him. There was no bitterness of feeling. I told him I had had an intimation that he was doing something in connection with the Government, but he denied it vehemently. He said it was untrue, all a lie, and so on. I, of course, told him I believed that, and I did believe it perfectly. He went off and said he would be back in an hour or two, as soon as he got breakfast. The next I heard of him he was in Jersey City; he did not come back at all.

Q. Have you given about the substance of the conversation?—A. Yes; the substance. I do not remember it distinctly, but that is about what it was. There was nothing like rage manifested on my part or his.

Subsequently Dorsey says that in that conversation no affidavit was mentioned or spoken of. Now, those being the opposing statements in reference to the interview, let us see which is true by the light of what immediately followed the interview. According to Dorsey, they parted good friends. According to Dorsey he had no impression on his mind that Rerdell had any idea of communicating with the Government. Rerdell had dispelled that idea. According to Dorsey's statement not one word was said about an affidavit. According to Rerdell's statement quite a different kind of interview took place. Dorsey had charged him with making communications to the Government, and became enraged, and then Rerdell left. When Rerdell reached Jersey City, according to Dorsey's statement, he sent Dorsey a telegram. Dorsey says the very first words of that telegram were as follows:

The affidavit story is a lie.

What affidavit story? In his conversation with Dorsey that morning the word affidavit had not been breathed, as Dorsey swears. Not one word was said about an affidavit; and yet the very first words Rerdell sends to Dorsey, after leaving his room, were words manifestly in continuation of a discussion about an affidavit.

The affidavit story is a lie.

What affidavit story? "The affidavit story that you have been discussing with me. The affidavit story that you and I were quarreling about. It is a lie."

Mr. INGERSOLL. Does Rerdell swear that there was anything said about an affidavit?

Mr. MERRICK. No, sir; no, sir. He says that Dorsey accused him of having had communications with the Government. He cannot repeat the conversation, but he says it was angry, and Dorsey became enraged.

Mr. INGERSOLL. There was nothing about an affidavit.

Mr. MERRICK. No, sir; but it is plain. Dorsey, on the contrary, swears that nothing was said about an affidavit. Rerdell was not interrogated specifically upon the subject. But from what Rerdell does state, and the subsequent circumstances, it is plain that the affidavit was the subject of discussion and Dorsey falsely swears it was not.

The affidavit story is a lie.

What does that mean? "The affidavit story that you and I have been quarreling about this morning." Dorsey says they quit good friends, calm as a summer's morning, as I have said. Rerdell says they quit in anger. What next? Says Rerdell to this man whom he had left, to his master to whom he had been clinging through all the vicissitudes of their crimes—

Confidence between us is lost.

Was that the language of a man who had quit another in peace and good temper and love and amity? Was it not rather the language of a

man who had left a room where there had been an angry quarrel and where there had been either manifested, or avowed, a condition of things that looked to a permanent separation between them? Why was confidence between them lost? Why should Rerdell hurl this back, after a peaceable, amiable, and friendly talk:

The affidavit story is a lie. Confidence between us is lost. I have been faithful to every trust, but now resign my place.

Why telegraph from Jersey City, "I now resign my place," if all had been amicable and peaceful and pleasant that morning? "This declaration of my resigning is in consequence of what has occurred to-day. You have questioned me. You have questioned my truth and my sincerity in reference to your interests. Confidence between us is gone. We have parted in anger. Friendship is dead. I resign my place. Send on somebody to take charge of the books." So says Rerdell according to Dorsey. What books? The books that Rerdell was keeping as Dorsey's clerk.

Mr. INGERSOLL. Rerdell swears those books were in New York.

Mr. MERRICK. May it please your honor, may I proceed without interruption?

Mr. INGERSOLL. Was that an unfair interruption?

Mr. MERRICK. Certainly; if I make a misstatement you may interrupt me.

The COURT. If you misstate a fact.

Mr. MERRICK. But I have not done so. Counsel has been very courteous and I will reciprocate with great pleasure, but I do not think he has a right to interrupt me in the course of my argument to interpose suggestions controverting my course of reasoning.

Mr. INGERSOLL. No, I would not do that; but this is the point I was about to make: Mr. Rerdell swears that the red books were in New York.

Mr. MERRICK. Is not that an argument?

Mr. INGERSOLL. No, no. Mr. Dorsey swears that when he received the dispatch from Rerdell there was in it, "Send some one to take charge of the books." I understand Mr. Merrick to say that the books there referred to were the red books.

Mr. MERRICK. Is that correcting me?

Mr. INGERSOLL. I ask if the evidence is not that those red books were in New York.

Mr. MERRICK. Is that correcting me?

The COURT. No.

Mr. MERRICK. Certainly it is not, and the counsel knows it.

Mr. INGERSOLL. No; I do not know it.

Mr. MERRICK. Pardon me. I object to being interrupted in that way even by one so courteous as the counsel has been since the argument commenced.

Mr. INGERSOLL. I object to your saying that I knew.

Mr. MERRICK. You must have known. I give you credit for a great deal of knowledge.

Mr. INGERSOLL. No. I insist that the court is wrong in that decision, but of course, I submit to it.

Mr. MERRICK. Says Mr. Dorsey:

Send somebody to take charge of the books.

Dorsey says this whole matter was in the hands of Rerdell. Dorsey knew that Rerdell ought to have been the custodian of those books. He may not have known where the books were. Wherever Dorsey was

pressed as to the affidavits filed in the department on any of the routes, or with regard to other matters relating to the mail business, he said, "I don't know whether I wrote it or not, because this whole thing was in Rerdell's hands, and I knew nothing about it." Dorsey says that the telegram spoke of "the books." Rerdell says the telegram did not refer to books. Rerdell knew where the books were. Rerdell says his telegram was :

Send somebody to take charge of *the business*.

Mr. INGERSOLL. Do you claim that Rerdell telegraphed Dorsey to send somebody to take charge of the books that he, Rerdell, had stolen?

Mr. MERRICK. May it please your honor, may I proceed?

The COURT. The evidence——

Mr. MERRICK. [Interposing.] May I proceed?

The COURT. Certainly. The evidence was that——

Mr. MERRICK. [Interposing.] I know it hurts, but still I must go on.

Mr. INGERSOLL. It is too absurd to hurt.

Mr. MERRICK. I have been sweeping away absurdity.

The COURT. Dorsey says that the request was that Dorsey should send somebody to take charge of the books. Whatever Mr. Merrick can make out of that by way of argument is proper.

Mr. INGERSOLL. I ask him if he claims that Rerdell intended to have Dorsey send somebody to take charge of a book that Rerdell had stolen.

The COURT. You will see after a while.

Mr. MERRICK. Rerdell says he telegraphed to Dorsey to send some one to take charge of the business, not the books. Dorsey says that the telegram was to send some one to take charge of the books. I do not believe Dorsey told the truth. I think the telegram was "Send somebody to take charge of the business." But Dorsey's mind was on the books, and he, therefore, testified that such was the telegram, and thus betrayed himself.

Mr. INGERSOLL. Rerdell had the route-book.

Mr. MERRICK. I must again say to the court that I protest against these unbecoming interruptions.

The COURT. Go on, Mr. Merrick; go on.

Mr. INGERSOLL. Well, I will go out and take a smoke.

Mr. MERRICK. I think that will probably do you some good, especially as you have given us so much smoke during the argument.

Mr. INGERSOLL. I do not think any shot has been thrown that has penetrated that smoke.

Mr. MERRICK. No; smoke cannot be penetrated!!

Mr. INGERSOLL. Oh, yes, it can. Perhaps my kind cannot.

Mr. MERRICK. I think the counsel will find himself easier outside, although I would be glad to have him here during my argument.

Now, gentlemen of the jury, according to Rerdell's testimony he went into Torrey's office during his stay in New York and took possession of that red book. Coming on, he brought the book with him. He met Mr. James in the car and said to Mr. James, "Here is the book." He had a little sachel. Counsel say what he had in his lap was a shirt. The sachel was too small for the book, but amply large enough to carry the shirt. However, let me not be led off from the line of the argument. I am now seeking to show you that S. W. Dorsey was guilty of perjury when he stated on the stand the substance of that interview at the Albemarle Hotel. I will show you first, by the telegram which he says he received from Rerdell, that such a telegram from one of the parties to the con-

versation, if the conversation was as Dorsey details it to be, was an impossibility. What next? The instant Dorsey receives that telegram he follows Rerdell on the wings of the lightning. He sends him a telegram to be delivered on the road at Philadelphia or Trenton. He sends him a second telegram to be delivered on the road at Philadelphia or Trenton. He writes him a letter that night, and although he does these things and thus pursues Rerdell in his anxiety and fear, he tells you he was not apprehensive and made no arrangement for meeting or overcoming the difficulties that were coming upon him from Rerdell's going over to the Government. Rerdell tells you the contents of that letter, and there again he and Dorsey are directly at issue. Neither of them can tell you the contents of the telegrams sent to be delivered along the road. We offered to prove their contents by Mr. James, but the testimony was ruled out. It is not subject-matter for me to comment upon. The telegrams were in reply to the telegram from Rerdell, saying that he had resigned, and directing Dorsey to send somebody to take charge of the books. If Dorsey had accepted that resignation and apprehended no danger from Rerdell, surely he would not have pursued him with two telegrams and a letter. It is reasonable to infer that the two telegrams and the letter, sent under those circumstances within a few hours of each other, were papers containing some sort of a petition to Rerdell either not to do what he had threatened, or to wait and consult with Dorsey.

Mr. INGERSOLL. Mr. Merrick, there is no evidence that the telegrams sent were in reply to the one sent by Rerdell.

The COURT. The evidence was that two telegrams were received.

Mr. BLISS. And that he sent them.

Mr. INGERSOLL. But there is no evidence that those telegrams were in reply to Rerdell's.

Mr. MERRICK. There is evidence, may it please your honor, in this way——

The COURT. [Interposing.] There is this evidence only——

Mr. BLISS. [Interposing.] Dorsey swears distinctly that he sent two telegrams in reply.

Mr. INGERSOLL. Not in reply.

Mr. BLISS. In reply.

Mr. INGERSOLL. No.

The COURT. The telegrams were sent after Dorsey received Rerdell's telegram, and whilst Rerdell was on the train, the same evening in which Rerdell had sent the telegram to Dorsey.

Mr. INGERSOLL. But the contents were not proved.

Mr. BLISS. I will read from page 3978 of Dorsey's testimony:

Q. Did you make any reply to that telegram?—A. I believe I did.

Q. In what form did you reply? By word of mouth, letter, or telegram?—A. By telegram, I think.

Q. Where was it addressed to?—A. My recollection is that it was addressed to Philadelphia.

Q. Did you send one or two telegrams?—A. I believe I sent two.

Q. Rerdell was not going to Philadelphia, was he?—A. He passed through there. According to his telegram he was going to Washington.

Q. Your telegram was not then sent to Philadelphia to be delivered in the city of Philadelphia, but was sent to Philadelphia to be delivered on the road, was it?—A. On the train.

Q. Two telegrams?—A. That is my recollection about it.

Q. On the same day?—A. Certainly, on the same day.

Mr. INGERSOLL. The contents were not established.

The COURT. No.

Mr. INGERSOLL. I was mistaken as to their not being in reply.

Mr. MERRICK. Then I think counsel had better go and take his smoke.

Mr. INGERSOLL. Wait a moment. Has the counsel a right to say what the contents were?

The COURT. I did not understand him to state the contents.

Mr. MERRICK. I have not said a word about the contents, except as I reason what those contents must have been.

Mr. INGERSOLL. I understood him to say they were petitions.

Mr. MERRICK. I did. I said the only conclusion that could be drawn in reference to those papers, from the circumstances and the relation of the parties, was that they were petitions; that the contents were not in evidence by any witness, because the court would not allow us to prove the contents, and that was not a subject-matter upon which I could comment.

Mr. INGERSOLL. So you do not claim that there is any evidence that they were petitions?

Mr. MERRICK. Only from the circumstances.

Mr. INGERSOLL. Very well.

Mr. MERRICK. I have not said a word about them except that.

Mr. INGERSOLL. There is no evidence.

The COURT. Oh, no. He does not claim that.

Mr. MERRICK. I do not.

Mr. INGERSOLL. If he does not claim there is anything in the evidence, I do not care.

Mr. MERRICK. There is nothing in the evidence directly as to their contents, but there is evidence from which any sensible man would conclude as to the general nature of the contents. That is all that I say. Why should Dorsey send one telegram? If he sent one why should he send two? Why should he follow them both with a letter? Why catch Rerdell at Philadelphia on the train? I say any sensible man will answer the question in this way: Those two telegrams were, "For God's sake, stop, and come back." Why pursue him on the train? He had announced that he would resign his place. He had asked Dorsey to send somebody to take charge of the business. In reply to that telegram one telegram is sent to intercept him on the train and another telegram is sent to intercept him on the train. Why not meet him in Washington, unless the object was to stop him half way with a view to his coming back to New York? Why not send those telegrams to Washington? For the simple and only conceivable reason that the design was that he should not touch the soil of Washington until Dorsey had him again in his clutches.

Now, gentlemen, he goes on and gets to Washington. I think a few days afterwards Dorsey arrived here. Dorsey had intended to go on West immediately. He had closed up his business in Washington and left to go West, but he returns to this city, and here at that time was made the affidavit of June, 1881. Let us see, gentlemen of the jury, who tells the truth about that affidavit. In the first place, Rerdell in his testimony says that he prepared a truthful and exact narrative of what had occurred between him and the Attorney-General and the Postmaster-General in reference to the subjects talked of between them and handed it to Dorsey, and that Dorsey took his narrative and interpolated in that narrative in different places throughout, until from the reading you will see that the entire sense and nature of the paper as Rerdell states it was originally written has been changed by Dorsey's interpolations. You will find, when you examine and reflect upon the character of Dorsey's interpolations, that they were all more or

less upon the political features of the transaction. I will read from page 3781 of Mr. Dorsey's examination:

Q. I will ask you if you wrote these words as a part of the statement afterwards sworn to by Mr. Rerdell:

“WASHINGTON, D. C., June 20, 1881.

“Mr. PRESIDENT: I think it is my duty to you, the Administration, and common fairness that I should make to you the following statement under oath.”

Did you write that as a part of that statement, or furnish that sentence?—A. No, SIR.

Then the counsel read him another extract, and said:

I will ask you if you wrote that or any part of it?—A. No, sir.

So you will remember the counsel went on through the entire affidavit, taking up each particular word, line, and sentence which Rerdell said Dorsey had written and asked Dorsey if he wrote it, to all of which questions came a prompt and emphatic NO. Then, following the specific and detailed inquiry in reference to the different lines and sentences of the affidavit this examination took place:

Q. “The books referred to, Mr. MacVeagh understood to be the private books and accounts of Mr. Dorsey.

“His urging me repeatedly to obtain these books, substantially by stealing them from Mr. Dorsey's office in New York, alarmed me beyond measure. I could not believe it possible that the Attorney-General of the United States would advise and urge anybody to commit what in its very nature must have been the gravest of felonies, including both larceny and burglary.”

If Mr. Rerdell swears that you wrote or suggested that, you may tell the jury whether his statement is or is not true?—A. If Mr. Rerdell swears to that, it is a lie. I did not suggest it or write it.

Q. Then, is it your statement that ALL of this statement or affidavit of June 20th or 21st, 1881, was written, so far as you know, by M. C. Rerdell?—A. It was, so far as I know.

Q. Did you suggest any part of it?—A. NO PART OF IT; NO WORD IN IT.]

He neither wrote a word nor suggested a word. He speaks with positive emphasis and clear recollection:

Q. Did you suggest any part of it?—A. NO PART OF IT; NO WORD OF IT.

In his testimony in chief I may add that he produces the impression that the preparation of this affidavit was a matter of Rerdell's own suggestion entirely, and that he did nothing to prompt it. Indeed, the very next sentence to what I last read I might read to sustain this statement:

Q. Did you at that time say anything to him as to making it for the purpose of inducing him to make it?—A. No, sir.

He says it was not made at his suggestion at all, and he did not care much about it. He says, on page 3731:

It was not made at my suggestion, at my request, or by my direction in any way.

Now, let us turn to his cross-examination, for out of his own mouth I intend to convict him before this jury of either designedly trying to deceive them, or of being guilty of manifest perjury. I will read from page 3984:

Q. Were you anxious to get that affidavit?—A. Well, I thought it was a desirable thing to have.

Q. Was not the getting of that affidavit the means that you were taking to protect yourself against this man?—A. That would appear so after I became acquainted with the character of the man.

After swearing he had nothing to do with it he tells you on cross-examination that the getting of the affidavit was the means that he was

taking to protect himself against that man after he had learned his character. He further said it was a desirable thing to have. Now, I will read in continuation, and I will read pretty largely, because as I am attacking him by using the words of his own mouth, he should have the benefit of all the words that came out of that mouth:

Q. Did you not revolve over in your mind some plan by which you were to protect yourself before you came on to Washington?—A. Oh, I had concocted no scheme.

Q. You had concocted no plan, but simply remained in anxiety without a plan as to what to do, did you?—A. I do not know about the anxiety. I don't think I was very anxious.

Q. Did you expect to meet Mr. Bosler here?—A. I think I did.

How came he to expect to meet Bosler here? He had finished his business. He had nothing here left to do. He was going West. He says he expected to meet Bosler here. Why? Had he not sent for Bosler to come here and meet him? Was it not arranged then that he and Bosler should meet here? Else why the expectation? If they were to meet here, about what were they to meet? Not about the business that was closed up, but some new business. They were to meet about this affidavit. He had summoned Bosler here about this affidavit. Let us go on:

Q. You have stated in your examination-in-chief that you prepared no part of that affidavit.

You recollect how promptly and emphatically he answered—

That is my recollection.

That is a very good answer.

Q. Are you positive about that?—A. I believe it.

Q. Is your recollection clear and distinct about that?—A. I don't think I did.

Q. What is your recollection?—A. That is my recollection: that I don't think I did.

Q. Do you say positively that you did not?—A. I don't think I did.

Q. Can you say positively that you did not?—A. I am not going to speak positively about anything that is four or five years old, or three or four years old, unless I know positively from records in my possession.

He had just spoken positively of the telegram that Rerdell sent him. He had spoken positively when the counsel, on his examination-in-chief, had examined him. You will see how he began to imagine that something was coming, and how he began to prepare himself for the squall that was manifestly approaching toward him over the waters of his cross-examination.

Q. You will not even speak positively about this affidavit?—A. I say I don't believe I prepared any part of it.

Q. But you cannot say positively that you did not?—A. I will not say positively that I did not, if I can.

Q. Can you? If you can, I don't think "won't" will do.—A. I don't think I can state positively. Mr. Bosler may have come to me for suggestions. I don't remember about that.

He had not suggested a word. He swore to it positively when examined in chief by his own counsel. But, snuffing the coming storm, he says, "*Mr. Bosler may have come to me for suggestions. I don't remember about that.*"

Q. No matter about that. Can you say positively that you did not take from Rerdell a statement written out by him and then interpolate it all the way through?—A. I do not remember any such thing.

Q. Can you state positively that you did not do it?—A. I say I don't remember it.

"Don't remember it." Is that answer satisfactory to you, gentlemen of the jury? He does not remember whether an affidavit which has fig-

ured so largely in his private history and in the political history of the country, since its date, was a paper which he took from its author originally and interpolated it himself all the way through. He does not remember, when day by day, night by night, in gladness and in sorrow, in time of grief and in time of triumph, that affidavit has been before his eyes and on his mind. For, recollect, immediately at that time commenced this investigation, and recollect that from that day to this he has clung to that affidavit as the shipwrecked mariner clings to the last plank of his vessel amidst the terrors of a hurricane. He "don't recollect" what he did about that affidavit. Is not that asking from a jury an extent of credulity that is too large for him to hope you will give? As well tell me that a parent would forget the existence of a child, or the amputation of a limb from the child that had occurred only three years ago. This affidavit was the child of his brain.

Let us see a little further :

Q. Can you say positively that you did not do it?—A. I do not remember it.

Q. Are you willing to say positively whether you did or did not?—A. I do not remember it.

Q. I ask you are you willing to say positively whether you did or not; not whether you remember it or not?—A. I simply say I do not remember it.

Q. I ask about your willingness.—A. Oh, my willingness?

Q. Are you willing to say so?—A. I will govern my willingness myself. I say I don't recollect the fact.

Mr. MERRICK. I think I have a right to the answer to that question.

Mr. INGERSOLL. I think the witness has answered it absolutely, directly, forty times. He says, "I do not remember."

Now, the "forty times" left out the positive times that he had answered Mr. Ingersoll, his own counsel. He had answered positively, distinctly, unequivocally, emphatically, plainly, manifestly, judicially, unjudicially, socially, privately, publicly, "I don't remember." [Laughter.]

The COURT. I understand him to speak in that sense : that he does not remember.

Mr. MERRICK. No ; but he is not willing to say.

The WITNESS. That is your assumption.

Mr. MERRICK. If that is my assumption, then I ask the court to direct that I have an answer to the question.

The COURT. No. When you have the witness's answer that he cannot remember you will have to stop.

Q. Can you tell how that affidavit came to be directed to the President of the United States?—A. [After a pause.] That may have been done—

Q. [Interposing.] I do not ask what may have been done, but I ask your recollection. Do you recollect how that affidavit came to be directed in its beginning, "Mr. President?"

Then he saw that the storm was near upon him.

A. WELL, I WANT TO CONFER WITH COUNSEL A MOMENT ABOUT THAT.

Frightened, seeing the peril he was in, he wanted to confer with his counsel before answering my question. Pitiable man! But do not let us forget, gentlemen, what he has been—great, grand, above all ordinary pygmies that obey the law, a man that now defies the law. A more pitiable spectacle was never exhibited on the witness-stand than by that creature when he asked to consult his counsel in his agonizing efforts to evade the truth.

Mr. MERRICK. No, sir; you cannot confer with counsel.

The COURT. No; you cannot confer with counsel, but must answer according to your best recollection when a question is put to you.

Now, let us see how it works when we force an answer.

The WITNESS. All right, your honor.

Q. What is your recollection?—A. My recollection is that after the affidavit was made and sworn to I sent for Colonel Ingersoll and submitted it to him.

After it was made and sworn to he sent for Colonel Ingersoll, and submitted it to him. What, in the name of common sense, had S. W. Dorsey to do with that affidavit? Nothing. He says nothing. Why did he want to submit it to Colonel Ingersoll? We will see presently. He wanted a nurse for it to bring it up in the way it should go, and, as I will show you presently, they led it in the way he intended it should go.

Mr. MERRICK. I object to what passed between you and Colonel Ingersoll.

The WITNESS. You have asked me a question and I want to answer it.

The COURT. He can state that fact and not say what passed between him and Colonel Ingersoll, but in pursuance of or in consequence of it.

Mr. MERRICK. Yes, sir; of course.

A. [Continuing.] In consequence of that the affidavit was addressed to the President of the United States.

There you have him. He swore in chief that he had not participated in writing or suggesting a single word in the affidavit. But after it was made and sworn to he sent for Colonel Ingersoll, and *in consequence of his sending for Colonel Ingersoll* the affidavit was addressed to the President of the United States. The consultation between him and his counsel, therefore, you will infer, resulted in a change of address and in the insertion of the words "Mr. President." Now let us go a little further:

Q. It was not then addressed to the President when it was given to you?—A. Originally, I think not.

Q. Who wrote the words "Mr. President?"—A. I think Rerdell did.

Q. Had it been sworn to?—A. I am not sure whether it had or not.

He had just before said that it had not.

Q. Are you sure that you did not write the words "Mr. President?"—A. Oh, I do not know. I don't remember about that.

Q. You do not remember about that?—A. No.

Q. Were those words inserted after you sent for Colonel Ingersoll?—A. I think so.

Q. I will read you those words and the following lines:

"Mr. President: I think it is my duty to you, the Administration, and common fairness that I should make to you the following statement under oath."

When were those words written?—A. I cannot tell you.

Q. Were they written after you sent for Colonel Ingersoll or before?—A. I do not remember that.

Why, is it not perfectly palpable, gentlemen, that the address, "Mr. President," was written coincidently with the words beginning the affidavit, which are as follows:

I think it is my duty to you, the Administration, and common fairness, &c.

Is it not perfectly palpable that the words "Mr. President" were written coincidently with the first words of the affidavit, and not until after it had been determined to direct it to the President? But he does not remember that.

Q. Have you no recollection about it?—A. No, sir; none at all.

Q. Were they not written at your direction?—A. I say I don't remember whether they were or not.

He does not remember whether they were or not. This is an all-important paper to him.

Q. Was the affidavit rewritten after the insertion of the words "Mr. President?"—A. It probably was, though I do not remember. If I had written the affidavit it would not have had that sort of thing.

Q. Why not?—A. Well, there would have been a little English in it.

Q. Is the English of it bad?—A. I don't remember.

Q. Then why do you say if you had written it there would have been a little English in it? The closing of the affidavit is as follows:

"I therefore in my heart and conscience justify myself in the course I have taken in this matter, by deeming it right and proper that I should by every means in my power

show to you and to the world the degradation and shame brought upon your administration by the action of two members of your Cabinet by attempting to seduce, bribe, and corrupt the confidential agent and clerk of Mr. Dorsey so as to compass his ruin and disgrace."

Were those words written after you saw Colonel Ingersoll?—A. I think not, sir.

Q. Were they not written after the beginning of the affidavit with the words "Mr. President?"

The WITNESS. There is something that precedes that, is there not?

Mr. MERRICK. There is a good deal that precedes it. I have read you the last clause of the affidavit?

A. Then it must have been written after the beginning, if it was not written at the beginning.

Q. Was it not written after the affidavit had been handed over to you as complete by Mr. Rerdell?—A. I don't think it was.

Q. Were those words in Rerdell's original draft of that affidavit, according to your statement of what that draft was?—A. I cannot tell you.

Q. Were they not written in the affidavit after the words "Mr. President" were put at the head of the affidavit?—A. I cannot tell you that.

Q. Have you any recollection about it?—A. No, sir.

Q. Was the original affidavit, as you have described it as written by Mr. Rerdell, intended for the President or for the public?—A. I do not remember that.

He does not remember whether it was intended for the President or for the public! Gentlemen, I will show you presently that it was gotten up for the President of the United States and not for the public, and gotten up in self-defense.

Q. Do you not remember that you directed that the affidavit should be addressed to the President of the United States?

Now, see, it is getting a little closer.

A. That is possible. I thought he was the proper man to read it.

Did he not intend it for the President? "I thought he was the proper man to read it. It is possible that I directed that it should be addressed to the President, although I admit that I have solemnly sworn before this jury that I never suggested a word in it!!!

Q. Then that part of the affidavit which is addressed to the President of the United States was written under your direction?—A. I presume that before the affidavit was sworn to—

You recollect he says he did not know when it was sworn to—

and when the original draft was made, I may have suggested the insertion of the name of the President of the United States, and addressing the affidavit to him. I think that is possible, but I don't remember about that.

Q. Did you not swear in your examination-in-chief that you had neither written nor suggested a single word of that affidavit?—A. That is my recollection now.

Q. What is your best recollection of your having suggested parts of that affidavit?—A. I have told you repeatedly over and over again that I have no recollection on that subject.

Q. Why did you state just now that it is possible you had recommended or advised that the address should be "Mr. President?"—A. Well, I say it may be possible. All things are possible. If that suggestion was made, in my belief it was made by Mr. Bosler.

So there were three of them had a hand in it, after the counsel was sent for.

Q. Was Mr. Bosler present at your interview with Mr. Ingersoll?—A. No, sir; he was not.

Q. Then what do you mean by saying it was inserted after your interview with Mr. Ingersoll?—A. I have not said that absolutely.

He is evidently disposed to try to tack a little.

Q. Have you not?—A. I said I thought it was; I think so yet.

Q. You have not said anything very absolutely. You said you thought it was and

you think so yet?—A. Yes, sir; put the colonel on the stand and I guess he can tell you about it.

No, thank you, I did not want Colonel Ingersoll on the stand unless they put him there. I spoke of that the other day. I recognize that it is not generally proper that counsel in a case should take the stand.

Q. I would prefer to get it from you?—A. You seem to question my testimony.

Q. No; pardon me. I am not *saying* that I question your testimony. I am trying to refresh your bad recollection.—A. Oh, my memory is first rate.

Q. First rate?—A. FIRST RATE.

He had just proved it to be first-rate. Yes, I accept his oath. He swears that his memory is first-rate. I believe him. But it is his conscience that is bad. It is his conscience that is not first-rate, for if his memory is first-rate, his conscience is rotten. If his conscience is pure, and he swore honestly to the "I don't remember," his memory is not first-rate. On page 3988 this question is put to him:

Q. Was it not arranged that this affidavit should be so prepared as to present to the President of the United States serious charges and accusations against MacVeagh and James?

Now, you will see directly the reason why it was to go to the President.

A. The affidavit, if it had come from a worthy source, did present charges of that kind.

Q. I do not understand that answer.—A. I say the affidavit itself, on its face, had it come from a worthy source, presents accusations of that kind.

Q. You considered that it did not come from a worthy source?—A. Undoubtedly I did.

He considered that affidavit as coming from an unworthy source.

Mr. INGERSOLL. I do not understand it in that way.

Mr. MERRICK. Don't you? Let me read it again.

Mr. INGERSOLL. What page were you reading from?

Mr. MERRICK. Page 3988, about the middle of the page.

Mr. INGERSOLL. Thank you.

Mr. MERRICK. [Reading:]

Q. Was it not arranged that this affidavit should be so prepared as to present to the president of the United States serious charges and accusations against MacVeagh and James?—A. The affidavit, if it had come from a worthy source, did present charges of that kind.

Mr. INGERSOLL. Now, if you will read the next question to that.

Mr. MERRICK. I will read it right on.

Mr. INGERSOLL. Go on.

Mr. MERRICK. [Reading:]

Q. I do not understand that answer.

Mr. INGERSOLL. That is right.

Mr. MERRICK. Here is the answer:

I say the affidavit itself, on its face, had it come from a worthy source, presents accusations of that kind.

Q. You considered that it did not come from a worthy source?—A. Undoubtedly I did.

Mr. INGERSOLL. That is not right. Just read it again.

Mr. MERRICK. Pardon me; haven't I read it correctly?

Mr. INGERSOLL. What you have read you have read correctly.

Mr. MERRICK. I am going to read more.

Mr. INGERSOLL. Read the next line, which will show that he believed the affidavit at that time.

Mr. MERRICK. Ah! I understand it. I am coming to that, for he did not believe it.

Mr. INGERSOLL. We will see.

Mr. MERRICK. Yes; we will see.

Mr. INGERSOLL. Read the next question.

Mr. MERRICK. I will read what I like. I will read it all and deal fairly.

Mr. INGERSOLL. If you don't read it I will.

Mr. MERRICK. Very well, the court can interpose and see whether I deal fairly or not. The next question is:

Q. Did you give it credit?—A. I gave it credit from the collateral evidence I had.

What collateral evidence? What collateral evidence did he have of the interview of Rerdell with James and MacVeagh?

Mr. INGERSOLL. Read the next question.

Mr. MERRICK. I will conduct this argument, may it please your honor, in my own way. I cannot and I will not stand these interruptions.

Mr. INGERSOLL. He directed his question to me.

Mr. MERRICK. No, sir. I was speaking generally. I am not talking to you. I have not addressed a single question to you.

The COURT. He insists upon being allowed his undoubted privilege of making his argument in his own way.

Mr. INGERSOLL. I do not wish to interfere.

Mr. MERRICK. I do not think the gentleman has finished his smoke yet, or his nerves would be in better condition. He can't stand anything this afternoon.

The COURT. [To Mr. Ingersoll.] Please not to interrupt him now.

Mr. INGERSOLL. I will not, of course, unless it is proper for me to do so.

Mr. MERRICK. When it is proper I shall not object; but in the course of my argument to the jury it never will be proper, for, as I said in the beginning, I propose to deal more than fairly with these defendants, and upon the honor of a professional gentleman, as I would in any private transaction where the restraints of honor are obligatory.

I gave it credit—

Says he—

from the collateral evidence I had.

Where could he have had collateral evidence of the interview that Rerdell had with James and MacVeagh? What collateral evidence could he have had that MacVeagh had advised him (Rerdell) to steal Dorsey's books? What collateral evidence could he have had that MacVeagh had advised him to commit larceny and burglary?

* Now, let us see what further he says:

Q. How did you know what had passed between him and James and MacVeagh?—

A. Well, I had heard from many sources.

What sources? Woodward was present. Did Dorsey hear it from Woodward? Rerdell was present. Had he heard from Rerdell of the interview? MacVeagh was present and James was present. Had Dorsey received his information from James and MacVeagh? Gentlemen of the jury, the very reading of that lie stamps the testimony of that man as that of a perjurer. He had not learned what had passed. It was not possible that he could learn it. Standing in a criminal attitude towards the Government, and the law officers of the Department of Justice seeking to bring out the facts in regard to his crime and endeavoring to obtain the proof, would they tell what had passed at an

interview between them and his man, his pupil, his clerk? No, sir. It is utterly beyond the limits of belief.

A. Well, I had heard from many sources.

Q. You had heard?—A. Yes, sir.

Q. The affidavit accuses James and MacVeagh of having stimulated him, as he says here, to both burglary and larceny in stealing your books.—A. That is the right name for it.

Do you believe that he had heard from anybody at that time that MacVeagh and James had advised Rerdell to commit burglary and larceny? And if he had not heard that MacVeagh and James had advised Rerdell to commit larceny, then, when he says he had heard it from other sources, he tells what is false, does he not?

But we will go a little further, and I will come to the culminating point directly.

Q. Did you not present the affidavit as a truthful representation of the misconduct of his—

The President's—

ministers, and ask him to remove them on account of that misconduct?—A. I presented the affidavit, and General Garfield, in the presence of Governor Foster of Ohio and Colonel Ingersoll, stated that James and MacVeagh had made almost the exact statement contained in that affidavit to him.

Is not that a falsehood made out of whole cloth?

Mr. INGERSOLL. What page?

Mr. MERRICK. 3988.

And I considered it his duty, and he ought to have removed them right then and there.

Do you suppose that Mr. James and Mr. MacVeagh ever told the President of the United States that they had advised one of Dorsey's accomplices to commit burglary and larceny? Do you suppose that Mr. MacVeagh, even if his proud and lofty nature could have allowed such a thought to come within the possible range of his speculative inquiries, could have told the President of the United States that he, in endeavoring to get evidence against Dorsey, had advised Dorsey's accomplice to steal his books, and to commit burglary to steal them? That proud man, pre-eminent as a lawyer, distinguished as a statesman, highly cultivated as a scholar, whose position in the department of Justice honored the Government that had honored him by placing him there—that man do these things! And then tell with pride, as if he did not understand the force of the crime with which he was charging himself, that he had advised the burglary and larceny! Gentlemen, this presses too hard upon belief.

Q. Did you not present this affidavit to him and demand their removal upon the face of that affidavit?—A. I never *demand*ed the removal of a Cabinet officer.

Q. Did you not present it to him and say to him that those men had behaved as this affidavit set forth, and they ought to be removed?—A. WELL, IF I DID NOT SAY SO, MY TONGUE DID NOT KNOW ITS CUNNING.

Now you have this solution. Here was a man, a great criminal, who claimed, as Mr. Ingersoll has intimated in his speech, exemption from penalty by reason of his political services, for he says these men disgraced the places to which Dorsey helped them, by attacking him. This man that Mr. Ingersoll says was so grand that he could defy the law, because he had helped to elevate the representatives of a political party to power—this man, afraid of the tribunals of justice and not daring to stand before the law as ordinary men are required to stand before it, procures from his menial tool, Rerdell, the individual he had so debauched

and corrupted, this affidavit, charging a high crime and misdemeanor upon two Cabinet officers, and then goes to the President to get those Cabinet officers removed, in order that he who had helped to make that President, according to Mr. Ingersoll's statement, might recommend for appointment two other Cabinet officers who would be subordinate to his demands and his requirements, and stand, in their executive capacity, between him and the tribunals of justice, and save him from the penitentiary. That was his object. The testimony shows that linked arm in arm, or side by side, Mr. Rerdell and Mr. Ingersoll and Mr. S. W. Dorsey, carrying this affidavit in triumph, walked up to the White House.

Mr. INGERSOLL. There is no evidence of that; no evidence that Mr. Rerdell went there.

Mr. MERRICK. Rerdell says so, and I do not think it is denied.

Mr. INGERSOLL. Let me say that, as a matter of fact, we did not.

Mr. MERRICK. Take the stand and swear to it, as Mr. Dorsey's counsel, and let me cross-examine you on that affidavit. I wish to get it all.

Mr. INGERSOLL. Very well; I will do so if you desire it.

The COURT. Rerdell has testified to the fact.

Mr. MERRICK. Certainly; he was left down-stairs. Let me say that if there were facts within the knowledge of counsel which would be beneficial to the defendants, according to the rule of the profession I hold that it was his duty to retire from the case as counsel, and take the stand as a witness. But he cannot testify in this manner.

The COURT. We will not discuss it further.

Mr. INGERSOLL. I could have contradicted Rerdell, but I did not think that necessary.

Mr. MERRICK. Counsel cannot testify now. The proof is that Rerdell went up there. They went up and presented that affidavit to the President, Dorsey himself saying that it had not come from a worthy source, saying himself that it had come from a man that could not be believed.

Mr. INGERSOLL. I have to call your attention to the evidence, that he undoubtedly at that time believed it came from a worthy source.

Mr. MERRICK. I have read that and commented upon it, haven't I, your honor?

The COURT. It is a fact which I think he has a right to call your attention to.

Mr. MERRICK. Dorsey says he believed it because he got this information from other sources, but I have shown your honor that there were no sources from which he could have got it. I have shown that he lied when he said he got it from other sources.

The COURT. You have my point.

Mr. MERRICK. You have my answer.

The COURT. You did not prove what he said.

Mr. MERRICK. I have proved it by the laws of ordinary intercourse known among men. I ask you, sir, do you believe that anybody could have procured information of what passed between MacVeagh and Rerdell, not in close confidence with MacVeagh at the time? Could anybody have done it? When Dorsey says he had information of that private conversation, do you not believe that Dorsey lied? Here is your point fairly put. Dorsey says that *if* it had come from a worthy source, certain inferences would follow, but it did *not* come from a worthy source, *according to him*. It came from a tainted source, from a source that he himself had tainted with his foul teachings. I believe that he knew better than any other man whether it was a worthy source or not.

That affidavit contains a statement about the removal of these two officers. And, gentlemen of the jury, that is not the only attack that has

been made upon this department. Dorsey's effort, from the beginning to the end, has been to get rid of the great and distinguished men that have held these two respective offices since MacVeagh and James went out, in order that some instruments of baser purpose might stand between him and peril.

Mr. INGERSOLL. I must correct the gentlemrn once more. He says he demanded their removal. Dorsey says, on page 3988:

I never demanded the removal of a Cabinet officer.

Mr. MERRICK. And he also said, "But if I did not do all I could, my tongue had lost its cunning."

Mr. INGERSOLL. Oh, faugh!

Mr. MERRICK. "Oh, faugh, faugh!" But this is not very creditable in a court of justice.

The COURT. Mr. Ingersoll, take your seat, if you please.

Mr. INGERSOLL. I have taken my seat.

The COURT. This is carrying the interruption a little too far.

Mr. INGERSOLL. Now, let me ask the court, when Mr. Merrick said that Dorsey demanded the removal of two Cabinet officers, whether I have not the right to call his attention to what Dorsey did swear.

Mr. MERRICK. I have just read it myself.

Mr. INGERSOLL. "I never demanded the removal of a Cabinet officer."

The COURT. But he said also that if he had not done it his tongue had forgotten its cunning, or something to that effect.

Mr. INGERSOLL. But he had not demanded it.

The COURT. That is trifling.

Mr. MERRICK. That is trifling.

Mr. INGERSOLL. If the evidence is trifling. If we are not trying the case according to the evidence, it is trifling.

The COURT. It appears to me that it is trifling to make that the basis of an interruption of counsel.

Mr. INGERSOLL. That is owing to whether he is right or not.

The COURT. He says, "I did not demand the removal of a Cabinet officer," but the next moment he says, "If I did not do all I could to have him removed then my tongue had lost its cunning;" and you make a point between demanding his removal and his effort to have him removed, with all his power and influence. I cannot see that there is much ground to stand upon for interruption in that respect.

Mr. INGERSOLL. I think there is enough.

Mr. MERRICK. Gentlemen, that interruption, which has thus received the condemnation of the court, is like a great many others from which I have suffered in the course of this argument, but which I can readily pardon, as the outspoken exclamations consequent upon pain, rather than the results of judgment from looking over the testimony.

Mr. INGERSOLL. I can assure you——

Mr. MERRICK. [Interposing.] Now, gentlemen of the jury, I say that not only MacVeagh and James have been the recipients of attentions from these gentlemen, but that Brady's testimony as to his papers shows that that same effort has been made on other executive officers, honorable and high men, the first in the land, one of whom [the Attorney-General] now honors this court-room with his presence, having been attacked and sought to be removed by the same identical——

Mr. INGERSOLL. I object to that.

The COURT. What evidence is there of that?

Mr. MERRICK. What did Brady testify about the papers?

The COURT. If there is any evidence to sustain that assertion Mr. Merrick will be sustained, and if not, I will have to stop it.

Mr. MERRICK. I cannot now recall it. I thought it was in Brady's testimony about buying his papers. It is certainly on the records, may it please your honor, in the cards of S. W. Dorsey, which form part of the case, although they may not have been read to the jury. It was in the card of S. W. Dorsey of December, or the last of November, about which I interrogated Dorsey when he was on the stand. Your honor will remember that card.

The COURT. If that card is in evidence and contains the foundation for your declarations on that subject, I shall not have you interrupted.

Mr. INGERSOLL. My recollection is that that card was referred to, and that Mr. Merrick asked Mr. Dorsey about the first paragraph, and, simply to identify it, read the first paragraph, and asked him if he remembered it. I think Dorsey said he did, but I think it was never read to the jury and never referred to again.

Mr. MERRICK. I thought the card was in evidence. I will look to-night and see whether it is.

Mr. INGERSOLL. Let me call your attention to another point——

Mr. MERRICK. [Interposing.] If it is not in evidence I will take it all back.

The COURT. Make no further comment now.

Mr. MERRICK. I make no further comment now, but I will look and see. There I stop. I will not comment another word upon it.

Now, to go on a little further:

Q. Did you not present it to him and say to him that those men had behaved as this affidavit set forth, and that they ought to be removed?—A. WELL, IF I DID NOT SAY SO, MY TONGUE DID NOT KNOW ITS CUNNING.

Q. That is what you used it for, is it not?—A. I used it to prevent what I believed to be a most vicious, unlawful, and improper act on the part of two executive officers of this Government.

What act did he mean, gentlemen of the jury? He does not mean an act already committed. He does not mean an act from which Rerdell had already retreated; but some other act he means. What was the "vicious, unlawful, the improper act" that he meant? The indictment and the prosecution of S. W. Dorsey under the auspices and direction of the Department of Justice. That is the only act he could have meant.

Q. That was what you wanted it for, was it not?—A. That was one of the things.

Yes, he wanted it addressed to the President that he might ask him to remove James and MacVeagh, and thus to save himself from prosecution. That was one of the things he wanted, that being one of the things he was after; and when he procured the affidavit he went with it and with his counsel and Rerdell, and although the man was rotten as a carcass that had lain out in an August sun for a week, according to the testimony of Dorsey in regard to him, he stuck the affidavit right before the President, and says here on the stand, "If I did not do everything I could to have MacVeagh and James removed on that affidavit of this one man my tongue had lost its cunning." And yet he had nothing to do with getting up that affidavit; not a thing!

Further on in the testimony, on page 3989, I asked what arrangement he had made about this matter.

Arrangement by whom?

Mr. MERRICK. I did not say by whom, but you being a party to the arrangement.

A. If there was anything that I could do that I did not do to get MacVeagh out of office, I have forgotten it. If any man ever disgraced a party that he pretended to represent, it was Wayne MacVeagh. That is my dicta, as I believe you lawyers call it.

Of course he wanted MacVeagh out of that office. An honorable man, an honest man, a sound lawyer at the head of the Department of Justice, loving his country and respecting the authority of the law and determined to do the duty of his office, was ruin to S. W. Dorsey, and therefore MacVeagh must be got rid of. It was conscious guilt wanting to be protected from arraignment at the bar of justice, where he knew any honest jury must find him guilty if the evidence was brought forward.

Then further on :

Was not that the purpose—

To turn MacVeagh out—

you had in view when you got the affidavit?—A. *I stated some time ago that that was one of the purposes that I intended to use the affidavit for.*

There he stepped into the trap squarely.

Q. Was not that the purpose you had in view when you got the affidavit?—A. I stated some time ago that that was one of the purposes that I intended to use the affidavit for.

Q. Did you communicate that purpose to Rerdell?—A. No, sir; I was not communicating with Rerdell at that time.

Not communicating with Rerdell at that time! Not when he wrote the words “Mr. President!” Not when he suggested “Mr. President!” Not communicating with Rerdell! Why, Rerdell was in his employment, gentlemen of the jury, and, notwithstanding his denunciation of Rerdell, Rerdell remained in his employment down to the 1st day of last August.

Now, gentlemen, in connection with the address of that affidavit and the last part of it, and all those parts of it that look to the removal of James and MacVeagh, let me ask you, in confirmation of the proof I have already furnished that Dorsey wrote it or ordered it to be written why should Rerdell at his own suggestion have addressed it to the President? Why should Rerdell have sought to have James and MacVeagh removed? Rerdell, the subordinate, Rerdell who, had no interest, why should he have conceived the plan of addressing that paper to the President? It must be plain to you that the affidavit was intended to subserve the purpose Dorsey had in view from the beginning, namely, not so much the protection of himself from what he says was a false statement made by Rerdell as to have MacVeagh and James removed. This is plain to you from the language of the affidavit and the terms in which the charges are couched against James and MacVeagh. When those circumstances are connected with the fact that Dorsey and his counsel went up with that affidavit to the President, taking Rerdell with them, and laid it before the President—that Dorsey’s tongue used all the cunning it had not forgotten to have James and MacVeagh removed—and that Dorsey prepared that affidavit precisely as Rerdell testified, I think I may justly take from off Rerdell the black robes given him by the counsel and put them on the shoulders of Stephen W. Dorsey.

If we are to have burials of men in this case, gentlemen of the jury, after what I have shown you about S. W. Dorsey, let us bury him for his perjury. Open for him a grave by the side of Rerdell. Put him in. Call for the chief mourners, his co-conspirators in this case. Stand back, and let them gather around this last resting-place of their chief genius and leading power. Lower him gently into the tomb. Mourners, give way. Room—room for the orator of the occasion—a funeral oration, a choice specimen carefully selected from the stock on hand. And now let us give him a monument, as Mr. Ingersoll proposed to give to

Rerdell. What shall it be? Let it be an arch, with one abutment resting at the head of Rerdell's grave and the other resting at the head of Dorsey's, and on the key-stone let there be written this epitaph:

"They were amiable and lovely in their lives, and in death they were not parted."

And if, notwithstanding the counsel's prayer, Gabriel, when he comes over those graves, should blow his trump, and the corrupt and buried Dorsey should arise, an immortal spirit, and come into that last grand court, before the Searcher of hearts, where we must all appear, and the question should be then asked upon his arraignment there, "Were you not O, spirit, when in the flesh known and called by the name of Stephen W. Dorsey," the spirit would answer, "*I don't remember.*" [Laughter.]

The COURT. Adjourn the court.

Thereupon (at 4 o'clock p. m.) the court adjourned until to-morrow morning at 11 o'clock.

FRIDAY, JUNE 8, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

The FOREMAN. If the court please, at the suggestion of several members of the jury, I request that we may be allowed to again see the pencil memorandum, the Clendenning letter, the letter of Dorsey to Paddock, and also one of Rerdell's letters containing his signature.

The COURT. That is a proper request.

Mr. MERRICK. Certainly.

[The papers asked for were submitted to the jury.]

Mr. DAVIDGE. I would like to have the account of John W. Dorsey with Rerdell, also, to submit to the jury.

The COURT. Several specimens of Rerdell's writing may be submitted.

Mr. MERRICK. Oh, yes. The jury may have any papers they ask for. If they ask for that account they can, of course, have it. [Account submitted to jury.] I will also submit, gentlemen, in the course of my argument, 9 O, 40 F, and 30 S, to which I called your attention yesterday.

Mr. CARPENTER. If the court please, I do not think that 30 S, at all events, ought to be submitted to the jury in this connection. It is not a letter admitted to be written by Dorsey. It is a letter that purports to be written by John W. Dorsey. Boone says he thinks it was written by S. W. Dorsey, and I think Rerdell says so; but Boone says it is in a handwriting very much unlike Senator Dorsey's. I do not think it ought to be submitted for comparison.

The COURT. No paper ought to be submitted to the jury as the writing of a party unless it is admittedly his.

Mr. CARPENTER. That is what I say.

The COURT. No paper, the authenticity of which is in dispute, ought to be submitted.

Mr. CARPENTER. 30 S is in dispute.

Mr. MERRICK. Boone said it was in the disguised hand of Dorsey, and Dorsey did not deny the authorship of the letter.

Mr. CARPENTER. Dorsey could not see.

Mr. DAVIDGE. It is a disputed letter.

Mr. CARPENTER. Proved to be in a disguised hand. It therefore cannot be a good letter to make a comparison with.

The COURT. No.

Mr. MERRICK. He says he disguised his handwriting sometimes.

Mr. CARPENTER. Who says so?

Mr. MERRICK. Boone says so.

Mr. CARPENTER. I think not.

Mr. MERRICK. I think so.

Mr. CARPENTER. He did not say it. You are mistaken.

Mr. MERRICK. Boone swore that Dorsey disguised his hand and that he wrote that letter.

Mr. CARPENTER. He did not swear to that. He said it was a disguised hand. He did not say it was Dorsey's disguised hand.

Mr. MERRICK. He said it was Dorsey's disguised hand.

The COURT. That is a question.

Mr. CARPENTER. Mr. Merrick showed the jury that very paper yesterday and I objected then.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen of the jury, I am glad you have again had an opportunity to make these comparisons. Before I make any comment on them allow me to call your attention to the testimony of Boone in reference to the question that arose as to 30 S, and as to Dorsey's simulating another's handwriting. I read from page 2702:

Q. I hand you 30 S.—A. This is in the handwriting of Stephen W. Dorsey.

So says Boone, and Dorsey does not deny it. On page 2693 is the testimony to which I referred in reference to the disguised hand. That testimony does not relate to 30 S. It relates to 19 F.

I will hand both the papers to the jury and let them look at them. In reference to 19 F, the testimony is as follows:

Q. In whose handwriting is it?—A. It is a handwriting entirely different from Stephen W. Dorsey's.

The COURT. That is not an answer to the question. Who wrote that letter, if you know, judging from the handwriting?

The WITNESS. It resembles the handwriting of Stephen W. Dorsey; it is a disguised handwriting. It is different from the ordinary way he writes.

Whilst you are looking at those papers I may still continue; for, gentlemen, I am resolved to conclude this already too much protracted argument to-day, even if I have to omit a great many things that I would like to say to you. I want you to bear in mind that there is a great deal of difficulty in determining handwriting by comparison under any circumstances, but the comparison of the hands in question here can be readily made. There can be no doubt, when you compare the handwriting of Dorsey in the communications admitted to be his with the pencil memorandum, that the pencil memorandum was written by Dorsey. If Rerdell had, as Colonel Ingersoll thinks, attempted to forge this memorandum since the last trial for the purpose of being used as evidence, and was the expert that they claim him to be in the use of the pen, certainly he would not have been fool enough to write like himself. If there is a resemblance between the handwriting in the memorandum and his own handwriting, it is the best evidence in the world, under the circumstances of this case, that the memorandum is genuine. I can see in the handwriting of Dorsey a slight resemblance to the handwriting of Rerdell, and Rerdell may have in that particular imitated the writing of his master as he imitated him in other respects.

The FOREMAN. There seems to have been a press copy made of one of these letters from its appearance.

Mr. BLISS. That is true of many of the oaths. I do not know what particular paper you refer to.

Mr. MERRICK. If Rerdell were going to forge a paper, he would make it as little like his own writing as possible. The forgery would not be accidental; it would be deliberate. Being deliberate, he would take it away as far as possible from any semblance or similitude to his own hand. But the conclusive proof in reference to that memorandum is this, as I stated to you yesterday, that it is reflected on the books. Did the red books exist? Did Donnelly tell the truth? Did Gibbs tell the truth? Did those red books exist between Christmas, 1879, and March, 1880, as in the first place Donnelly swears and in the second place Gibbs swears? If so, then, as I said before, they contained the shadow of this memorandum, and the shadow could not be on the books without the existence of the substance to cast that shadow. This is proof infinitely better than all evidence of handwriting. I will now show you 5 E, which Mr. Bliss hands me as being in Dorsey's handwriting.

Mr. BLISS. The testimony on the subject is on page 2691.

Q. I now show you 5 E, and ask in whose handwriting it is?

Mr. INGERSOLL. What is it?

Mr. BLISS. It is a letter transmitting an oath.

A. It has the appearance of being in the handwriting of Stephen W. Dorsey.

Q. Is that your best judgment?—A. Yes, sir.

The COURT. Let me see it. I would know it myself now.

Q. Who does the signature purport to be by?—A. John W. Dorsey. It is the same writing all the way through.

Mr. MERRICK. I show this paper to the jury for the purpose of letting them see that S. W. Dorsey simulated John W. Dorsey's handwriting; that he simulated and forged John W. Dorsey's handwriting. I do not care about any comparison of that with any other paper. I show it to prove an independent fact.

Mr. CARPENTER. We do not admit that to be in S. W. Dorsey's handwriting. Counsel for the prosecution do not profess that we do. They have not stated that we do. They say it was proved by somebody.

Mr. MERRICK. I show you as an independent fact that S. W. Dorsey, as you will see by this paper, simulated or forged John W. Dorsey's handwriting.

Mr. HENKLE. Who is the witness from whose testimony you read?

Mr. BLISS. Mr. Boone.

Mr. MERRICK. Gentlemen, I want you to pass that paper around and look at it, and I will pause in the mean time, for I think you had better examine it carefully.

[Mr. Merrick here paused to enable the jury to examine the paper last referred to.]

Mr. CRANE (foreman of the jury). John W. Dorsey's signature on 19 F is entirely different from that on the paper you first handed to us, 5 E.

Mr. BLISS. 5 E transmitted the oath.

Mr. MERRICK. It transmits the oath. Boone testifies that Dorsey wrote both. They are different, but when a man undertakes to forge a signature he writes in a different hand.

Mr. BLISS. "The letter of John W. Dorsey, signature and all, is written in a disguised hand, which resembles that of S. W. Dorsey." That is the testimony.

Mr. MERRICK. That is 19 F ?

Mr. BLISS. Yes.

Mr. MERRICK. [To the jury.] The best evidence is that of comparison ; look at the "y," which is the same in both. The same man wrote both of them. 5 E transmitted the oath which was filed when Rerdell was not here ; he was out West.

Mr. BLISS. That paper is dated the 28th of April ; that, with the oath, was filed on the 30th of April, 1879.

Mr. CRANE. I see no file mark on this 5 E showing when it was filed.

Mr. BLISS. It transmits the oath, and the oath was filed on that day. [Oath shown to Mr. Crane.]

Mr. MERRICK. [Resuming.] Gentlemen, I stated in a preceding part of my argument that, with the affidavit of June 1881 under their arms, S. W. Dorsey, Mr. Ingersoll, and Mr. Rerdell went to the President. Some little irregularity took place in the colloquy between Mr. Ingersoll, the court, and myself, in which, with a great deal of irregularity, Mr. Ingersoll volunteered the statement that Rerdell did not go to the President at that time in their company. I have no doubt that is so. But Rerdell did go up with them to the Executive Mansion, and they left him in the ante-room *while they went in to see the President*. In my mind's eye I can see the three worthies now, arm-in-arm, with that affidavit in charge, going up the avenue to the White House to get the President of the United States to discharge two of his Cabinet ministers, upon a paper coming from a man whose statements they then believed to be unworthy of credit. Reconcile the statement, therefore, with Rerdell's testimony, which was that he went up to the President's house and remained in an ante-room ready to be sent for if necessary to help this conspiracy to turn out MacVeagh, and thus prevent the prosecution of Dorsey.

Now, gentlemen of the jury, I call your attention for a little while—and I shall be as brief as possible—to what the other side seems to consider an important transaction in the course of these proceedings, namely, the distribution of the routes on the 1st day of April, 1879. I need not remind you that I have traced this conspiracy, step by step, down to that period of time and beyond it, and as I have gone along, showing how Stephen W. Dorsey asked Miner to come in with his brother and Peck, because, as Stephen W. Dorsey said at the time, he thought it would be a good thing for Miner ; and how Stephen W. Dorsey came on to Washington and got Boone to assist in the transaction, and throughout was the guiding genius and spirit of its conduct, its speculations, and its adventures ; and how John W. Dorsey contributed his aid with ready affidavits whenever required ; how Miner said that they were "all good affidavit men," and understood the whole scheme and speculation ; how Vaile came in without security, in the fullness of his philanthropic heart, giving aid to the scheme the money that had been accumulated by the sweat of his brow, without the slightest security of any kind to insure its repayment ; how these routes, at the time largely losing, were subsequently changed by the alchemy of fraud and perjury into routes giving immense gains ; and how Brady piled up those tremendous orders, unprecedented in the history of the records of the department, to such an extent that even his honor, when he came to speak of the admissibility of our testimony, said in substance that he stood amazed before them. I need not remind you of all this, but taking it as a conceded fact, for the purpose of my argument, that a conspiracy to defraud the Government in reference to these routes existed on the 1st day of April, 1879 ; that those routes had then

been expedited by these criminal, illegal, and outrageous processes; taking it for granted that the conspiracy then existed, the question which I now desire to direct your attention to is whether by the transaction of that day, the 1st of April, 1879, there was any termination or abandonment by the parties of that conspiracy. For you must find, in order to find a verdict of guilty, that the conspiracy, as such, existed between these parties subsequent to the 23d day of May, 1879, the time when it is laid in the indictment that the conspiracy existed. Not that it was formed then. But no matter when formed or where formed, was it in existence on the 23d day of May, 1879, or since that date? I mean the conspiracy existing prior to and on the 1st day of April, 1879.

I lay it down as a proposition of law, which I presume the court will tell you is correct, that if you find these orders on these routes, and the proceedings thereon, tainted with criminality on the 1st of April, 1879, before this division took place; if you find that up to that time these conspirators were seeking by perjury and other unlawful means to rob the treasury of the people, no division at that time of the plunder acquired up to that day could free them from the crime they had committed, or terminate the conspiracy in which they had been engaged; but that, as these contracts had three years to run from April, 1879, and were continuing contracts, the distribution of the contracts was a division of plunder the profits on which were to be realized in the future, and that such a transaction was not a parting with the crime of conspiracy. But claiming the property then divided as plunder and resting that claim upon a manifest and unequivocal testimony, I say that if, when these contracts were distributed, to wit, on the 1st of April, 1879, you find that they were tainted, and that in the division it was agreed and understood that the distributees should respectively do for one another whatever was necessary "*to carry out the business,*" then the conspiracy continued under the operations of that covenant, and the distribution was made not to get rid of the crime of conspiracy, or to break up the conspiracy, but to leave to the respective parties a more facile mode of carrying out the design to rob the Government, each party freed from the caprices of the others, and each having the right to call upon the others for such aid as might be needed feloniously and burglariously to enter the national Treasury. I think you all comprehend that proposition without my dwelling upon it any longer than simply to repeat it.

Now, what was the fact in reference to this subject? Let us see what the agreement was. Bear in mind, gentlemen, that the parties testify that, after the 1st of April, Miner and Vaile had no interest whatever in the routes taken by S. W. Dorsey; that S. W. Dorsey and John W. Dorsey and Peck had no interest whatever in the routes taken by Miner and Vaile, and that Peck and John W. Dorsey had no interest in anybody's routes. That is their testimony—that after the 1st of April there was no interest of a practical kind by Miner and Vaile in the routes taken by S. W. Dorsey, and no interest by S. W. Dorsey in the routes taken by Miner and Vaile. But what was the agreement of distribution? Although there was no interest of one distributee in the routes of another distributee, did the conspiracy end? Was it designed that the fraud should stop? Was it designed that the co-operative efforts of the several parties should cease at that time? John W. Dorsey on his cross-examination says—

Mr. CARPENTER. [Interposing.] What page, please?

Mr. MERRICK. 4105.

Q. At the time you sold out, was there any understanding about your making papers?—A. That was a part of the agreement. *I was to sign all the necessary papers TO CARRY ON THE BUSINESS.*

The business was to be carried on. “If anybody got one of my routes upon which I was contractor, I was to sign for him the necessary papers to carry on the business.” Not necessary papers of transfer—not necessary papers to consummate title, for that was done and accomplished; but the papers were “*to carry on the business* ;” that is, to execute the purpose of the conspiracy, which was the *business* of getting increase and expedition upon false affidavits. On his cross-examination, on page 4123:

Q. If you had nothing to do with these routes after the division, explain how it came that on this route, 38113, you made an affidavit on the 26th day of April, 1879, in order to get increased pay for expedition.

Now, if he had no interest after the 1st of April, how comes it that on the 26th of April he made this affidavit, the character of which I have already explained to you, gentlemen, made in blank and filled up?

A. When I sold out I agreed to sign all the necessary papers.

Q. That was part of the consideration, was it?—A. That was the agreement.

Q. You agreed to sign what?

Mr. BLISS. That question was by the court.

Mr. MERRICK. [Reading:]

By the COURT:

Q. You agreed to sign what?—A. All the necessary papers to carry on the business.

I did not observe that that question was asked by the court. It emphasizes the question. He answered that he agreed to sign all the necessary papers. The court wanted to know what necessary papers he meant, whether papers to carry out transfer of title, or papers to carry on business. “What do you mean by necessary papers?” “I mean all necessary papers to carry on the business.” Now, what else?

Q. Any papers that the parties having the routes might ask you to sign you agreed to sign?—A. All the necessary papers, AND THEY CLAIMED THAT THESE AFFIDAVITS WERE NECESSARY PAPERS.

On certain routes where John W. Dorsey was contractor, by reason of so being contractor, and having certain relations to them, he was the only man that could furnish the lever with which to pry open the Treasury door, and he stipulated, according to his own language, that he was to furnish affidavits for expedition, and I have shown you that those affidavits were the levers that pried open the door and made the robbery possible. He was then to furnish the affidavit. I have shown you that the affidavit was the foundation of this robbery. I have shown it to you from the records in the department; and then those records have had a flood of light thrown upon them by the testimony of Moore, when he says that he had a conversation with Miner at Denver, in which he told Miner that the more expedition they got upon the Oregon routes the worse it would be for them, and that Miner replied, “*The expedition depends upon the affidavit, and we are all good affidavit men.*”

Mr. CRANE (foreman of the jury). Do not the regulations require that the affidavit should be made by the contractor?

Mr. MERRICK. Yes, sir.

The COURT. The regulations require that the affidavit for expedition should be made by the contractor.

Mr. MERRICK. But Brady did not respect that order. He had taken the affidavit of the subcontractor; and there were cases where the person who made the affidavit was neither contractor nor subcontractor, as in John W. Dorsey's case. Another man could not make it according to the regulations. Nevertheless, Brady did take others fraudulently and for the benefit of these conspirators, and Brady swore on the stand that it was all right to take them. He did not care for the regulations or laws either.

I think, if the affidavits were originally written in blank, and the parties interested were authorized to fill them up with as many horses and men as they pleased, the man that swore to the affidavits was a participant in the fraud with the man who filled them up, and that is what John W. Dorsey did when he continued the business of the conspiracy.

The COURT. This affidavit is dated the 26th of April; that, of course, is outside of the date of the conspiracy.

Mr. MERRICK. I am not using it as an overt act.

The COURT. The conspiracy must be shown to have been since the 23d of May.

Mr. MERRICK. Of course. I am proving that the conspiracy which, on the 26th of April—

Mr. HENKLE. [Interposing.] This was in May.

Mr. MERRICK. What odds does it make? Don't trouble yourselves.

The COURT. The prosecution has been allowed to show, as far as able, that the conspiracy existed prior to the 23d of May, and they had a right, of course, to bring it down to that point, on the condition that they show that it was continued since the 23d of May.

Mr. MERRICK. I am arguing now to show that it did not end on the 1st of April. The other side say it did.

Mr. HENKLE. We say the division was completed on the 5th of May.

Mr. MERRICK. That is a division gotten up by the acrobatic Miner. There was nothing on God's earth done on the 5th of May, except to write a letter to the Post-Office Department asking that certain matters addressed in a certain way should be sent to a particular place. The others all swore that it was on the 1st of April.

Mr. DAVIDGE. They all say that the routes were divided on the 5th of May.

Mr. MERRICK. No, sir; that is not so. The subcontracts all bear date on the 1st of April, and they all swear that it was on the 1st of April; and the reason of it, may it please your honor, was that that was the end of a quarter.

The COURT. Now, Mr. Davidge wants to interrupt you.

Mr. DAVIDGE. Simply to say that in my view—for I cannot compete with my learned brother in the article of voice—

Mr. MERRICK. [Interposing.] I suppose that is the reason you did not argue the case.

Mr. DAVIDGE. One reason, and another very good one is that I did not deem it necessary, after listening to the fourteen days' argument on your side; nor did the possibility of the fourteen days being supplemented by ten days more impress upon my mind any absolute necessity for me to argue it.

I was only going to say—and if I am wrong of course I will be the first to take it back—that the agreement was made some time in the month of March, which was to take effect on the 1st of April, and the routes on the 5th of May were actually divided. Not until that time

were they actually partitioned off, and the department notified. But the agreement was made in March, to take effect on the 1st of April, because that was the end of the current quarter, and the partition and notification to the department were in May. And on the 1st of April, 1879, Stephen W. Dorsey was not in the city of Washington.

Mr. BLISS. On page 4225 Mr. John R. Miner says that the division was previous to a certain date, and that the first meeting was on the 6th of March.

Q. When did they agree upon the terms?—A. I cannot fix the exact date, except that a note which I have, of the 29th of March, refreshes my memory that the division of the routes—that is, the setting off of the routes—was perfected previous to that date.

The 29th of March.

Q. Previous to what date?—A. The 29th of March. I have a note that fixes that date; but we could not divide the debts until the quarter had expired and towards a month afterwards, because the amount of them could not yet be ascertained. We did not know what the deductions would be and we could not ascertain the amount of the bills on the routes we were running ourselves.

At the bottom of page 4226 the witness says:

The WITNESS. You misunderstood me. The arrangement as to the division and the division of the routes took place at the same interview.

Q. Can you fix the date of that interview?—A. I fix it only as prior to March 29, 1879. I have no memorandum or recollection of the exact date. It was subsequent to the 4th of March and prior to the 29th of March, 1879.

Mr. MERRICK. On the 1st of April they divided up these routes, and the proof from themselves is, although they may equivocate and falsify to get out of a seeming trouble, that after the 1st of April one had no interest in the routes of another.

Mr. DAVIDGE. Mr. Merrick, will you allow me to direct your attention to the fact——

Mr. MERRICK. [Interposing.] I prefer to go on with my argument.

The COURT. Mr. Davidge may read——

Mr. MERRICK. [Interposing.] Very well.

Mr. DAVIDGE. Mr. Merrick stopped at a certain point, and I propose to read a few lines of what he omitted.

Mr. MERRICK. From what page?

Mr. DAVIDGE. From page 4227, the same page where you were reading.

Q. Were you present?—A. I was. Subsequently Mr. Dorsey went to New Mexico and——

Q. [Interposing.] I do not care about that. Then at that drawing the routes drawn by you and Vaile passed to you, did they?—A. They did.

Q. And the routes drawn by Dorsey for Peck and John passed to them?—A. They did.

Q. You had no pecuniary interest in the routes that passed to them?—A. None after that date.

Q. And they had no pecuniary interest in the routes that passed to you?—A. None.

Q. None whatever?—A. None whatever.

Q. On the 1st of April you executed papers, passing respectively to each other the titles?—A. Not on the 1st of April certainly, but some time during April I should judge.

The COURT. What matters it? The parties had come to a substantial agreement in March. Vaile says so, and Stephen W. Dorsey, too, as well as Miner. On the 6th of March that agreement was substantially concluded, although it was not formally executed.

Mr. DAVIDGE. That is it exactly. I concur with your honor. It ran along——

The COURT. [Interposing.] Of course there were some other matters that could not be fixed up.

Mr. DAVIDGE. Undoubtedly.

Mr. HENKLE. Until the end of the quarter.

The COURT. But between the parties there was a verbal agreement, as I understand it, concluded about the 6th of March. Vaile, and Stephen W. Dorsey were the substantial parties to that contract.

Mr. MERRICK. Certainly.

The COURT. The rest all followed them. Miner followed Vaile, and Stephen W. Dorsey took his party.

Mr. DAVIDGE. Your honor must see that Miner did not follow Vaile at all, because Miner got 30 per cent. under the division, and afterwards Vaile and Miner went into copartnership, Vaile getting 40 per cent.

The COURT. That was between Vaile and Miner.

Mr. CARPENTER. I think Mr. Turner states in his testimony that he himself received notification of the division at the department on the 5th of May.

Mr. MERRICK. What was that? It was not notice of the division; it was notice to send papers to a certain place.

The COURT. Those were all matters——

Mr. MERRICK. [Interposing.] All matters of form and immaterial, for the witnesses all swear that, after the 1st of April, Dorsey had no interest in the Vaile routes, and Vaile had none in the Dorsey routes.

Mr. CARPENTER. That is so; we do not deny that.

Mr. MERRICK. Very well. Then if the interest ceased on the 1st of April that is the substantial fact. The business to be done afterwards by the parties respectively for each other was not to transfer title, according to John W. Dorsey; *it was to make affidavits to carry on the business*; it was “to carry on the business,” to use his language, and the division that was made was made because of the caprice and ill-will of the parties, so that they need not be jostled and disturbed in the distribution of the proceeds of their robbery by the fraudulent increases, and they found it easier and more promotive of harmony to divide the routes and let each man take care of his own for himself on the affidavits furnished to one side and the other by the respective parties. That is all. They were doing the thing in harmony, keeping up the spirit of the conspiracy, united in the consummation of a common object, each standing ready to help the other and each helping the other. Instead of dividing up the money after it was drawn, they divided up the papers upon which it was to be drawn, and they divided up those papers in blank, may it please your honor. They were all blanks to be filled up as occasion might require, and whenever any one of those blanks was filled up, it was filled up in execution of the conspiracy, which was continued under the agreement that they would do what was necessary to carry it on. If, as your honor remarked to Mr. Bliss, in the course of his argument—I think your honor made the remark—the thing was innocent in itself on the 1st of April, then why should their acts in that connection tend to prove guilt? But if the thing was guilty on the 1st of April, then whatever grew out of that guilty thing was guilty as long as it remained in action. I understood that to be the view of the court then; I understand that to be the view of the court now. Therefore, I hold that if I have established the conspiracy as of the 1st of April, I have established it within this indictment.

Q. You sold out for so much money?—A. Yes, sir.

Q. In consideration of so much money you transferred all your interest in these contracts, and further agreed to execute any necessary papers in the course of carrying out those contracts?

Any papers necessary in the course of carrying them out.

A. Yes, sir; that was the agreement as I understood it.

Q. Were the others to do the same thing?—A. I do not know anything about that. I had nothing to do with that at all.

Q. You do not know anything about it?—A. No, sir; it was not any affair of mine at all.

Q. *You carried out your part of the agreement?*—A. *I did; I tried to as far as I could.*

Q. You signed any necessary papers they brought to you?—A. Yes, sir; any that I thought was proper and right, I signed. [Page 4124.]

Therefore he signed those affidavits of the 21st and 26th of April, 1879, sent to him by Rerdell.

Here is what Miner said. You will find directly, as I go along, that he was in a little trouble, and he was just as ready to account for the trouble as to account for the Hayes letters, and did it just as wisely. I read from page 4170:

Q. What did you have to do, if anything, with regard to his routes after the separation?—A. Not a thing. I never touched pen to paper for them after the 5th of May.

Mr. WILSON. I think you are mistaken as to the page you have given.

Mr. MERRICK. I have it so marked here.

Mr. BLISS. The page may be wrong, but that is what he said, undoubtedly.

Mr. MERRICK. [Reading from page 4212:]

Q. Do you say that all the orders for pay that have been introduced in evidence in this case which purport to have been signed by you on routes that went to Senator Dorsey in the division were signed by you prior to or on the 5th of May?—A. Prior to the 5th of April, 1879; probably some time in April.

* * * * *

Q. Did you authorize Mr. Dorsey to fill a blank with the date whenever the exigency arose?—A. I did.

He gives Dorsey orders for pay on the routes that had passed to Dorsey, and authorizes him to fill up blanks whenever the emergency arises.

Mr. WILSON. Mr. Merrick, I wish to call your attention to the fact that you omitted something.

Mr. MERRICK. I have to omit some things. I cannot read all this testimony. I take the substance, may it please your honor.

Mr. WILSON. I will have to appeal to the court.

Mr. MERRICK. Very well; appeal to the court.

Mr. WILSON. What the counsel has just read—

A. Prior to the 5th of April, 1879; sometime in April—

Was followed by this question and answer:

Q. Why were those orders signed in blank in that way?—A. To enable them to draw the pay. If they chose to borrow money on the route, there being a subcontract on file, the party in whose favor the subcontract was could file a receipt, which would relieve the pay, and he could then put his draft in the hands of a banker and borrow money on it.

Then follows the question and answer which he last read:

Q. Did you authorize Mr. Dorsey to fill a blank with the date whenever the exigency arose?—A. I did.

Mr. MERRICK. Very good. Now, I appeal to your honor, is that interruption justifiable under any rule of law?

The COURT. I think so.

Mr. MERRICK. I will tell you why it is not?

The COURT. Go on.

Mr. MERRICK. For the reason that I say before the jury, and con-

tend, that the only question I was developing was whether the papers were in blank and Dorsey authorized to fill them up. He says they were in blank, and Dorsey was authorized to fill them up. The question before goes into the reasons why they were in blank, namely, that Dorsey might have greater facilities in the use of the orders. What had that to do with my argument?

Again, on page 4213:

Q. Why were they intended to be in blank?—A. Because there was no telling the amount; the amount was at that time undetermined; we might want to draw an order for part of the pay or all of the pay.

Therefore the amounts and the dates were left in blank, furnishing to the party that took the route every facility that the original owner upon the route had, in order to carry out the original agreement:

Q. Is the same true of the orders which you have signed?—A. I dated those the 1st of April, 1879. You will not find any dated later than that, that is, so far as I remember from seeing them in the record.

Now S. W. Dorsey says, in his cross-examination, on page 3396:

Q. At the time of this distribution of these routes, in view of this law of Congress which I have just read and the affidavit that was required by the Post-Office Department as the basis of the pro rata calculation, did you not also divide up among you a lot of blank affidavits?—A. I do not remember about that.

Q. Do you know whether you did or not?—A. I do not know.

Q. Do you not know that it was understood between the parties that affidavits should be furnished, if necessary, respectively, by one side to the other?—A. Oh, there may have been some conversation of that sort.

I have in the previous part of the argument, gentlemen, shown you that the blank affidavits were divided up among the distributees on the 1st of April, 1879, and that Peck's affidavits, made in December and February in blank, were not filled up and filed in the department until after the 1st of April, and that they were then filled up by the respective parties holding the routes to which the affidavits belonged by reason of Peck's relation to these routes. That being the agreement upon which the division took place, the next question that arises is, what did these parties do under that agreement? Let us see. The agreement is positively proved, as I have said, by John W. Dorsey, and is substantially proved by what transpired afterwards.

Let us look at the affidavit of John R. Miner on the route from Saint Charles to Greenhorn, dated April 17, 1879, and filed April 18, 1879, upon which the contract price was raised from \$548 to \$3,068.80.

Mr. CARPENTER. What is the page?

Mr. MERRICK. Page 4187 of the record refers to the route, I think. You will find it all under the head of that route. That route was originally taken by Miner. It passed to Stephen W. Dorsey in the distribution. On April 17, 1879, after the division, when Miner had no further interest in the route at all, he made an affidavit for expedition, which affidavit was filed April 18, 1879. On that affidavit there was, on July 14, 1879, an order allowing \$2,630.40. The affidavit was written by Miner after the division, and I have shown to you that that is one of the affidavits which was false according to the proof in the case.

Q. I want to ask you whether you had any interest in that route at the time you made the affidavit, either present or prospective?—A. I had not.

Now let us go a little further. This was all right enough possibly if the original thing had been right; but if there was a conspiracy up to April 1, then these things were done—as I have shown you—under an agreement to carry out that conspiracy, and they cannot protect themselves from the body of the crime by simply showing a division of the routes.

Route 46132, from Julian to Colton, was originally taken by John M. Peck. In the distribution it was taken by Vaile. John M. Peck made an affidavit on December 30, 1878. Bear in mind that the affidavit was made by Peck on that day on that route thus taken by Vaile. It was filed April 11, 1879. On June 24, 1879, there was granted on that affidavit an order giving an increase of pay to the amount of \$5,346. The affidavit was written by Miner. It was filled in by Miner. It was interlined, as you will see, from an examination of the affidavit. Now you have one affidavit of Miner's on a route of his that passed to Dorsey, made after the 1st of April and after he ceased to have any interest in the route. You have an affidavit of Peck made in 1878 on the route from Julian to Colton, which passed to Vaile and Miner, which affidavit, though made in December, 1878, was not filed until April, 1879. That was one of the blank affidavits distributed to the party who took the route at the time of the division. That was one of the burglar's tools on hand and in stock at that time. Now I submit, gentlemen, that this interchange of services after the distribution shows, if what John W. Dorsey said in that respect is true, that the distribution of the routes was merely *for the purpose of enabling the parties to carry on the business*, instead of ending the conspiracy, and that the covenant was that the one should do for the other whatever was necessary to carry on the business. The business was carried on by these affidavits, and subsequently all the way down from the 11th of April and the 26th of April, when these affidavits were filed, mutual offices were done and interchanged and orders were passed which are set forth in the indictment as overt acts, and show a continuation of the conspiracy.

I will now proceed to the other point, namely, a discussion of the overt acts.

In the discussion of the overt acts you will find that the continuation of the conspiracy will necessarily come in and the fact that it was continued be fully developed. The date of the conspiracy as laid in the indictment is May 13, 1879. It is for you to find from the evidence that the conspiracy was in existence since that date. If the conspiracy existed before, and you find that the object was to defraud the Government of the United States by the means stated, of increases and expeditions through fraudulent petitions and fraudulent affidavits, you cannot fail to find that that conspiracy continued and that those means were resorted to after the 23d day of May, 1879. The whole and entire question then hinges upon the general inquiry: Was there originally a conspiracy to defraud the Government of the United States?

Route 34149, from Kearney to Kent: July 10, 1879, there was an order for increase and expedition (1 A, page, 567). On that order thus made, gentlemen of the jury, within the period—and all the orders and papers of which I am going to speak to you now are within the period—no expedition was *in fact* obtained. The mail was carried before the order in a shorter time than it was after the order, and the *order* of expedition only operated to take from the Treasury \$2,200, for which there was no consideration whatever.

The COURT. Do you treat that order as an overt act?

Mr. MERRICK. Yes, sir; that order is an overt act.

The COURT. So charged in the indictment?

Mr. MERRICK. So charged in the indictment.

Mr. WILSON. I would like to have the indictment.

Mr. MERRICK. Get the indictment.

Route 35015, from Vermillion to Sioux Falls: July 10, 1879, order for increase and expedition (7 R, page 1904).

Route 35051, from Bismarck to Tongue River. August 2, 1879, order to increase three trips, which order made it six trips, doubling the fraudulent allowance in the first order on that route. As it doubled the fraudulent amounts this order itself became fraudulent, and that is an evidence of the continuation of the conspiracy and of acts done under the agreement.

Route 38134, from Pueblo to Rosita: July 8, 1879, order for increase and expedition. Oath of J. W. Dorsey, subcontractor, acted on; averred as filed on the day of that order. Although the oath had been filed before, it was treated as filed on the day it was acted on, and the man who filed it continued in the commission of the crime of filing up to the day the oath so filed was used to produce its fraudulent effect, of which he got the benefit. This oath was filled in by Rerdell.

Route 38135, from Saint Charles to Greenhorn: On June 26, 1879, there was an order for increase and expedition. On November 10, 1880, there was an order to embrace Agate. They had no right to put that on the route, as has been explained to you. On December 14, 1880, there was an order of Brady to omit Agate and allow a month's extra pay. No work was done, and no mail was carried.

Route 38145, from Ojo Caliente to Parrott City: February 26, 1881, order to increase four trips. If your honor please, this was a retroactive order, dated February 26, requiring the department to pay from January 15, 1881. Your honor will recollect that this retroactive order was made upon the telegram which had been sent out before, making an increase upon a short distance of the route; but when the order came to be made it extended over the entire route, passing by and disregarding the small portion of the route specified in the telegram. That was the Chama order, as will be remembered.

Route 38152, from Ouray to Los Pinos: August 3, 1880, order to discontinue and allow a month's extra pay when no service had been performed.

Route 38156, from Silverton to Parrott City—

Mr. WILSON. [Interposing.] I desire to ask, if you will allow me to make an inquiry of the court without interrupting you. I wish to inquire of the court whether it would be proper, as Mr. Merrick is now speaking of these overt acts, for me to bring to the attention of the court, and to the attention of the counsel, the indictment in that respect. If it is not, I do not want to say anything about it.

The COURT. I think you had better not interrupt him. He is assuming his own positions, and he has a right to do that.

Mr. MERRICK. I am assuming my own positions, may it please your honor, and on the proper occasion I will maintain every one of them.

The COURT. I suppose, of course, that the other side will give you the opportunity.

Mr. WILSON. Oh, yes; we will give him the opportunity.

Mr. MERRICK. There will be plenty of opportunity.

Mr. WILSON. I did not know but what you might want the matter brought up now.

Mr. MERRICK. I am obliged to you. You are kind and generous; I know you would like to make a speech.

Route 38156, from Silverton to Parrott City: Order for increase and expedition, June 12, 1879. Oath of John W. Dorsey filled in by Rerdell on figures given by S. W. Dorsey after it was sworn to. The order was passed June 12, 1879. That is an overt act. It was a continuation of the bargain of the 1st of April, and of the conspiracy.

Route 40113, Tres Alamos to Clifton: May 23, 1879, letter of J. W.

Dorsey transmitting petition. What had J. W. Dorsey to do with that business? Petition 9 O, written by S. W. Dorsey. Petition 11 O, written by John A. Sibbald. 12 O, another petition written by James W. Donnelly. He is the same witness who testified about the books, and who worked for Dorsey. [In reply to a remark by Mr. Carpenter which was inaudible to the reporter.] He was Dorsey's man, but not a man that Dorsey entirely corrupted. He was Dorsey's man, and worked for Dorsey, and when he testified here to facts that went to Dorsey's detriment, he did it under the greatest possible pain, as was evident from the manner in which he gave his testimony.

Mr. CARPENTER. If Dorsey partially corrupted him you finished the work.

Mr. MERRICK. Order for expedition June 3, 1879, founded on these petitions. February 11, 1881, order to increase four trips. Bear in mind that in some of these cases I claim specific elements of fraud; but in all of them the general elements of the fraud that tainted the transactions all the way through up to and after April 1.

Route 41119, from Toquerville to Adaiville: Here is an order to which I desire to call special attention. June 25, 1879, Peck's oath was filed, dated January 22, 1879. The body of the oath was written by Miner. This was one of those distributed blanks. The figures were filled in by Rerdell by direction of S. W. Dorsey, who told him to put in anything, but keep the proportion of 150 to 250 per cent. That is set forth in the indictment as an overt act, and that, my associate informs me, Mr. Ingersoll admitted in his speech came within the statute.

Mr. INGERSOLL. I think I admitted it was filed within the time.

Mr. MERRICK. The filing is the crime as to the oath. You will bear in mind that it is not necessary for you to find all these overt acts. *One single overt act done by any one of these men after the 23d day of May, 1879, is all you need find.* All you need find is the filing of that oath on the 25th day of June, 1879. It only requires one overt act. The conspiracy is proved by a multitude of acts out of which you draw the conclusion of a conspiracy. But, may it please your honor, unless the law has been modified by the late decision of the Supreme Court, and I think likely it has, in addition to the conspiracy there must be one overt act committed by one conspirator to make it criminal.

The COURT. What decision of the Supreme Court has modified that?

Mr. MERRICK. The Brittan case.

Mr. WILSON. That recent case.

Mr. MERRICK. In the Brittan case the Supreme Court decided that the overt act was not necessary to constitute a part of the body of the crime of the conspiracy, as I understood the decision when I looked at it. That is a matter that will be discussed before your honor. I shall not disturb the ruling made by your honor, or rather I shall not ask you to disturb it at all, but I will treat the overt act as part of the body of the crime. The Supreme Court did not seem so to treat it. It states that the conspiracy being proved, an overt act is, as it were, a sort of *locus penitentiae*, but does not constitute an essential element of the crime.

The COURT. I glanced at that decision, but I acknowledge I did not read it critically. As I understood it I did not find any doctrine laid down there that gave a shock to my convictions at all. It was all consistent with my previous conclusions that there must be a conspiracy and an overt act in pursuance of the conspiracy. If the conspiracy was formed and was not followed by an overt act there would be nothing to punish. There would be no crime. The overt act must be an act in

pursuance of the conspiracy. Some other act not done in pursuance of the conspiracy of course would not be an overt act.

[Mr. Wilson rose.]

Mr. MERRICK. Mr. Wilson, excuse me. I do not propose to discuss it, and would rather not interrupt the line of my argument for any suggestions in regard to it.

Mr. WILSON. I am not going to make any suggestions, but only to say that at a certain point in my argument I was going to take it up—

Mr. MERRICK. [Interposing.] Will you allow me to go on?

Mr. WILSON. Yes; certainly.

Mr. MERRICK. I do not propose to take it up now.

Mr. WILSON. I was just going to say to the court that we would like an opportunity to discuss it.

Mr. MERRICK. It is a matter of law, and you will have an opportunity to discuss it.

June 25, 1879, petition 4 D filed, and altered by writing in seven trips. 5 D written by Rerdell, and some of the names probably fictitious, says one of our witnesses. July 8, 1879, order for increase and expedition. You will bear in mind that an overt act may have been committed by Rerdell just as well as anybody else. He is one of these conspirators, pleading guilty, and whilst in an ordinary case it is necessary for the jury to find two men guilty, for one man cannot conspire with himself, yet where one conspirator has pleaded guilty to the indictment the jury may find any other one guilty along with him. Any act done by Rerdell in execution of this conspiracy, whether done on his own motion or at the suggestion of S. W. Dorsey, is an act to be considered by you the same as if it had been done by any other one of these parties.

Now, on the Eugene City and Bridge Creek route, I call your attention particularly to this overt act: On May 24, 1879, one day after the time fixed in the indictment as the date when the conspiracy was flagrant, Peck's oath, dated January 22, 1879, was filed. Miner wrote the body, and Rerdell filled in the figures after the date of the oath by direction of S. W. Dorsey, and on that oath was passed an order for increase and expedition.

Mr. KER. Mr. Ingersoll admitted that.

Mr. INGERSOLL. I admitted the filing as within the period, but I did not admit the affidavit to be untrue.

Mr. MERRICK. This is one of Peck's oaths which is one of the blanks distributed at the time of the division, and the *jurat* is dated January 22, 1879. It was written by Miner. It was filled in by Rerdell. Dorsey ordered it to be done. You then have on that oath of Peck, as participants in its manipulation, Rerdell, Miner, and S. W. Dorsey. The evidence is conclusive that that oath was fraudulently manufactured, filled up, and illegally dealt with, and as you must find that it was filed on the 24th of May, 1879, that may be regarded in itself as a final fact in your inquiry as to overt acts. For as you need find only one overt act committed by any one of the defendants in order to consummate the crime of conspiracy as denounced by the law and as this overt act cannot be questioned in any of its features or forms or substance, its illegality or its immorality or the fact that it was perpetrated by the parties, or that it was perpetrated within the time, you may regard that overt act as an end to your inquiry in reference to overt acts. But I will go on further:

Route 44155, from The Dalles to Baker City: Order June 27, 1879, to increase four trips. Here comes another order to which I wish to call particular attention.

Route 44160, Canyon City to Camp McDermitt. July 16, 1880.

Mr. BLISS. What year?

Mr. MERRICK. 1880. Petition 21 H, written by Miner. Petition 29 H, written by Miner, with the name of E. Hall and five others forged. Order to increase four trips, July 16, 1880.

Route 46132, from Julian to Colton: June 24, 1879, order for increase and expedition.

Route 46247, from Redding to Alturas: February 11, 1881, order to increase to seven trips. Major and Culverhouse swore that they were carrying the mail in less time than the order required. Many thousand dollars were taken from the Treasury by the order for expedition, and yet, in point of fact, the mail was being carried more expeditiously than the order required it to be carried.

Mr. INGERSOLL. What is the date of the order?

Mr. MERRICK. February 11, 1881. Increased to seven trips, doubling up the expedition previously made.

Now, gentlemen, you see that all along up to the time that this investigation began and the law interposed to arrest this wild carnival of corruption these orders were being passed and these contractors were upon these contracts and orders robbing the Treasury of the United States. I therefore say again, gentlemen, that if there was in reference to these contracts originally a conspiracy prior to April, 1879, as I think I have conclusively shown you, then on the 1st day of April, 1879, the division was not for the purpose of stopping the robbery, but to facilitate its further development and to realize the profits from it by conducting it under a different system, each party rendering reciprocal aid in the process of carrying on the business, and there flowed one continuous and uninterrupted current of corruption until stopped by investigation and judicial inquiry and the indictment of the malefactors. I have shown you on these routes a sufficient number of overt acts to render any failure of justice by reason of an inability to find their commission an utter impossibility.

If your honor please, it is near the hour of adjournment.

The COURT. I will consult your comfort. We will take our recess now. I suppose it will be an hour and ten minutes, then.

Mr. MERRICK. Yes, sir. I shall finish in half an hour or an hour, I think, unless Brother Bliss makes me go into some matters I do not want to go into.

At this point (12 o'clock and 52 minutes p. m.) the court took its usual recess.

AFTER RECESS.

Mr. MERRICK. [Resuming.] With submission to the court and gentlemen of the jury: Appreciating that I have detained you already in this argument almost too long, too long for your own patience, which has been singularly manifested throughout by a careful and deliberate attention, and too long for my own strength, which I have had to press up to its utmost capacity in order that I might fully perform the important duty imposed upon me by our common Government, I will hasten to its close. There are many things that I have in my notes about which I would like to speak to you, but which I will pass by without comment. I have gone over all that was important and all that was material, and I think that I have, as I promised in the beginning, made the questions involved so plain that all of you can see distinctly the entire case as claimed by

the Government. The learned counsel who addressed you last on behalf of the defendants, on two or three occasions in the course of his speech, remarked, speaking of himself, that he must kill this witness and that witness, and once or twice said that he must keep on killing. If he has succeeded in killing all the witnesses for the Government, the destruction of whom is essential to the defense, he has the fortune now of standing in the midst of quite an extensive burial ground. He claims to have killed Rerdell. In addition to him it was necessary that he should kill Boone, necessary that he should kill Moore, and necessary that he should kill Walsh. In order to get rid of the existence of the red books of Rerdell and the memorandum, which was the substance giving the shadow in the shape of an entry upon those books, it was necessary that he should kill Donnelly and Mr. Gibbs, and that he should sorely wound Mrs. Cushman. To protect John W. Dorsey it was necessary that he should kill McBean and McLellan and Cable and Lounsberry and Lambert and Major. To protect his own clients it was necessary that he should paralyze their cross-examination side, beginning by paralyzing Miner's cross-examination, John W. Dorsey's cross-examination, Vaile's cross-examination, Stephen W. Dorsey's cross-examination, and Brady's cross-examination. It was necessary that he should then destroy French, on the Kearney and Kent route, and Nephi Johnson, on the Toquerville and Adairville route. I think, gentlemen, that all these witnesses whose destruction was necessary to the defense, and whose death we might have anticipated, according to the promise of the learned counsel, are not destroyed, but still live, and speak to you in such emphatic and distinct tones that you cannot fail to hear them, and in such a manner that you cannot fail to believe them.

Reviewing the entire case from its beginning to the end, as I have presented it to you, from the inception of the conspiracy down to the time when the last orders were made charged in this indictment, what will be your course when you retire to the jury-room? First among the facts of the case, looming up prominently and distinctly, to be analyzed and reduced into its original elements, is this great fact: These routes in the indictment, originally taken at an additional cost of \$41,135, were, in a little more than a year, through the exercise of an extraordinary and an exceptional power on the part of the Second Assistant Postmaster-General, raised to a cost of \$448,670 per annum. In view of that great and prominent fact your first inquiry will be, has the United States been defrauded? Second, if it has, by whom? Third, for whose benefit? Fourth, by what process? Fifth, was there a conspiracy to defraud for the benefit of these individuals by the processes suggested?

Now, gentlemen, with a few more words I shall finish my task.

It is certainly true that no nation has ever gone down whose fall was not more or less directly occasioned by the corruption of its public functionaries in the execution of their public trusts. The official life of a nation should be, and very generally is, the reflex of the moral sense and of the intellectual development of its people. If official delinquency is permitted to go unwhipped of justice, the people become participators in the crimes of their officials. Then we know that there is some great calamity at hand, loss of liberty, loss of nationality, loss of national prestige, civil strife, or internal dissension. One of the most difficult duties which those charged with the administration of public affairs are called upon to perform is that of bringing their colleagues in office and sometimes the leaders in their own party to justice for their crimes of venality and corruption. The sympathies of partisanship and party policy condone a multitude of sins; and it is often inculcated as a max-

im of duty in the interests of political organizations that dissensions are not to be provoked and party supremacy endangered by the prosecution of those who claim that their contribution to party success entitles them to immunity from punishment for their corrupt practices, and even demand a longer lease of power wherein to continue their criminal practices.

Mr. Ingersoll has said in his speech to the jury :

These men who are persecuting S. W. Dorsey seem to forget who he is and what he has been. Yet men disgrace the position that Stephen W. Dorsey helped to give them by attacking him.

Can such language be heard in a court of justice before a jury in defense of a criminal without creating consternation among a free people, standing each equal to the other before the law? For me, I regard the demands of our country as above those of party. The true patriot and the lover of his country, of his country's honor, and of her freedom, cannot more readily pass by without condemnation the delinquencies of the officials of his own political household than he can those of any hostile organization. For the official delinquencies of political opponents the hostile political organization is not responsible. But for the official delinquencies of its own partisans the organization that put them in power and continues them in power, after knowing their criminality, is responsible. To repress and punish them is the highest moral duty as well as a duty requiring the manifestation of the highest moral courage. The people of these United States with one universal and harmonious voice, irrespective of party associations, and regardless of party affiliations and party prejudices, will, through all time, pay their high tribute of honor and devotion to an Administration which, convinced of the guilt of those who, according to their claims, have helped it to power, now pursues them through the judicial tribunals of the Republic to achieve that retributive justice which their crimes demand at the hands of the violated law.

It is well known to you that my political sentiments are not in accord with those that control the administration of the Government of our country at this time, and therefore I may speak with freedom. I deem it my duty, as it is my pleasure, to pay a just tribute to the gentlemen whose unpleasant function it has been to employ the power with which they have been intrusted, to pursue and punish the corruption of members of their own political household. It has been a most unpleasant duty on the part of the Chief Executive and of his official advisers to arraign before the bar of justice men who have stood high in the councils of their party, and whose energies have so greatly contributed to the success of that party. But it is infinitely to their honor that they have not sought to evade that high duty, and that the violent and libelous and tempestuous assaults made upon them have been ineffectual to swerve them from the line of duty even in the estimation of a hair. True to their country and to their country's cause, they have not hesitated to sink all the demands of party at the call of public duty, and by this course paid a high tribute to the inherent, grand, and lofty manhood of the American people. Such appeals as Mr. Ingersoll has addressed to this jury, and through his speech in this court to the people of the United States, can only redound to his own discredit, and, showing the low and narrow basis upon which he would put the vindication of his clients, goes forth like the wail of despair from a victim conscious that his hour has come.

Your verdict, gentlemen, in this case will be one of the most important that has ever been rendered in this country. It will arrest forever

the wild carnival of official corruption where those engaged expect to secure themselves against the law by the extent of the wealth they accumulate by their crimes, or it will give unrestrained license to those disgraceful and criminal revels. Whatever there has been in the past of official corruption in our country calculated to disgrace and dishonor the people and soil the fair record of the nation rises up now before you, and the virtuous portion of our inhabitants appeal to you for their vindication, and most earnestly pray that you will stop these official speculations by making theft in official places a dangerous thing. Men in office suppose that if they can perpetrate frauds of sufficient magnitude to accumulate large wealth, the gilded hand may come into the court or into the jury-box, and that they may stand up and defy the law, as these men have proclaimed their defiance of it through the public press. Your verdict will stop this, gentlemen, and announce to the world that the time has come when purity in office shall be the rule in the public affairs of our country; or if not that, your verdict will say, "Go on, revelers. The country pays for the music. Fling high in your wild dance and rob without fear of retributive justice the treasury of the United States."

Let me say to you, gentlemen, that in a case like this whilst you are trying the defendants the country is trying you. It is trying you and me and the court. It is sitting in solemn judgment upon the manner in which judicial authority and justice are administered in the District of Columbia.

Mr. INGERSOLL. I would like to ask the court if it is proper for the counsel to say to the jury that the country is trying them.

Mr. MERRICK. The country tries every juror in a case in which it is interested.

Mr. INGERSOLL. I am asking the court if that is proper.

The COURT. [To Mr. Merrick.] You had better leave that to the court.

Mr. MERRICK. The jury sit under a solemn obligation to perform their duty. Every man's every act in life is being tried before a jury of his own acquaintances and in his own circle. He walks and he sits and he talks before a jury; and as he walks and as he sits and as he talks, so that jury finds him honorable or dishonorable, and whether their verdict be expressed or not, he feels that justice is being done to him, and writhes under the sting, though he knows not whence it comes, or rejoices in the glory, though he knows not whose hand decorates him. This case is known all over the nation, and as you sit and as you speak so will be the verdict of your countrymen. But above and beyond that, as your first obligation, remember you are being tried by your own consciences. Yield to the voice of sympathy and give a verdict responsive to tears or sorrow, and that verdict will in calmer moments disturb the profoundest and the sweetest sleep. Give a verdict according to the law and the facts on the evidence, a verdict which hereafter, however examined by you, will be considered a just verdict, visiting punishment if need be upon the guilty, protecting the country, upholding the supremacy of the law, and maintaining integrity in office, and the recollection of that verdict coming over you in a restless night, when the lips are fevered and the heart beats high with an unhealthy throb, will bring you repose and sleep. The voice of your conscience will be to you as the voice of God, saying, *You have done your duty.*

For myself, gentlemen, I stated to you when I commenced this argument that I should deal fairly with the case and frankly and honestly with the defendants. I stated that I should deal with you and with them as I would in a private transaction. I have done so to the best of my ability. I have done it conscientiously. I have no word to take back. I have

presented no thought the shade of which I would change. I feel that I have done my duty faithfully, honestly, and fairly; and I now ask you, gentlemen, as I believe you will, to do yours in the same way.

I demand from you, according to my conscientious conviction of the requirements of the facts in this case, a verdict on those facts of guilty against all these defendants.

I demand this verdict on behalf of the people of the United States, whose public Treasury these defendants have robbed.

I demand it on behalf of integrity in the execution of official trust, which they have disregarded.

I demand it on behalf of the supremacy of the law of the land, which they have defied with arrogance and spurned with contempt.

In fine, I demand it on behalf of the truth, honor, and virtue of the American people, which these men by their criminal and nefarious conduct have stained and blackened and exposed to the scorn, the derision, and the contempt of the world.

May it please your honor, thanking you for the courtesy with which you have listened to me during the progress of the argument, and thanking you, gentlemen of the jury, for the patient, careful, and thoughtful attention you have given to me during its entire progress, I respectfully submit the case.

[Manifestations of applause promptly checked by the officers of the court.]

The COURT. I suppose both sides probably have their prayers ready. If so, I should be glad to have them submitted.

Mr. BLISS. I have here the prayers on behalf of the Government, which I will hand to the court and am ready to submit if the other side are ready to submit theirs. We will take the directions of the court, after any suggestions that may be made from the other side with regard to the matter, whether we shall go on with the discussion of them, or whether your honor will receive them from both sides and let them go into the record, and inform us either now or on Monday morning whether you desire a discussion of them.

The COURT. It would be a convenience to the court if I could have both sets of prayers for the purpose of looking at them between this and Monday.

Mr. INGERSOLL. Would it be convenient for the court or convenient for the counsel to say what they wish to say in regard to these prayers to-morrow? I suppose it will not be necessary for the jury to be present. I do not know how that will be.

Mr. MERRICK. Oh, no; not at all necessary.

Mr. INGERSOLL. I have not spoken to my brethren about it.

The COURT. I am quite willing to hold court to-morrow for that purpose.

Mr. INGERSOLL. I would like to do so.

Mr. MERRICK. Would not your honor prefer to take the prayers and have to-morrow to look them over, and then indicate what points you would like to have argued?

Mr. BLISS. There is another point that perhaps I may make, which Mr. Merrick has not referred to. We, of course, desire on the part of the Government the assistance of Mr. Merrick in any argument that there may be upon the law. I think your honor will agree with me that Mr. Merrick is not in such a condition as he ought to be in to begin another discussion so soon as to-morrow. I hope therefore if there is to be any discussion of the law it may not come until Monday.

The COURT. I appreciate very fully the facts mentioned in regard to

Mr. Merrick. He commenced his argument on Monday, the 26th of May. To be sure he was relieved on the Wednesday following and had a rest of one day and the usual rest of Saturday and Sunday ; but altogether he has been upon the floor nine days, and of course he must be very much exhausted. I am inclined to favor the suggestion made by Colonel Bliss that the court adjourn until Monday.

Mr. DAVIDGE. There is one suggestion I would be glad to make, may it please your honor. Our prayers may depend, and undoubtedly will depend to some extent, upon the prayers of the Government. We would be glad to be furnished copies of such prayers as they propose to submit to the court.

Mr. MERRICK. Have you submitted any yet ?

Mr. DAVIDGE. We have not submitted any. I desired to hand them in, but——

Mr. MERRICK. [Interposing.] Would it not be better for the defendants to submit all the prayers and to have them go in the record with those for the Government, so that they will be printed by to-morrow morning ?

The COURT. If you are prepared on the side of the defense I should be glad to have both sets of prayers submitted at the same time. Of course neither side has had the opportunity of examining the prayers of the other side. After that has been done the court sees that suggestions may occur to the minds of counsel that will lead to additional prayers on both sides, in consequence of the comparison of the prayers. I would not preclude counsel on either side from adding to the prayers so submitted to-day.

Mr. DAVIDGE. I have some and will cheerfully submit them ; but I supposed Mr. Merrick would take all day, and my prayers are at my house. I am perfectly willing to give the other side a copy of them.

The COURT. I hope they are in somebody else's handwriting than your own or printed.

Mr. DAVIDGE. They are all in print.

Mr. BLISS. Your honor, let me suggest that we can arrange the matter in this way : Those that are in court can be handed to the stenographer and those that are not in court can be sent to him and put in to-day's record, which will be printed by to-morrow morning, and thus all the prayers will be accessible to both sides.

Mr. INGERSOLL. I think it would be fair to give either side liberty to put in additional prayers.

Mr. MERRICK. Certainly.

The COURT. That I have already said.

Mr. DAVIDGE. I understand my Brothers Henkle and Chandler also have some prayers.

Mr. BLISS. Let them all go to the stenographer.

Mr. DAVIDGE. They may be handed to the stenographer.

The COURT. We will get them some time to-morrow.

Mr. MERRICK. We will get the record to-morrow morning.

Mr. HENKLE. We may present such additional prayers as we think necessary on Monday morning.

The COURT. I can foresee that additional prayers may be suggested between this and the argument. I do not wish to make any ruling that will limit counsel on either side to the prayers now offered.

Mr. WILSON. I want to say for the benefit of counsel on the other side and the court, that we have some prayers, but, like Mr. Davidge, supposed Mr. Merrick would occupy the entire day and did not bring them into court. I will be glad to hand them to the stenographer and let

them be printed so that the Government can have the benefit of them.

The COURT. If you will please to do that then, gentlemen, on both sides, it will be convenient for me and will relieve the counsel on both sides.

Mr. HENKLE. Can that be done to morrow morning, your honor?

Mr. MERRICK. You had better hand them in this evening.

Mr. HENKLE. Can they not be handed in on Saturday?

Mr. BLISS. The difficulty is this: the night force will be at the printing office to-night and you will not probably get them until Monday morning unless they are sent in this evening.

Mr. WILSON. We will want the benefit of them in the morning. I want you to have the benefit of ours and I want to have the benefit of yours.

Mr. DAVIDGE. We only want them for the points. The form can be modified afterwards.

The COURT. The right to modify your prayers will exist up to the last moment. I assume that they are substantially ready for the court now.

Mr. WILSON. Oh, yes; I presume theirs are, and ours are ready, I know.

Mr. BLISS. Ours are in print.

Mr. WILSON. We have not a printing office, your honor.

The COURT. I suppose you will insist on paying for the printing.

Mr. BLISS. [To Mr. Wilson.] You left us something.

Mr. INGERSOLL. I hope you will leave that to the Government when you quit.

Mr. CARPENTER. It is doubtful if they will.

The COURT. The Government belongs to us all. Now, the next question I am in the dark altogether about. The jury, of course, need not be present during the argument on these prayers. Can you give me an intimation of the probable length of the argument?

Mr. DAVIDGE. I hope your honor will limit the time. We think we can discuss these prayers in two or three hours on our side, and I presume the Government can do the same thing.

Mr. BLISS. I think there will be no trouble in closing the argument on Monday, if the defense confine themselves to anything like the time they intimate.

Mr. INGERSOLL. I am willing the court should limit us to Monday.

Mr. BLISS. If your honor will limit us to Monday, we will divide the time with the other side.

The COURT. Gentlemen of the jury, you will be excused from attendance until Tuesday morning. We hope to get through with the dry work of discussion of the law on Monday, and to be able to say something to you upon the subject of those prayers on Tuesday morning. We shall not require your attendance until that time. There is nothing further I believe to-day. Adjourn the court.

At this point (2 o'clock and 45 minutes p. m.) the court adjourned until Monday morning next, June 11, at 11 o'clock.

The prayers furnished to the stenographer, in accordance with the agreement of counsel, are as follows :

PRAYERS PRESENTED ON BEHALF OF THE PROSECUTION.

FIRST.

To constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, in word or in writing, state what the unlawful scheme is to be, and the details of the plan or means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner or through any contrivance, passively or tacitly, come to a mutual understanding to accomplish the combination and unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by a common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, such persons become conspirators, although the part which any one of them is to take in the conspiracy is a subordinate one, or is to be executed at a remote distance from the other conspirators.

SECOND.

A conspiracy can seldom be proved by direct testimony. Persons combining for the execution of an unlawful scheme do not ordinarily expose themselves to public observation; and the fact of the combination can, therefore, as a general rule, be established only by proof of the acts of the several parties in such combination, and the relation of those acts to each other, and their tendency by their united effect to produce a common result. In other words, where the jury find that the acts of several parties charged with a conspiracy are the co-ordinates of each other, and needed for the consummation of the criminal purpose charged in the indictment as the object of the conspiracy, they are at liberty to find that the various parties performing those several and respective acts were engaged in a conspiracy to produce the unlawful result, although there may be no direct evidence whatever before them to show that such parties ever entered into any agreement to accomplish such unlawful purpose.

THIRD.

There is no criminality in a confederation of individuals to bid for and procure contracts in the mail service of the United States. But where it is shown that the means proposed to be used by such confederation for the purpose of gaining profit out of such contracts are such as are declared by the law to be criminal, such as the presentation to the Post-Office Department of false and forged petitions for the increase or expedition of the service, or the making or presentation to the department of false affidavits, then such combination or confederation becomes illegal in its character, and the persons composing it become liable to criminal prosecution as conspirators. If it further appears that such persons do any overt act in execution of such illegal combination, such as the presentation of a claim for the payment of money to them founded upon any order or orders obtained upon such false affi-

deceits or petitions, such persons are guilty of conspiracy under the act of Congress enacted to punish conspiracy to defraud the United States. Moreover, any one thereafter entering into such illegal combination becomes a member thereof, and liable to the penalties denounced by law against it, equally as if he had been originally connected with the scheme.

FOURTH.

In determining the question of the existence of a conspiracy, the jury will take into consideration, as a very material fact, the relation of the parties to one another, their personal and business association with each other, and all the facts in evidence that tend to show what transpired between them at or before the time of the alleged combination, as well as the acts performed by each party severally subsequently to such alleged combination in respect of the subject-matter of the alleged conspiracy; and from these, together with all the other facts before them, the jury will determine whether a combination in fact existed, and whether such combination was illegal in its inception, or became illegal at any subsequent time.

FIFTH.

If a conspiracy is found to exist, any division of the property which formed the subject-matter of the conspiracy does not relieve the parties from the joint liability to the criminal law as conspirators; and if a combination is found to have existed for an unlawful purpose, although there may have been a subsequent division of the property of the combination between the several participants in severalty, yet if it is further found that at the time of making such division or partition it was agreed that each party should do any act needed to enhance the value of the property set off to any other party, and that thereafter there was an interchange of efforts by the several parties, through unlawful and illegal processes, to enhance the value of the property so set off to the several parties respectively, such agreement and every illegal act so done are evidence of the existence and continuance of the conspiracy; and any such act, though performed by one under such agreement, will bind all engaged in the conspiracy.

SIXTH.

The law provides that compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service. This provision is a declaration of the limit to which compensation may reach. The contractor is not necessarily entitled to the utmost limit of compensation allowed by law. The amount of compensation, within that limit, is left to the sound discretion and judgment of the executive officer who has charge of the subject. The law likewise provides that no extra allowance shall be made for any increase or expedition for carrying the mail, unless additional stock and carriers are thereby made necessary; and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation under the original contract bears to the stock and carriers necessarily employed in its execution; and the stock and carriers necessarily employed in the execution of the original contract mean those then actually in service.

If the jury find from the evidence that the defendant, Thomas J. Brady, was the executive officer having in charge the branches of the mail service specified in these laws, and that, in the performance of his duties as such executive officer, he knowingly and purposely allowed for any expedition on the routes specified in this indictment a greater sum than was necessary and proper, it is a circumstance strongly tending to establish the charge of a corrupt motive on his part.

Again, the law provides that no compensation shall be paid for any additional regular service rendered before the issuing of the order under which such service is to be rendered. If the jury finds from the evidence that the defendant, Thomas J. Brady, issued an order awarding compensation for additional service upon any of the routes named in the indictment subsequently to the time when such service was rendered, such order was illegal and prohibited by law; and the jury will regard it as a material circumstance in the consideration of the charge of corruption as made against said Brady.

SEVENTH.

In considering the acts of the various defendants the jury will bear in mind:

- 1st. That forgery is a crime under the law.
- 2nd. That to alter in any particular, after it has been signed, a paper required or authorized by law to be executed, is a forgery.
- 3rd. That to file any such forged paper in a department of the Government, to obtain its action thereon, is a crime.
- 4th. That a false oath or affidavit, filed in a department of the Government, is criminal under the statutes of the United States, and punishable like forgery.
- 5th. That the filing of a false, fraudulent, altered, or forged paper in any department of the Government, with the design and intention thereby to deceive any executive officer of the Government with reference to a matter subject to his jurisdiction, for the benefit of the person filing the paper or causing it to be filed, is a crime under the statute law of the United States.
- 6th. That the presentation of any claim to an executive department of the Government for payment, when said claim is fraudulent and so known to be by the person presenting the same, is a crime against the United States.
- 7th. That the presentation for payment to any department of the Government of a claim against the United States founded upon fraud, or upon a contract obtained by fraud, is a crime, if the person presenting the same or causing it to be presented is cognizant of the fraud.

EIGHTH.

If the jury find that any of the orders of increase on the routes specified in the indictment were made on petitions, part of the signatures to which were forged by any one of the defendants, and on affidavits made by any one of the defendants, and subsequently to the time when they were sworn to, interlined, erased, or filled up, or changed by any other of the defendants and made to speak falsely, and then filed in the Post-Office Department, these circumstances would afford strong if not conclusive evidence of a criminal combination among the parties participating in such transactions, and benefiting by the orders obtained in consequence thereof.

NINTH.

The duty of making contracts on post-routes and changing the same by increasing or expediting the service thereon, is, under the regulations of the Post-Office Department and the acts of Congress giving such regulations the authority of law, committed to the Second Assistant Postmaster-General, and he is responsible therefor; and the orders passed by him in the premises, although entered upon the journal which is signed by the Postmaster-General, derive their authority primarily from the Second Assistant Postmaster-General; and if the jury find that the orders in evidence in this case, as the orders of the Second Assistant Postmaster-General, were not made by him in obedience to instructions specifically given in that regard by the Postmaster-General, then the Second Assistant Postmaster-General can in no way protect himself from any and all of the consequences, civil and criminal, of such orders by reason of the fact that the Postmaster-General signed the journal of the department in which these orders are recorded.

TENTH.

Section 3679 of the Revised Statutes provides as follows: "No department of the Government shall expend in any one fiscal year any sum in excess of appropriation made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriation." Such being the statute of the United States, no executive officer of the Post-Office Department could exceed in actual expenditure or contract for expenditures in any one year the amount by law appropriated for that year; and if the jury find from the evidence that the defendant Thomas J. Brady, whilst Second Assistant Postmaster-General, exceeded the appropriation of a year, either by actual expenditure, or by contract to pay in the future, upon any of the routes specified in this indictment, such expenditure or contract to pay was a violation of the law, and beyond the power of the executive officer attempting to make the same, and any such violation of law, if found by the jury, may be taken into consideration by them in determining the guilt or innocence of the defendant, Thomas J. Brady.

ELEVENTH.

In the second section of the act of Congress of April 7, 1880 (chapter 48), it is provided, "That the Postmaster-General shall not hereafter have the power to expedite the service under any contract either now existing or hereafter given to a rate of pay exceeding fifty per centum upon the contract as originally let." If the jury find that upon any of the routes mentioned in the indictment, the defendant, Brady, prior to the seventh day of April, 1880, made an order for expediting and the allowance of increased pay and compensation therefor, and after the seventh day of April, 1880, the defendant, Brady, made another order to increase the number of trips, and allowing as pay for the increased trips a sum of money based upon the then existing cost of the trips including the expedition, that is, allowing for each of the trips so added a sum of money equal to the original cost of a trip with the cost of expedition added thereto, such an order and allowance of pay was a violation of the spirit of the law which the jury may take into account in considering the motive of Brady and the other testimony and circumstances concerning the charge laid in the indictment.

TWELFTH.

Section 3960 of the Revised Statutes provides, that "when any such additional service is ordered, the sum to be allowed therefor shall be expressed in the order and entered upon the books of the department." If the jury find that the defendant, Brady, made an order or orders for additional service and reduction of time, or expedition, upon any of the routes mentioned in the indictment, and for the allowance of increased pay and compensation therefor, without separating the amounts in each order so as to express in the order the amount allowed for such additional service, such order or orders were unlawful, and the jury may take the fact, along with the other testimony, into consideration in determining whether the defendant, Brady, made such order or orders in pursuance of the conspiracy to defraud the United States with which he is charged in the indictment.

THIRTEENTH.

If the jury find that the testimony of the witness, Rerdell, though that of an accomplice, is corroborated by other testimony in the case and circumstances that have been adduced in evidence, such testimony is not to be discredited because it is that of an accomplice. Therefore, if the jury are satisfied that said testimony is true in any material part thereof, and that in such material part it has been confirmed by unimpeachable evidence, such confirmation affords reasonable ground for belief that such testimony is true in all its other parts.

FOURTEENTH.

Although the defendants are authorized by law to testify as witnesses on their own behalf, yet their testimony, like that of accomplices, is not to be regarded without suspicion; and the jury, in weighing its credibility, may take into consideration the deep interest which they have in their own acquittal and the great temptation under which they are to procure such acquittal by disregard of the sanctity of an oath. Therefore, if the jury find in the present case that the testimony of the defendants who have appeared as witnesses on their own behalf is not full and explicit, or if they find it to be evasive, or if they find that the defendants, upon cross-examination, have failed to testify fully and to remember such facts as must necessarily have been within their knowledge and recollection, then they will be justified in refusing to give to such testimony the credence due to disinterested witnesses; and they will not regard the testimony of any two or more witnesses so testifying and corroborating each other as entitled to any greater credence than that of one alone.

FIFTEENTH.

When a defendant in a criminal cause becomes a witness on his own behalf, and has been notified to produce books and papers admitted by him or shown to have been in his possession, and which, if produced, would have been competent evidence in the cause, and upon cross-examination such defendant witness reiterates his refusal to produce such books and papers, the jury is entitled to presume that such books and papers, if produced, would have disclosed evidence disadvantageous to such defendant, and that such failure casts suspi-

cion on all the other evidence adduced by said defendant, and is a circumstance tending to prove his guilt.

SIXTEENTH.

And the jury is further instructed that the manner in which the counsel for the defendant, S. W. Dorsey, offered to produce said books and papers should in no way lessen or mitigate the force of any presumption or inference to be drawn from the non-production of the same, for the reason that such offer was so qualified that the court could not recognize it, even if counsel for the Government had accepted it, and the jury will therefore regard such offer only as further evidence, establishing by the admission of the said defendant, of his possession of the said books and papers, and the fact that they were within reach and within the power of the said defendant to produce the same during the trial, if he had thought proper to do so; and the jury will therefore draw from the non-production of said books and papers the presumptions and inferences as directed in the instructions heretofore given by the court.

SEVENTEENTH.

A conspiracy is rarely, if ever, proved by positive testimony. When a crime of high magnitude is about to be perpetrated by a combination of individuals, they do not act openly, but covertly and secretly. The purpose formed is known only to those who enter into it. Their guilt can generally be proved only by circumstantial evidence. This kind of evidence often satisfies a jury of the guilt of the accused. It is said by some writers on evidence that such circumstances are stronger than positive proof. A witness swearing positively, it is said, may misapprehend the facts or swear falsely, but that circumstances cannot lie. The common design is the essence of the charge; and this may be made to appear, when the defendants steadily pursue the same object, whether acting separately or together, by common or different means, all leading to the same unlawful result. And where *prima facie* evidence has been given of a combination, the acts or confessions of one are evidence against all.

EIGHTEENTH.

In a case of conspiracy *one* alone cannot be found guilty. There must be two or more.

But in this case, one of the defendants having pleaded guilty of the conspiracy as charged in the indictment, the jury is instructed that they may bring in a verdict of guilty against any one or more of his codefendants whom they may find from the evidence to have been guilty with him in said conspiracy.

NINETEENTH.

If the jury find that James W. Bosler, R. P. Williamson, L. P. Williamson, Charles Pelham, or either of them, was a person whose testimony would have been material on the part of one or more of the defendants, and was a witness, or were witnesses, that should have been called to testify on behalf of such defendant or defendants, and was or were not called to so testify, the failure to call such witness or witnesses

is a circumstance for the jury to consider when deciding upon the evidence against defendant or defendants.

TWENTIETH.

If the jury find that William H. Betts was a witness whose testimony would have been material on the part of the defendants, and when called to the stand and examined as a witness on the part of the defendants, was not examined or interrogated upon questions that were material in the issue, and in contradiction of the testimony given by A. W. Moore after the foundation having been laid for such contradiction, upon cross-examination, the failure to so examine or interrogate him raises the presumption that the testimony of the witness Betts in that respect would not have been favorable to the defendants, and is a circumstance for the jury to consider when deciding upon the evidence against the defendants.

PRAYERS PRESENTED ON BEHALF OF THE DEFENSE.

FIRST.

It is the duty of the jury first to determine whether there was such a conspiracy as that set out in the indictment. And in considering this question they are to start with the presumption that there was no such conspiracy; and if they find the existence of such conspiracy, their finding must be based solely upon the evidence in the case, which must be sufficiently strong to overcome the presumption against it and to satisfy their minds of its existence beyond a reasonable doubt; and if they can account for all the facts and circumstances in the case upon any hypothesis consistent with the non-existence of such conspiracy, it will be their duty to find that there was no such conspiracy, in which event they will, of course, find the defendants not guilty without further inquiry.

SECOND.

A conspiracy may be formed by the separate acts and declarations accompanying acts of the several persons charged with conspiracy; but such acts must tend to the accomplishment of a common purpose, and the purpose must be that set out in the indictment. Acts of individual defendants in the prosecution of their own business are not to be considered by the jury, unless they find from the evidence the existence of such conspiracy, and that such acts were done in pursuance of the common purpose set out in the indictment, and for the joint benefit of the members of the conspiracy.

THIRD.

It is not criminal nor unlawful for a contractor for carrying the mails upon the star routes to write or cause to be written and circulated petitions and recommendations for the increase or expedition of such routes; but, on the contrary, such acts are lawful and legitimate. The jury should presume all such petitions and recommendations were honestly made and filed, unless they are shown by the evidence to have been false, and made and filed for a fraudulent purpose.

FOURTH.

Where petitions, signed by citizens or military officers living or stationed along any of the routes named in the indictment, for increase of service or expedition had been filed in the Post-Office Department, and the granting of the prayer of such petitions had been recommended by members of Congress representing the Territories, and by Members and Senators representing the districts and States in which such routes were located, by indorsements on the backs of such petitions, or by oral recommendations, you will presume that the orders made by the Second Assistant Postmaster-General were innocently and honestly made in compliance with the prayer of said petitions and said recommendations; and this presumption can only be overcome by evidence sufficiently strong to satisfy you beyond a reasonable doubt that said orders were not based upon said petitions and recommendations, but that they were corruptly made in pursuance of the conspiracy set out in the indictment.

FIFTH.

Brady had a legal right to make orders for increase of trips and for expedition of service, and where such orders were made, the legal presumption is that they were made honestly and, as he believed, for the public good; and the jury is not at liberty to presume they were made for the benefit of the contractors, or in pursuance of a corrupt conspiracy with them, unless satisfied thereof from the evidence beyond a reasonable doubt.

SIXTH.

Brady had a legal right to make orders for increase of service and for expedition; and it is not the province of this jury to determine whether such orders were judiciously made or not; or whether they were extravagant or needless, unless they find from the evidence beyond a reasonable doubt that the said orders were made in pursuance of the corrupt conspiracy set out in the indictment.

SEVENTH.

If the jury are satisfied from the evidence that in the mail service it is and has for a long time been customary, where the entire interest in mail routes has been assigned to subcontractors, for such subcontractors to use the names of the original contractors in all correspondence with the department in reference to said routes, and that such custom is known and recognized by the department, the fact that Miner used the names of Peck and John W. Dorsey in correspondence with the department in reference to the routes upon which they were the original contractors, after the division and separation, and that S. W. Dorsey, or his agents, used the name of Miner in the same way, will raise no presumption of a continuation of a joint interest, provided the jury is satisfied from the evidence that said separation and transfer of interests were in fact made, and that said interests were never afterwards reunited.

EIGHTH.

There is no file mark of the Post-Office Department upon petition

marked "29 H," asking for increase of service and expedition upon route No. 44160, indicating when said petition was placed on file; nor is there any other evidence of the time of filing of said paper; nor is there any evidence that it was filed before the order of expedition and increase was made. In a criminal case all presumptions are in favor of the innocence of the defendant, and in the absence of any other proof than the fact that the paper was found at the last trial of this case among the papers belonging to this route, the jury should presume that it was not one of the papers upon which the order was made.

NINTH.

If the jury believe from the evidence that the defendant Vaile, when he entered into the contract bearing date the 11th of August, 1878, with the defendants John W. Dorsey, John R. Miner, and John M. Peck, had never seen John W. Dorsey, M. C. Rerdell, and John M. Peck, and had but a casual acquaintance with S. W. Dorsey, it is a circumstance for the jury to consider in determining whether the said Vaile entered into a conspiracy with the other defendants named at the time he became interested in the mail routes designated in the indictment.

TENTH.

Subcontracts are authorized by law. The legal presumption is that the subcontracts named in the indictment and put in evidence by the Government are valid, and that they were made for the purpose expressed in them; and the jury should so treat them, unless they find from the evidence beyond a reasonable doubt that they were made for an illegal or fraudulent purpose.

ELEVENTH.

If the jury believe from the evidence that the defendant Vaile had no knowledge of or interest in any of the nineteen contracts mentioned in this indictment, in any manner or form, direct or indirect, either in person or as agent, prior to August 1, 1878, this fact is evidence that he was not in a conspiracy prior to that date.

TWELFTH.

Even if the jury should believe from the evidence that some of the petitions filed upon some of these nineteen routes were false and fraudulent, still the defendants should not be charged with getting up the same and filing them, unless it is clearly shown by the evidence that they got them up themselves or procured them to be gotten up for the purpose of defrauding the Government, as charged in the indictment.

It is for the jury to determine, from all the evidence in this case, whether, at any time prior to May 23, 1879, or subsequent thereto up to the filing of this indictment, Vaile and Miner and the two Dorseys and Rerdell agreed by and between themselves to write or cause to be written false and fraudulent petitions, false and untrue affidavits, as charged in the indictment, knowing the same to be false and untrue, for the purpose of defrauding the Government, or not; and if not, the jury must acquit.

THIRTEENTH.

The indictment charges that John W. Dorsey, John R. Miner, and Harvey M. Vaile did, on the 23d day of May, 1879, fraudulently send, transmit, and deliver to the Second Assistant Postmaster-General, among the papers relating to route No. 35015, a certain false, willful, and corrupt oath, which oath was executed on the 14th day of May, 1879, by defendant Vaile. Now, if the jury believe from the evidence that the affidavit filed among the papers on said route was not so filed on May 23, 1879, as alleged, but was filed on the 15th day of May, 1879, as the affidavit itself shows, then there is a variance between the proof offered and the allegation, and it should not be considered.

FOURTEENTH.

The affidavit of defendant Vaile, executed on May 14, 1879, and filed in the office of the Second Assistant Postmaster-General on the 15th of the same month among the papers on route 35015, cannot be considered as an overt act, as the same is barred by the statute of limitations.

FIFTEENTH.

All affidavits and petitions filed with the Second Assistant Postmaster-General prior to May 20, 1879, are barred by the statute of limitations, and cannot be considered as evidence tending to prove a conspiracy.

SIXTEENTH.

All the affidavits and petitions filed with the Second Assistant Postmaster-General prior to May 20, 1879, are barred by the statute of limitations, and cannot be used as evidence to prove overt acts.

SEVENTEENTH.

Petitions neither false nor fraudulent do not sustain the averments in the indictment.

EIGHTEENTH.

The indictment charges but one conspiracy, and that was as to the nineteen routes named, in which it is charged the defendants had a community of interest. If this conspiracy existed at all it must have been formed before the division of the routes in April or May, 1879, as in the light of the uncontradicted evidence in the case, the defendants, after the division, never had any joint or common interest in the routes named in the indictment or any of them.

NINETEENTH.

The proof of guilt is upon the Government, and the law clothes the defendants with a presumption of innocence which attends and protects them until it is overcome by testimony which proves their guilt beyond a reasonable doubt, which means that the evidence of their guilt, as charged, must be clear, positive, and abiding, fully satisfying the minds and consciences of the jury. It is not sufficient in a criminal case to

justify a verdict of guilty that there may be a strong suspicion, or even strong probabilities of guilt, but what the law requires is proof, by legal, creditable evidence of such a nature, that when it is all considered by the jury giving it its natural effect, they feel, when they have weighed and considered it all, a clear understanding and entirely satisfactory conviction of the defendants' guilt.

TWENTIETH.

Guilt cannot be fastened upon any person by the declarations or statements, oral or written, of others. Guilt must originate within a man's own heart, and it must be established by his own acts, conduct, or admissions.

TWENTY-FIRST.

The hypothesis of guilt of the offense charged in the indictment should flow naturally from the facts proven and be consistent with them all. The evidence must be such as to exclude any reasonable hypothesis but that of their guilt of the offense imputed to them; or, in other words, the facts proved must all be consistent with and point to their guilt, not only, but they must be inconsistent with their innocence.

If the evidence can be reconciled either with the theory of innocence or guilt, the law requires the jury to give the accused the benefit of the doubt, and to adopt the theory of innocence.

TWENTY-SECOND.

The charge in the indictment is that the defendants entered into a conspiracy, the object of which was to defraud the United States, and that after such conspiracy one or more of the parties thereto did some act with the intent to effect such object.

The issues to be determined are: first, whether the alleged conspiracy was entered into for such object; and secondly, whether any one or more of the parties to such conspiracy afterwards did any act with the intent to effect such object. And unless both these issues are found for the Government the verdict of the jury must be for the defendants.

To constitute conspiracy the minds of the parties must unite in a common agreement or design to commit the unlawful act charged.

While such agreement need not be formal, nor established by direct evidence, but may be established by circumstances, yet in order to convict the jury must find that such agreement was in fact entered into.

Acts and conduct on the part of the defendants, however consistent with the theory of a conspiracy, do not constitute such conspiracy, unless sufficient to satisfy the jury that there was a combination of minds and that the parties did in fact enter into the conspiracy as charged.

And in determining such fact the jury must be satisfied of the charge of conspiracy beyond a reasonable doubt; for if the evidence relied on to establish such charge can be reconciled with any reasonable hypothesis of innocence, it is the duty of the jury to find in favor of innocence.

And when it is sought to establish a criminal charge, not directly but from a variety of circumstances, or, as it is called, by circumstantial evidence, then it becomes the duty of the jury to subject each fact relied on to the test whether, though consistent with the charge, it be in-

consistent with any reasonable hypothesis of innocence; and if not so inconsistent, to reject such fact as not tending in any manner to establish the charge.

TWENTY-THIRD.

The indictment is bad, because it does not aver with certainty that the object of the conspiracy was to commit a fraud against the United States denounced by statute.

TWENTY-FOURTH.

The indictment is bad, because it does not aver with certainty what fraud against the United States denounced by statute was the object of the conspiracy.

TWENTY-FIFTH.

There is but one conspiracy charged in the indictment.

TWENTY-SIXTH.

The conspiracy charged in the indictment is to defraud the United States by certain means specifically set out, and the means so set out are descriptive of the alleged conspiracy, and as much a part thereof as the act of conspiring or the object of the conspiracy. The indictment charges not only the act of conspiring, and the object to be effected, but also that certain means were agreed on whereby such object was to be effected; and hence, to warrant a conviction, the jury must be satisfied from the whole evidence not only of the act of conspiracy, and the object thereof, but also that all the means specifically set out were in fact agreed on as charged.

TWENTY-SEVENTH.

The conspiracy charged in the indictment is to defraud the United States by certain means specifically set out; and, to warrant a conviction, the jury must be satisfied from the whole evidence, and beyond a reasonable doubt, not only of the act of conspiring, and of the object of the conspiracy, but also that some one or more of the means alleged, whereby the object of the conspiracy was to be effected, was in fact agreed on as alleged.

TWENTY-EIGHTH.

By the true construction of the indictment, the conspiracy charged is alleged to have been entered into after the times when, as shown by the evidence, the mail contracts mentioned in the indictment were made and signed in behalf of the United States, and duplicate copies of said contracts had been delivered by the Postmaster-General to the Auditor of the Treasury for the Post Office Department.

TWENTY-NINTH.

By the true construction of the indictment, the conspiracy charged is alleged to have been entered into after the defendants mentioned in the

indictment, except Thomas J. Brady and William H. Turner, had become mutually interested in the mail contracts mentioned in the indictment, and in the moneys to be paid by the United States under said contracts, and after the said contracts were held for the mutual and pecuniary benefit of the said defendants, except as aforesaid.

THIRTIETH.

By the true construction of the indictment, the alleged conspiracy was entered into when the defendants mentioned in the indictment, except Thomas J. Brady and William H. Turner, were mutually interested in the mail contracts mentioned in the indictment, and in the moneys to be paid by the United States under said contracts, and when said contracts were held for the mutual and pecuniary benefit of the said defendants, except as aforesaid; and such mutual interest, and mutual and pecuniary benefit, must be proved to the satisfaction of the jury as existing at the time of any conspiracy.

THIRTY-FIRST.

The indictment was found under the act of Congress bearing date the 17th of May, 1879. The terms of that law are prospective, and relate to a conspiracy entered into after its date; hence, any conspiracy under the indictment must be proved to the satisfaction of the jury, and beyond any reasonable doubt, to have been entered into after the 17th of May, 1879, and to have been followed by an overt act with the intent to effect the object of such conspiracy.

THIRTY-SECOND.

Section 5440 of the Revised Statutes of the United States was repealed by act of Congress of the 17th of May, 1879.

Section 13 of the Revised Statutes of the United States, if it applies to crimes, saves the right of prosecution as such right stood at the date of the repeal of the statute under which the right accrued. It does not keep the repealed statute alive for any other purpose than the right to prosecute for an offense already committed, and does not make any subsequent act an offense against the statute repealed.

THIRTY-THIRD.

Section 13 of the Revised Statutes of the United States does not apply to crimes alleged to have been committed under a repealed statute.

THIRTY-FOURTH.

The right to prosecute under sections 5440 and 13 of the Revised Statutes of the United States, if it ever existed after the repeal of the act of the 17th of May, 1879, was barred by the statute of limitations before this indictment was found.

THIRTY-FIFTH.

A conspiracy before the 17th of May, 1879, followed by an act after that time to effect the object of the conspiracy, would not, even if found

by the jury, sustain the indictment; and in the event of such finding their verdict must be for the defendants.

THIRTY-SIXTH.

The different acts charged by the indictment as overt acts are alleged to have been in pursuance of and to effect the object of the alleged conspiracy; and hence it is admitted that such conspiracy was entered into before the time of the earliest of said acts so charged; and when such time shall, from the evidence, be found by the jury, they can only find a conspiracy anterior to such time.

THIRTY-SEVENTH.

If the time of any act charged as an overt act shall be found by the jury to be before the 17th of May, 1879, they must acquit the defendants.

THIRTY-EIGHTH.

One of the overt acts alleged is the transmission to the office of the Second Assistant Postmaster-General of the affidavit in relation to route No. 40104, from Mineral Park to Pioche, and causing the same to be placed among the papers pertaining to said route.

This affidavit is set out at pages 54 and 55 of the indictment, and is in evidence. According to the file-mark thereof it was placed in said office on the 20th of December, 1878. Hence, the conspiracy, if the jury believe the said file-mark charged by the indictment, is a conspiracy entered into before said date.

And the jury are instructed to disregard all evidence on the subject of conspiracy not tending to show a conspiracy entered into before said date; and further, to disregard all evidence on the subject of conspiracy as consistent with a conspiracy entered into after as before said date; and further, to disregard all evidence on the subject of conspiracy the relation of which to a conspiracy before said date is involved in reasonable doubt.

And the jury are further instructed that if they believe said file-mark and no evidence in contradiction thereof has been given, they will consider that the issue to be determined by them is whether there was a conspiracy before the said date.

THIRTY-NINTH.

The principle of the foregoing instruction is applicable to any other act, if any, alleged by the indictment to be an overt act the true date whereof is prior to the 20th of December, 1878. The said true date found by the jury, then the conspiracy charged by the indictment, and to be determined by the jury, must be a conspiracy entered into before said date.

FORTIETH.

The alleged conspiracy, as described in the indictment, involves as an essential ingredient the fact that all the defendants named in the indictment conspired as charged, and the conspiracy of any lesser number, even if found, would not support the indictment.

FORTY-FIRST.

The alleged conspiracy, as described in the indictment, involves as an essential ingredient the fact that both Thomas J. Brady and William H. Turner conspired as charged, and the indictment cannot be sustained without proof of such fact; and the acquittal of William H. Turner is conclusive against such fact.

FORTY-SECOND.

The alleged conspiracy, as described in the indictment, involves as an essential ingredient the fact that Thomas J. Brady conspired as charged, and in the absence of proof of such fact, beyond any reasonable doubt, the indictment cannot be sustained.

FORTY-THIRD.

Even if the jury shall find that the alleged conspiracy was entered into, yet if they further find that it was so entered into more than three years before the finding of the indictment, they must find for the defendants, notwithstanding they further find that some overt act to effect the object of such conspiracy was committed by any one or more of the persons conspiring within three years before the finding of the indictment.

FORTY-FOURTH.

Even if the jury shall find that the alleged conspiracy was entered into, yet if they further find that it was entered into more than three years before the finding of the indictment, and that an overt act to effect the object of the conspiracy was committed more than three years before the finding of the indictment by any one or more of the persons conspiring, then the jury must find for the defendants, notwithstanding they find that some other overt act or acts to effect the object of the conspiracy was committed by any one or more of the persons conspiring within three years before the finding of the indictment.

FORTY-FIFTH.

The defendant Thomas J. Brady being invested by law with discretionary power in respect of the different orders given in evidence, such orders cannot be impeached in this trial for any error of judgment, however great, whether in respect of the general policy of the department, or the merits of the special matters upon which he was called upon to act and did act; but only upon the ground of a corrupt motive, in pursuance of the alleged conspiracy, in making such orders; and such motives cannot be inferred from such error of judgment, but must be established beyond a reasonable doubt by evidence *aliunde*.

FORTY-SIXTH.

By the true construction of the indictment, and the conspiracy as therein described, the acquittal, as shown by the record, of William H. Turner, whose part in the alleged conspiracy, as described in the indictment, was an essential ingredient in such conspiracy, and without which part such conspiracy could not exist, is conclusive of the fact that the alleged conspiracy never existed, and the jury must find for the defendants.

FORTY-SEVENTH.

If the jury find that it was agreed early in March, 1879, that there should be a division of all the mail routes, being about one hundred and thirty, and that early in May following, on or about the 5th, such division was in fact made, some of the routes being allotted to Stephen W. Dorsey, others to Miner, and others to Vaile, and that thereupon the said Miner and Vaile entered into copartnership in respect of the routes allotted to them, and the said John W. Dorsey and John M. Peck sold out their respective interests, and that after such division the said Stephen W. Dorsey had no interest in or connection with the routes allotted to Miner and Vaile, and the latter had no interest in or connection with the routes allotted to Stephen W. Dorsey, and that down to such division there had been no such conspiracy as is alleged in the indictment, then, even if it be assumed that the said Stephen W. Dorsey conspired in respect of his routes and the said Miner and Vaile in respect of their routes, thus making two conspiracies, this indictment cannot be maintained, and the jury must find a verdict of not guilty.

FORTY-EIGHTH.

If the evidence in support of the charge of conspiracy in the indictment be as consistent with the theory of two conspiracies entered into after the said division, as mentioned in the next preceding instruction, as with the theory asserted by the prosecution of one conspiracy entered into before the said division, and divided with the mail routes, and then continuing in two parts, or even if the jury entertain a reasonable doubt whether the evidence supports the latter theory as against the former, they must find a verdict of not guilty.

FORTY-NINTH.

And even if the jury shall find that before the division of the routes there was a conspiracy as alleged, but that such conspiracy was at said division abandoned, or ceased to exist, and that after said division two independent conspiracies were formed by the parties representing the routes held by them respectively, then the verdict of the jury must be for acquittal.

FIFTIETH.

The defendants are on trial for conspiracy followed by an overt act, and for no other offense.

Evidence has been given tending to show alterations and erasures in petitions and affidavits, and that some of the latter were sworn to in blank and afterwards filled up, and that statements in them were in some instances erroneous or exaggerated, and that orders were made irregularly. In respect of all such matters, and others involving personal or official misconduct, the jury are instructed that the evidence was admitted solely because of its supposed bearing upon the charge of conspiracy, and that it can be considered by the jury solely with reference to such charge. The issue to be determined is not whether the defendants, or any of them, did wrong things, but whether they conspired as alleged.

The evidence above referred to is to be considered only because of its tendency, if any, to show that the defendants conspired as alleged,

and is to receive only that weight to which, in connection with all the facts and circumstances bearing upon the charge of conspiracy, it may in the judgment of the jury be entitled.

FIFTY-FIRST.

A witness professing to be an informer is, on that ground alone, declared by a rule of law unworthy of belief unless corroborated, but such corroboration is of no avail whatever when from the evidence of such witness it is apparent that he has deliberately testified falsely in relation to any material fact. In such case another rule of law places such witness beyond the pale of belief.

FIFTY-SECOND.

The credit to which witnesses are entitled belongs to the exclusive province of the jury.

FIFTY-THIRD.

Even if the jury find that there was a conspiracy, as alleged, prior to the division of the mail contracts, still it is incumbent upon the Government to satisfy the jury, beyond a reasonable doubt, that such conspiracy continued after the said division and until within three years before the finding of the indictment, and was afterwards followed by an overt act.

The said division as given in evidence, and if believed by the jury, is inconsistent with the continuance of such conspiracy. The evidence is that John W. Dorsey and John M. Peck sold out their respective interests, and that neither Stephen W. Dorsey, H. M. Vaile, nor John R. Miner was to have in the future any interest in or connection with the contracts allotted to the others.

The common purpose, if there was one, existing before, thus ceased to exist, unless it was agreed or understood at said division that the conspiracy should continue with the difference, only in the manner of holding the contracts and enjoying the alleged illicit gains.

The burthen of proof, however, to show any such agreement or understanding after the division is upon the Government, and it must be established beyond a reasonable doubt. An agreement to execute all necessary papers would not tend to show that the conspiracy was to continue. And the continuance of the alleged conspiracy cannot be inferred from the concurrent acts and conduct of Vaile and Miner and Stephen W. Dorsey, unless the jury shall further find that such concurrent acts and conduct resulted from the agreement or understanding to continue the said conspiracy.

If the conspiracy was not continued as aforesaid, then the jury must find a verdict of not guilty, as, even if Vaile and Miner subsequently conspired as to their contracts and Stephen W. Dorsey as to his contracts, such conspiracies could not be found under this indictment, because that is not the kind of conspiracy charged in the indictment.

FIFTY-FOURTH.

The defendants cannot be convicted under the indictment framed under the act of May 17, 1879, as this one is, unless the indictment charges a conspiracy to commit a fraud which has been defined by some

other statute of the United States to be a crime against the United States; and the jury is instructed that by the averments of the said indictment it is not charged that the defendants conspired to commit any fraud which has by any other statute of the United States been defined to be a crime, and the jury must acquit the defendants.

FIFTY-FIFTH.

The defendants cannot be convicted under the indictment framed under said section of the statute, as this one is, unless the indictment charges that the defendants conspired to commit a fraud against the United States which has been by some other statute of the United States defined to be a fraud against the United States; and the jury is instructed that by the averments of the said indictment the defendants are not charged with having conspired to commit any fraud against the United States defined to be such by any other statute, and, therefore, you must acquit the defendants.

FIFTY-SIXTH.

The defendants cannot be convicted under the indictment framed under said section of the statute, as this one is, unless the jury shall find from the evidence that the fraud which they conspired to commit is a fraud defined and made criminal by some other statute of the United States.

FIFTY-SEVENTH.

The indictment in this case charges that these defendants entered into a conspiracy to defraud the United States by means of false petitions, false letters, false affidavits, false applications and statements asking for increase and expedition of service, and by means of false oaths in respect thereof; and by means of the defendant, Brady, making fraudulent orders for increase and expedition of service when such increase and expedition of service was not needed; he, the said Brady, it being alleged, knowing that they were not needed; and by means of the refusal of the said Brady to impose fines and deductions for failure to perform service, and by means of false entries made by William H. Turner on jackets, &c. To make such an indictment a sufficient indictment upon which a verdict of guilty could be rendered against the defendants, or either of them, it must aver and charge not only that the conspiracy was entered into, but it must set forth the means by which the fraud was to be accomplished; and if the means set forth in the indictment are not such as would, if resorted to as charged in the indictment, constitute a fraud against the United States, which at the time of the alleged conspiracy was defined to be a fraud by statute, the indictment would not be sufficient to warrant a verdict against the defendants, and you are instructed that the means set out in this indictment have not been by any statute declared to be a fraud against the United States; if these parties had done each and all of the things set out as means in this indictment they would not have done anything that has been by statute defined to be a fraud against the United States; and hence you are instructed that even though each and every of the means alleged in the indictment had been resorted to by the defendants or any two of them, it would not constitute an offense against the United States; it would not be a fraud defined by any statute; and therefore it is your duty to render a verdict of not guilty.

FIFTY-EIGHTH.

The conspiracy is the offense under the repealed section 5440, as well as under the act of May 17, 1879. Even if you should find that there was a conspiracy entered into prior to the repeal of the section 5440, there could be no conviction in this case for such conspiracy, because the said section having been repealed more than three years prior to the finding of this indictment, no prosecution can be maintained under this indictment for violation of the said section 5440.

FIFTY-NINTH.

Before there can be a conviction in this case the Government must prove that the conspiracy charged was entered into since the 17th day of May, 1879, and within three years prior to the finding of this indictment.

SIXTIETH.

The jury cannot find any of the defendants guilty in this case by finding from the evidence that some part of the alleged offense, as, for example, the conspiracy, was committed prior to the 17th day of May, 1879, and the overt acts in pursuance of the conspiracy were committed since said last-named date. The entire offense must be found by the jury, including the conspiracy and all overt acts, to have been committed since the 17th day of May, 1879, or else they must acquit the defendants.

SIXTY-FIRST.

The jury is also instructed as follows :

1st. Section 5440 of the Revised Statutes was repealed by the act of May 17th, 1879, entitled "An act," &c.

2d. Section 13 Revised Statutes preserves the right to prosecute offenses completed under the said repealed section 5440, before it was repealed.

3d. No offense committed under that repealed section could be prosecuted by indictment found more than three years after the said repeal, to wit, more than three years after May 17, 1879.

4th. This section 5440 of the Revised Statutes was repealed more than three years before the finding of this indictment, and hence this charge is prosecuted under the act of May 17th, 1879; and if the indictment is not for an offense committed after said act was passed, it cannot be maintained. In other words, if the conspiracy which is sought to be prosecuted by this indictment was entered into before the section 5440 was repealed, this prosecution must fail, and you must acquit.

5th. To sustain the charge in this indictment the Government must find from the evidence, beyond a reasonable doubt, that the conspiracy complained of was formed since the 17th of May, 1879, and within three years before the finding of the indictment.

SIXTY-SECOND.

The jury are charged that none of the orders set forth and complained of in the indictment and charged therein to have been made by defendant Brady while acting as Second Assistant Postmaster-General are in

said indictment alleged to have been made to effect the object of the alleged conspiracy in said indictment charged, and the jury will not consider either of said orders as overt acts or acts mentioned and described in the statute of May 17, 1879, as done to effect the object of a conspiracy. And neither of said orders can be considered by the jury as overt acts in this case done to effect the object of said conspiracy in the indictment charged, and you must exclude from consideration each and all of said orders as overt acts.

The overt acts attempted to be charged in the indictment from and including that beginning on page 74, to and including the one ending middle of page 80, cannot be considered by you as overt acts, because the prosecution of said claims respectively is not charged to have been to effect the object of the conspiracy, and you must exclude them from your consideration as overt acts. And you will for like reason exclude as overt acts those attempted to be charged beginning at the middle of page 81, and ending near the top of page 87.

And you will for like reason reject as overt acts the last two overt acts attempted to be charged in said indictment.

SIXTY-THIRD.

The jury are further instructed to disregard as overt acts each and every of the overt acts attempted to be charged as such beginning on page 73, of the indictment in relation to the presentation of false claims and ending with the indictment, because the same do not nor does either of them contain sufficient averments to entitle them to be considered as overt acts; it is not averred therein wherein they were false and fraudulent as charged.

SIXTY-FOURTH.

The jury are instructed that the alleged overt acts in relation to the presentation of false claims, beginning on page 73 of the indictment and ending with said indictment on page 89, must be disregarded as overt acts, because no evidence has been offered of the presentation of any claim to the Auditor of the Treasury for the Post-Office Department, either by the parties charged to have presented such claims or by any parties, nor for the amounts named, nor for any amounts.

The jury are instructed to disregard as overt acts each thereof in relation to the presentation of false claims, to which the evidence fails to prove beyond a reasonable doubt the presentation thereof, to the said Auditor by the identical persons named in the indictment as having presented them, and for the exact amounts named. But no such proof has been offered, and hence you must exclude these entirely from your consideration.

SIXTY-FIFTH.

The jury are instructed that the introduction of warrants upon which payments were made on account of the contracts named in the indictment will not suffice to prove that the parties who are alleged in the overt acts relating to the presentation of false claims, beginning on page 73 and concluding with said indictment on page 89, to have presented the claims did present such claims, and there being no evidence that they did present the claims described in the indictment you must exclude these from your consideration altogether as overt acts.

SIXTY-SIXTH.

The court charges the jury that it is alleged in the indictment in this case that certain defendants named at one time presented to the Auditor of the Treasury for the Post-Office Department a certain alleged false and fraudulent claim against the Post-Office Department of the Government of the United States of America, for approval by said Auditor of the Treasury for the Post Office Department, and for payment by the Postmaster-General of the United States of America, of a certain specific sum of money; and that it is also alleged in the indictment that certain other defendants named, at a certain other time, so presented, as aforesaid, for audit and payment a claim for certain other and different sums of money, and that said acts were done to effect the object of the conspiracy described in the indictment. The jury are therefore charged that no such act can be considered by them as an act done to effect the object of said conspiracy, unless the testimony establishes that the particular persons charged in said indictment to have presented said particular claims for audit and payment, as aforesaid, did actually present as charged; and it is not sufficient to establish that part of the charge that different defendants from those named in the indictment did present said claims charged in the indictment to have been presented by others.

SIXTY-SEVENTH.

Whether there was or was not such a conspiracy as is charged in the indictment formed and entered into by the defendants at the time charged in the indictment is a question of fact exclusively submitted to the jury to determine; and this they must do on their own independent judgment. And in determining the existence and extent of said conspiracy and the guilty connection of any defendant therewith the jury considers and weighs against any one defendant only such circumstances, facts, and declarations as spring from his own conduct. No defendant by his acts or declarations can affect another defendant not present at the time of such act or declaration unless first authorized by that other to do such act or make such declaration while discharging or performing some business connected with the subject-matter complained of in the indictment.

SIXTY-EIGHTH.

One defendant cannot be proved to be engaged in a conspiracy by the acts or declarations of others. No defendant can be found guilty of being in a conspiracy by any entries that one defendant may have made or caused to be made in his books in relation to or affecting another defendant without the knowledge of the latter. Even if you should believe that there were such books of S. W. Dorsey as is claimed by the prosecution, and even if you believe that there were such entries therein as is claimed by the prosecution, such entries cannot be considered by you as proving or tending to prove that the defendant, Brady, was in the alleged conspiracy.

SIXTY-NINTH.

In respect of the question of the existence of a conspiracy, the court charges the jury that no defendant can be proved to be in a conspiracy

by the acts or declarations of any person other than himself. His own acts and declarations are all that can be considered as against him in respect of proving conspiracy as against him, and unless from his acts and declarations you can find beyond a reasonable doubt that he was in a conspiracy, you cannot find a verdict against him.

SEVENTIETH.

The acts done or declarations made about or concerning defendant Brady by any of the other defendants, not done or made in the presence of said Brady, are not admissible against said Brady to prove either the conspiracy as to him or the alleged corrupt character of the orders made by him and complained of in the indictment. The guilt of defendant Brady of the charge in the indictment made against him must be proved, if at all, by facts, acts, and circumstances springing from his own conduct alone.

SEVENTY-FIRST.

It is alleged in the indictment, among other things, that it was intended by the defendants, as a part of the alleged conspiracy in said indictment charged against defendants, to deceive the Postmaster-General in respect of the matters complained of in the indictment. The court therefore charges the jury that unless the allegations in the indictment relating to the deception of the Postmaster-General have been established as therein alleged, there can be no conviction under the evidence in this case.

SEVENTY-SECOND.

If the jury believe from the evidence in this case that in transacting all the official business mentioned in the indictment defendant Brady advised and consulted with the Postmaster-General in good faith, and without deceiving him in respect thereof, and made the respective orders for the allowance of money to the defendants complained of in the indictment as the result of such consultation and advice with said Postmaster-General, and pursuant to such advice, or because he, said Brady, believed at the time the said respective orders were made that it was right and proper to make them, then the jury must acquit said Brady, though they do not approve in their own minds the making of said orders.

SEVENTY-THIRD.

The court charges the jury that there can be in this case no conspiracy to defraud the United States concerning the matters complained of in the indictment in manner condemned by the act of May 17, 1879, which does not include as a part of said conspiracy an agreement among the parties thereto to deceive the Postmaster-General in respect to the payments to defendants, or some of them, of the amounts of money, or some of them, shown in the evidence to have been paid as alleged in the indictment; and the allegations of the indictment in respect of such deception must be proved as alleged, or there can be no connection in this case.

SEVENTY-FOURTH.

The jury are instructed that in this indictment the defendants are not charged with having conspired to defraud the United States by deceiving by means of petitions and affidavits the Second Assistant Postmaster-General, but the charge is that the defendants conspired to defraud the United States by means of affidavits and petitions, &c., recorded and filed for the purpose of deceiving the Postmaster-General; and under this indictment the defendants cannot be convicted of having conspired to defraud the United States by deceiving the Second Assistant Postmaster-General.

SEVENTY-FIFTH.

If the jury believe from the evidence in this case that the Postmaster-General acting as such at the time the transactions complained of in the indictment happened and were done was not deceived in respect thereof, but, on the contrary, knew about and approved all the orders for allowance of money to defendants, or any of them, made by defendant Brady, then they must acquit defendant Brady.

SEVENTY-SIXTH.

The jury are instructed and charged that the original contracts mentioned in the indictment for conveying the mail on and over the respective routes named in said indictment are not therein alleged to have been fraudulently entered into or made, and for the purposes of this case they and each of them must be assumed to have been honestly and orderly executed.

SEVENTY-SEVENTH.

The court charges the jury that defendant Brady is not shown by the testimony in this case to have been a party to any of the contracts or subcontracts read in evidence, under and by means of which the business described in this case was in whole or in part transacted; and any acts done, or declarations made, by any of the defendants other than defendant Brady, not in Brady's presence or with his knowledge or connivance, about the said business during the period of the alleged conspiracy cannot affect defendant Brady either as evidence of a conspiracy as to him or as proof of any act of defendant Brady alleged in the indictment to have been done to effect the object of said alleged conspiracy.

SEVENTY-EIGHTH.

The court charges the jury that it is not sufficient to authorize a connection in this case of any of the defendants to show by the evidence that two or more of the defendants, exclusive of defendant Brady, entered into a copartnership, or business agreement, or understanding among themselves, to carry out and perform the contracts read in evidence and described in the indictment for carrying the United States mails on and over the routes, or some of them, mentioned in the indictment, and also agreed, in addition thereto, to procure an increase of pay for more frequent and quicker mail service over said routes, or some of them, up to the limit of payment therefor allowed by law to be ordered to be paid.

SEVENTY-NINTH.

The court charges the jury that none of the acts set forth and described in the indictment and alleged therein to have been done by some of the defendants to effect the object of the alleged conspiracy are shown by the allegations of the indictment to be of such a nature as to be calculated to effect the object of said alleged conspiracy to defraud the United States. (*King vs. Rex*, 79 B., 782; 7 Barb., 391; *United States vs. Crafton*, 4 Dillon.)

EIGHTIETH.

The jury are instructed that whether or not the increase of mail service, the payment for which is complained of in the indictment, was or was not necessary for the public good, or was lawfully needed or required, or was for the advantage of the United States, were questions of fact exclusively within the jurisdiction of the Post-Office Department, and with the decision of which the jury have nothing to do, and the jury cannot consider or decide either of those questions of fact in this case. (Sedg. on Stat. & Con. Law, 156-163; Cooley, 4 ed., 87; 13 Wall., 384; *Atty. Gen. vs. Brown*, 1 Miss.—, 522; *Brown vs. Porter*, 9 How., 235; *W. S. Retchel*, 17 How., 533, 534; *W. S. Ferry*, 13 How., 40-48; 1 Bish. Com. Law, 462; 4 Black. Com., 121.)

EIGHTY-FIRST.

The jury are charged that section 3965 of the Revised Statutes of the United States, which reads as follows, "The Postmaster-General shall provide for carrying the mail on all post routes established by law, as often as he, having due regard to productiveness and other circumstances, may think proper," invests said Postmaster-General as the head of the Post-Office Department with discretionary power to fix the frequency of trips and the rate of speed which shall govern in carrying the United States mails, under contracts made by him therefor, over said routes; that what is due regard for productiveness is not defined by the laws of the United States, and is therefore a question submitted by the law itself to the judgment and decision of the Postmaster-General, from whose interpretation of said law there is no appeal, and the jury in this case are not authorized to substitute their interpretation of said law for that of the Postmaster-General.

EIGHTY-SECOND.

Nor can any conviction in this case be based, either in whole or in part, upon any finding by the jury that the increase or expedition of service shown in this case by the evidence was, in the judgment or opinion of the jury, extravagant, or needless, or unwise, or not made with due regard to productiveness. Neither the court nor the jury can retry or sit in judgment upon or in any way take jurisdiction of said matters of discretion submitted by the statute to the discretion and judgment of the Postmaster-General.

EIGHTY-THIRD.

That in making up their verdict in this case the jury must assume that every act and order done and made by the Postmaster-General, or

by his assistant, Brady, or by the two jointly, and which acts and orders are by law submitted to the discretion of these officers as to the propriety or utility of adopting them, must be by the jury assumed to have been properly, honestly, and wisely made and ordered, and to have been done with due regard to productiveness and other circumstances.

EIGHTY-FOURTH.

In determining the guilt or innocence of defendant Brady, the jury will not consider or weigh any of the official acts done and performed by him in the discharge of his official duties as Second Assistant Postmaster-General. (State *vs.* Gov., 39 Mo., 388-99.)

EIGHTY-FIFTH.

Though the jury may believe from the evidence in this case that defendant Brady ordered to be paid to some or all of the defendants more money for services claimed by said defendants to have been performed by them for carrying the mail over the routes, or some of them, mentioned in the indictment, than under the provisions of the law governing the payment for such services ought to have been paid or ordered by him to have been paid, yet such payment or order of payment is not declared by law to be a fraud upon the United States, and defendant Brady cannot be convicted therefor under this indictment.

EIGHTY-SIXTH.

If the jury believe from the evidence in this case that any of the increase of mail service ordered by defendant Brady, and complained of in the indictment, was brought about and procured to be ordered by persons other than the defendants, and not under the control of defendants, or either of them, then to the extent that such was the case there is a failure of proof of the allegations of the indictment charging said orders to have been brought about and procured by a conspiracy between other of the defendants and said Brady, and in making up their verdict the jury will not consider the orders so procured to be made by others.

EIGHTY-SEVENTH.

The court charges the jury that there is no presumption of law against the truthfulness of the testimony of any of the defendants in this case springing out of the fact that they are defendants, but the testimony of the defendants is to receive such weight as in the judgment of the jury it is entitled to.

EIGHTY-EIGHTH.

The court instructs the jury that it is charged in said indictment that the said defendants at a certain date filed, or caused to be filed, in the Post-Office Department—

1. False petition on route 34149.
2. False oath on route 34149.
3. False oath on route 35015.
4. False petitions on route 35015.

5. False petitions on route 35051.
6. False petitions on route 38134.
7. False oath on route 38134.
8. False oath on route 38135.
9. False petitions on route 38135.
10. False petitions on route 38140.
11. False oath on route 38140.
12. False oath on route 38156.
13. Fraudulent subcontract on route 40104.
14. False oath on route 40104.
15. False oath on route 40113.
16. False petitions on route 40113.
17. False oath on route 46132.
18. False petitions on route 46247.
19. False petitions on route 44160.

Now, unless the jury believe, from the evidence, that said oaths, petitions and subcontract were filed on the dates charged in the said indictment, they will disregard each and all as overt acts. And in making up their verdict, the jury cannot take the filing of the aforesaid petitions, oaths, and subcontract into consideration as overt acts.

EIGHTY-NINTH.

The jury are further instructed that in the said indictment it is alleged that the said defendants filed on the 27th day of June, 1879, a certain forged petition on route 44155. Now if the jury believe from the evidence that said petition was filed on the 23d day of April, 1879, then they are instructed that they cannot consider such overt act in making up their verdict.

NINETIETH.

The jury are also instructed that it is charged in said indictment that the said defendants filed a forged petition on route 44160, on the 16th day of July, 1880. Now, if the jury believe, from the evidence, that such petition was filed on the 7th day of May, 1879, then the jury have no right to take into consideration said allegation as an overt act, in making up their verdict.

NINETY-FIRST.

The jury are further instructed that in making up their verdict they cannot take into consideration as overt acts the following, to wit:

1. Filing subcontract by S. W. Dorsey, on route 38113.
2. Filing subcontract by S. W. Dorsey, on route 38135.
3. Filing subcontract by S. W. Dorsey, on route 38140.
4. Filing subcontract by J. L. Sanderson, on route 38150.
5. Filing subcontract by S. W. Dorsey, on route 38156.
6. Filing subcontract by M. C. Rerdell, on route 40104.
7. Filing subcontract by H. M. Vaile, on route 46132.

For these reasons, namely:

- (1) The allegation is *not properly pleaded*. It is not sufficient to say that they fraudulently sent a paper.
- (2) It is impossible to *fraudulently file a subcontract*; and
- (3) Because of *variance in regard to date* of filing subcontracts on routes 38150 and 40104, they having been filed *before* the 23d day of May, 1879.

NINETY-SECOND.

The jury are further instructed that they cannot take into consideration as overt acts, in making up their verdict, the following *orders* charged to have been made by Thomas J. Brady, to wit:

1. The order of March 8, 1881 (p. 28).
2. The order of July 10, 1879 (p. 32).
3. The order of July 10, 1879 (p. 34).
4. The order of August 2, 1879 (p. 36).
5. The order of July 8, 1879 (p. 38).
6. The order of June 26, 1879 (p. 41).
7. The order of November 10, 1880 (p. 42).
8. The order of December 14, 1880 (p. 43).
9. The order of May 23, 1880 (p. 45).
10. The order of February 26, 1880 (p. 47).
11. The order of July 12, 1879 (p. 52).
12. The order of December 28, 1880 (p. 53).
13. The order of July 23, 1879 (p. 55).
14. The order of April 10, 1880 (p. 56).
15. The order of June 3, 1879 (p. 58).
16. The order of January 4, 1881 (p. 59).
17. The order of February 11, 1881 (p. 60).
18. The order of April 17, 1880 (p. 62).
19. The order of July 16, 1880 (p. 64).
20. The order of June 24, 1879 (p. 66).
21. The order of February 11, 1881 (p. 67).
22. The order of June 26, 1879 (p. 70).
23. The order of July 8, 1879 (p. 72).

NOTE: *The reasons:* Because not charged to have been done in pursuance of the conspiracy, or to effect the object thereof—

—The Government having failed to prove that they were ever certified to the Auditor.—

NINETY-THIRD.

The jury are further instructed that in making up their verdict they will not regard as an overt act the charge on page 69 of the indictment, of sending the oath on route 44140 to the office of the Second Assistant Postmaster-General, for the reason that it is not charged that said oath was sent in pursuance of the conspiracy, or to effect the object thereof.

NINETY-FOURTH.

And further, That they will not consider the charge, on page 72, of filing false petitions on route 41119 as an overt act, for the same reason.

NINETY-FIFTH.

The jury are further instructed that they will not take into consideration as an overt act, in making up their verdict, the charge, on page 35, of filing false petitions on route 35051, for the same reason.

NINETY-SIXTH.

The jury are further instructed that they cannot take into consideration the overt act set out on page 48 in the indictment in relation to route 38150—the same being an order made by Thomas J. Brady—if they believe from the evidence that said route was subcontracted to J. L.

Sanderson at full rates, from the 1st day of July, 1878; and in no event can the jury consider the same as an overt act unless they believe that the said order was made in pursuance of a corrupt conspiracy between the defendants as set out in this indictment; and if they believe, from the evidence, that the said order was made for the benefit of *J. L. Sanderson*, and that he received the one month's extra pay, then the jury cannot consider the same in this case, in making up their verdict.

NINETY-SEVENTH.

The jury are further instructed that they cannot consider the overt act charged upon route 38152, on p. 50—the same being an order of Thomas J. Brady to discontinue service and allow the contractor one month's extra pay—if the jury believe from the evidence, that at the time said order was made, *J. L. Sanderson* was the subcontractor at full rates.

NINETY-EIGHTH.

The court instructs the jury that as to the charge of the overt act on page 71 of the indictment—fraudulently sending and causing to be placed in the office of the Second Assistant Postmaster-General the oath on route 41119—the jury must believe beyond a reasonable doubt that John M. Peck, John R. Miner, Harvey M. Vaile, Stephen W. Dorsey, and Montfort C. Rerdell did fraudulently send, transmit, and deliver, and cause and procure to be placed in the said office of the Second Assistant Postmaster-General, among the papers relating and pertaining to the said post-route numbered 41119, a certain unlawful, false, willful, and corrupt oath, deposition, and statement, as set forth on page 71 of the indictment; and if the jury believe from the evidence, that at the time the said affidavit was filed, John R. Miner, Harvey M. Vaile, and John M. Peck, had no interest in the said route, and that the said John R. Miner and Harvey M. Vaile did not fraudulently send, transmit, and deliver, or cause or procure to be placed in the office of the Second Assistant Postmaster-General the said oath—then the court instructs the jury that they cannot consider the filing of the said oath, or placing it in the Post Office Department, as an overt act.

NINETY-NINTH.

The jury are instructed that they are the exclusive judges of the weight that is to be given to the evidence of each witness. The jury have the right to take into consideration the circumstances under which each witness testifies, the motive that each witness has, his appearance upon the stand, and if the jury believe that Rerdell, or Moore, or any other witness, knowingly swore falsely in any material point, the jury have the right to disregard the entire testimony of such witness.

ONE HUNDREDTH.

The court instructs the jury that the defendants are on trial for the conspiracy charged in the indictment, and for no other offense; and that the indictment does not charge that the defendants, or any of them, conspired to defraud the United States by deceiving the Second Assistant Postmaster-General; but the charge is, that the defendants, including the Second Assistant Postmaster-General, conspired to de-

fraud the United States by deceiving, through certain means, the Postmaster-General; and under this indictment no two of the defendants can be convicted of having conspired to defraud the United States by deceiving the Second Assistant Postmaster-General.

MONDAY, JUNE 11, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

The COURT. Gentlemen, this day was assigned for the argument of the prayers; are you prepared?

Mr. BLISS. Has your honor any directions as to the order of procedure?

The COURT. I do not think that I have any special directions. I suppose that the Government opens upon its own prayers.

Mr. MERRICK. We open upon all of them.

Mr. BLISS. It was as to that point that I wanted to inquire. There are certain of the prayers on both sides that overlap on the same ground of discussion.

The COURT. Yes; that is necessarily so.

Mr. BLISS. It was as to that point that I desired the direction of the court: As to whether the Government should open upon the whole or what should be the course of procedure.

Mr. INGERSOLL. I suppose the Government will open upon its own prayers.

The COURT. The prayers may be likened to the pleadings in a cause. The Government will open its argument upon all the prayers on both sides.

Mr. HENKLE. Would it not be better, your honor, to take up each prayer *seriatim* and have the court pass upon it?

The COURT. The court is not going to announce its decision upon each prayer as it goes along.

Mr. HENKLE. That is quite customary in settling prayers.

The COURT. How can the court announce its decision in the absence of the jury? These are instructions to the jury. I am to hear you upon the prayers. It is not important, it seems to me whether the Government shall open merely upon its own prayers and reply upon its own prayers and then the other side open upon their prayers and reply upon their prayers, or——

Mr. INGERSOLL. [Interposing.] Let me suggest a mode of procedure. The Government will open upon the prayers the prosecution may desire. Then let us open on our prayers, for this reason: There are many of the prayers that we do not wish to argue, but which are offered simply for the purpose of saving the point. Several of them your honor has decided, and decided so often that we would not care to argue them again. Consequently if we open as to our prayers we will select such as we really wish to argue, and then the Government can answer those prayers. I make the suggestion simply to save a vast deal of time.

The COURT. Gentlemen, that suggestion commends itself to me. You will, if you please, proceed with the argument upon the prayers for the prosecution in the first place.

Mr. KER. Your honor's ruling in this matter will simplify matters

very much. On the part of the prosecution we do not intend to take up each prayer by itself, because the majority of them your honor has already passed upon, and they have been elaborately argued during the trial of the case. The principal proposition that we wish to bring to your honor's mind is contained in the fifteenth and sixteenth prayers, and to those, taken in connection with the nineteenth and twentieth, being almost analogous, I will devote my attention entirely, exclusive of all the rest.

I hope I may make myself clear in expressing to your honor the principle which we want to bring to your honor's attention in this case. I will read first this prayer :

FIFTEENTH.

When a defendant in a criminal cause becomes a witness on his own behalf, and has been notified to produce books and papers admitted by him or shown to have been in his possession, and which, if produced, would have been competent evidence in the cause, and upon cross-examination such defendant witness reiterates his refusal to produce such books and papers, the jury is entitled to presume that such books and papers, if produced, would have disclosed evidence disadvantageous to such defendant, and that such failure casts suspicion on all the other evidence adduced by said defendant, and is a circumstance tending to prove his guilt.

The next is :

SIXTEENTH.

And the jury is further instructed that the manner in which the counsel for the defendant, S. W. Dorsey, offered to produce said books and papers should in no way lessen or mitigate the force of any presumption or inference to be drawn from the non-production of the same, for the reason that such offer was so qualified that the court could not recognize it, even if counsel for the Government had accepted it, and the jury will therefore regard such offer only as further evidence, establishing by the admission of the said defendant, of his possession of the said books and papers, and the fact that they were within reach and within the power of the said defendant to produce the same during the trial, if he had thought proper to do so ; and the jury will therefore draw from the non-production of said books and papers the presumptions and inferences as directed in the instructions heretofore given by the court.

In searching through the different reports to find cases that are decided covering this portion of our law that permits a defendant to become a witness on his own behalf, I find that there are very few decisions bearing directly upon the point in issue. As I said before, I want to try to bring it so plainly before your honor that your honor will understand the point that we are making. It is this :

First, not that having been given notice to produce the books, and failing to do so, then the inference is to be drawn against him, but that being a part of the proceedings of the case before your honor and within your honor's knowledge, and upon which your honor had to pass before we could pass by the threshold of that point and enter the door of secondary evidence, your honor therefore knew that the notice had been given, and the defendants knew it ; but when we come to that part of the case where the defendant himself takes the witness stand, where he becomes a witness, and where he seeks in his testimony to deny the testimony that has been given on the part of the Government, then there is a new phase of the case opened, and it becomes an important matter to consider what are the rights, the duties, and the obligations of the defendant when he takes the witness-stand in his own behalf.

Suppose we had given no evidence whatever of the contents of the papers, the books, and the stubs that have been under discussion. Suppose they had not entered into the calculation at all. Suppose

the defendant took the witness-stand on his own behalf and was asked upon the cross-examination, "Did you not make an entry on the stub of your check-books?" "I don't remember that I did." "Have you such a check-book or such a stub?" "I presume I have. I ordered my clerk to examine, and he made an examination." "Did you find there a peculiar check, for instance, one to J. B. B.?" "I don't know whether I did or not." "Will you produce the stub of that check-book, and let us see?" "No; no." The answer is made by himself, and the answer is made by his counsel. Now, if the question were a proper one, and admitted by the court, is it not, then, a proper question upon cross-examination, and if it is a proper question, going to his credibility and going towards searching out evidence which he is required to produce when he takes the stand upon cross-examination, what position, then, does the witness occupy? Suppose he were asked in his cross-examination, "Did you not pay money to Thomas J. Brady," and he should reply, "I decline to answer," what would your honor then do with the witness? How could we compel that witness to answer that very material question? Cross-examination is one of the material parts of the case. It is the test that is applied to the witness's statements to ascertain whether he is telling the truth or whether he is telling a falsehood. Cross-examination is of great importance in a case. If a party had been examined in chief upon a material point, and during the adjournment of the court, and before the opposite side had an opportunity to cross-examine that witness, the witness should die, what would become of that witness's testimony? Would it stand for so much as had been given, or would it be excluded entirely? I think I am right when I say that that testimony would be excluded entirely. Not being given in full and the right to cross-examine not having been exercised, the testimony passes for nothing. Is a witness taking the stand in his own behalf in any better shape than an ordinary witness? Suppose there had been a witness brought here to testify on behalf of the defendants, and that witness, after taking the stand and being interrogated in chief, were to be cross-examined as follows: "Did you write a letter?" "Probably I did." "Did you not get that letter in your possession?" "I think I did." "Have you that letter?" "Yes; I have it." "Will you give it to us?" "No." What would your honor do in that case? Would your honor compel him? Would your honor commit him for contempt? In case he failed to produce the paper, what then? Might we not say to your honor as to that portion of the witness's testimony in which that paper became a material and necessary part of the case that we would ask your honor to exclude it and to have that portion of the testimony wiped out and withdrawn entirely from the consideration of the jury? When a witness states a matter the truth of which is known only to himself and will not verify it by the highest kind of evidence which he is capable of producing, how are we to reach that evidence? We have no means of testing whether the witness is telling the truth or not. In all probability your honor would commit that witness if he refused to produce the evidence that your honor directed him to produce and he would remain in prison. It might be a hardship on the part of the person who called the witness to have his testimony excluded but that is a matter over which neither the plaintiff nor the defendant has any control. We only seek to get the best light we can in the administration of justice. It is a part and parcel and portion of the administration of justice, and when a witness, a third party, is brought in, voluntarily or involuntarily, without any interest in the case, there is only one point upon which he can claim privilege outside of professional

privilege, and that is that his testimony might criminate himself; then, under your honor's instruction, we would not be permitted to go to the length of asking him about that. But again the question here arises, would you not, as to that material point, strike out the testimony and not allow one-half of it to go to the jury and the other half to be concealed in the breast of the witness?

When a defendant takes the stand, I submit to your honor that he occupies an entirely different position from the voluntary or involuntary third party witness. Under the law we could not ask him to take the stand. Under the law your honor could not force from him a book that he held in his hand, and defied us to produce or cause to be produced. When he takes the witness-stand and divests himself of the privilege that is thrown about him, and is sworn to tell the truth, the whole truth, and nothing but the truth, as to everything that is material to the issue before the court, he is bound to answer. The question can be put to him plainly and openly, "Did you pay money to Thomas J. Brady?" and he is under oath bound to answer that question. Your honor would decide that he is bound to answer it, and that its criminating influence would have nothing to do with him, nor would the question whether its effect might be good, bad, or indifferent. He has put himself in such a position that he must answer the question. Suppose he refuses, would your honor commit him for contempt? Suppose it were a case of murder where he was on trial for his life and he took the witness-stand and refused to disclose a matter that was inquired about on cross-examination. Would your honor then say, "I will commit you to prison and I will keep you there until you do answer? I will tie this jury together and let them wander around. The trial must stop. We will not go on any further. We will wait until you answer that question." It seems to me that it does not require much argument or much ingenuity to make it evident that a man might in such a way very readily escape with his life and suffer only a little temporary confinement under a commitment for contempt of court. Now, if a rule is good in one case it is good in all. If a rule will apply to murder or manslaughter or the higher crimes of felony it will apply equally well to the lower grades of misdemeanor. You cannot make a rule for one class of cases and another rule for another class of cases. You will have to make your rule answer for both. When a witness says, "I decline to answer; I will not produce these papers; I will not produce the stub that will show whether I am telling the truth or a falsehood; that will show whether, when I denied conversations with Government witnesses, I was telling the truth or a falsehood," and when he keeps them in his possession we ask your honor now for the first time, as far as we have been able with diligent research to discover through all the authorities, to establish a precedent upon this very important matter in criminal law. Almost every State has passed a law similar to this; but in no instance has a defendant ever boldly and defiantly said in the face of the ruling of the court, "I will not do it." Your honor is now called upon to decide that point. Knowing as we knew the importance of the point, and believing that we were correct in principle at the time the request was made and the witness refused to produce the books and to give us the information that we asked and desired, we waited until this opportunity would arise to discuss the law before your honor, and to ask your honor to so instruct the jury. We have collected together a number of cases, civil and criminal.

The COURT. You are on the sixteenth prayer now.

Mr. KER. I am referring to the prayer in the printed report on pages 5777 and 5778.

Mr. BLISS. He is discussing two together.

The COURT. The fifteenth and sixteenth.

Mr. MERRICK. They are substantially the same. One is supplemental to the other. As I wrote them they were intended so to be. There were some authorities attached to the original copy, but they are not printed in the record.

The COURT. I see them.

Mr. KER. There have been a series of decisions of England that have been followed in the courts of the United States in regard to a witness brought upon the stand and refusing to answer questions, and more especially that portion of the privilege of the witness where he is not bound to answer a question that would criminate himself. When a witness takes that stand and says, "I cannot or will not answer because it may criminate myself," then the question would arise, what is to be done with the testimony of the witness. In the case of Dickson against Vaile, found in Carrington and Paine's reports—and I will give your honor a list of these authorities——

The COURT. [Interposing.] Is it not well established that when a defendant comes upon the stand as a witness he is there as a witness only, and has the privileges of a witness, and no more?

Mr. MERRICK. The authorities go a little further and say that he is in some respects not entirely in the same attitude; that he is worse off than an ordinary witness.

The COURT. I know.

Mr. INGERSOLL. As to the particular crime charged.

The COURT. As to the particular crime charged he is there as witness.

Mr. INGERSOLL. Certainly.

The COURT. And if another witness would be bound to answer the questions put to him in regard to the particular charge, he is equally bound to do the same.

Mr. MERRICK. Certainly.

Mr. INGERSOLL. That is all there is to it.

Mr. MERRICK. The question behind that is the manner with which to deal with the testimony.

The COURT. The question is how the court will deal with the evidence. We have nothing to do with the witness as a defendant when he appears upon the witness-stand as a witness. As a defendant he is out of the case. He is testifying in relation to himself as a defendant, and he testifies precisely as any other witness would. He cannot defend himself as a witness under his privileges as a defendant.

Mr. MERRICK. No, sir.

The COURT. I think there is no question about that proposition. The other side do not seem to question it.

Mr. INGERSOLL. He is just like any other witness.

Mr. KER. The only question in my mind is whether it is worth while for me to go on with that branch of the subject. I think your honor is sufficiently familiar with it without my saying anything more, unless your honor should consider it necessary to ask for the authorities. The principle is very plain as to what is to be done with the testimony of a witness who refuses to answer on the ground of criminating himself, having already given a portion of his testimony. Decisions in the English courts have been to strike out that portion, and that ruling has been followed in the American courts, particularly in Vermont and in

Massachusetts, to the extent that that portion of the testimony being incomplete for want of full and sufficient and clear answer, although it may be damaging to the side of the person who has called the witness, cannot be considered; that the court cannot give half of the testimony to the jury while the other half is hidden in the breast of the witness. That is only one of the analogies. It is not one of the facts and circumstances that arise in this case. The next is, when he takes the witness-stand and refuses to produce the books when on cross examination and asked in reference to them, how does he stand?

The COURT. I understand you are discussing the fifteenth prayer.

Mr. KER. Yes, sir.

Mr. BLISS. The fifteenth and sixteenth prayers are being discussed together, your honor.

The COURT. Let us see what the proposition in the fifteenth is first.

Mr. KER. It is in the nature of a refusal to answer a question. It is of the same important significance as if he had said, "I will not answer." If he admits that he has the book in his possession, that would speak in such a way that there could be no doubt about it; there could be no hesitation on the part of the prosecution or on the part of the defense. It is of stronger importance and significance than if he had said, "I will not answer, because I might criminate myself," or, "I will not answer, because I will not." He had the books, and that is what we complain of.

The COURT. Are you arguing this proposition now that from their bare refusal to produce the books you have a right to infer guilt?

Mr. KER. Precisely, on cross-examination. We make a distinction where in chief, or where we are examining the witness on giving notice, then secondary evidence can come in, and that stops. We are not complaining of that. When the party takes the witness-stand himself, then whatever privilege he held as a defendant is waived. If he had said when we first notified him, "I will not give up the books and papers," our remedy was simply we could have proved the contents.

The COURT. They announced that to you; they told you they were not going to help you make out your case.

Mr. KER. Then we could give secondary evidence, and we gave it.

The COURT. Yes; you gave it. Then how did you come to interrogate him on the cross-examination about that?

Mr. KER. Your honor ruled that they could not then produce the books in order to contradict the secondary evidence. That is right; that is the law. But we were anxious to have the whole case, and Mr. Merrick on cross-examination waived all that, and said, "Will you produce them?" His counsel said, "No; not if they only contained some poetry about spring." We waived all that, and then the case took this shape: That if he had not gone on the stand, then the secondary evidence would have remained good and unimpeached; there would have been no trouble about it. But he took the witness-stand himself, and then he threw away every privilege that belonged to him as a defendant.

The COURT. What did he say in his evidence in chief in regard to the books?

Mr. INGERSOLL. Not a word.

Mr. KER. He was not asked that.

Mr. MERRICK. He denied, in his evidence in chief, that there were certain things on the books.

The COURT. I know; but he did not deny the existence of the books.

Mr. MERRICK. He said he had the books.

Mr. KER. He testified in this way: His counsel would say that Rerdell testified on page so and so, would read the testimony to him, and ask him, "Did you tell him that?" "No, sir." "Did you tell him to make an entry on the stub-book to William Smith?" "No, sir." "Did you tell him that there was a check to J. B. B.?" "No, sir." He said he did not tell him anything of that, and denied it all. But when Mr. Merrick came to the cross-examination, he says: "Did not you tell Rerdell to write on the stub of that check-book William Smith?" "I don't think I did." "Will you produce that stub?" Counsel says, "No, we will not." Now, does your honor see the difference? Could there be any dispute about the difference in position which the defendant occupied as a witness and as a defendant, when he threw down the mantle of secrecy and silence which we claim he did when he went on the stand. To verify his denial we asked him to produce the books that would have contradicted Rerdell, if they would have done that, and would have sustained Dorsey, if they had done so. But he declined to do it. We contend that he stands in the same position as if he had said, "I will not answer." One is the written answer, the other is the verbal; and the written answer is higher than the verbal, because it is of such a nature that it could not be clipped and altered to fit the occasion.

Your honor is not bound by our prayers. Your honor is bound to tell the jury what the law is, regardless of the prayers from either side. We ask these simply to direct your honor's attention to the points we make, and we draw them mildly in order that your honor may draw the law mildly or go beyond what we ask. We do not ask your honor to strike out that testimony, although I believe we could ask you to do so, and your honor would be justified in doing that. I mean that portion of the testimony that relates to the denial of the order to put William Smith upon the stub of the check-book or in the books that were made by Rerdell and that were copied by Gibbs and by Donnelly and traced into Dorsey's possession. The whole of those enter into the same category, together with the letter of December 9, 1878, written to John W. Dorsey.

His counsel ingeniously takes the position that we cannot notify them to produce secondary evidence. We will admit that as far as that goes and deny it at the other extremity. Secondary evidence cannot be called for in order to give the contents of secondary evidence; but when the defendant takes the stand and is asked, "Have you not in your possession a letter-book containing copies of letters that were sent to different people, and particularly one of December 9, 1878?" and he admits that he has that letter-book, and it appears that the witness obtained his information from that letter-book, I maintain again, your honor, that that is evidence the same as the stub of the check. When the witness speaks of the letter-book he does not speak of the letter that went to Bosler, but he speaks of that which his eyes rested upon in the possession of the defendant. But the press-copy of the letter was indexed in a letter-press copy-book. Rerdell says, "I saw that letter-press copy." Dorsey is asked on the stand, "Haven't you that copy? We ask you to produce it." And we are met by the same refusal, "We will not do it." I maintain, your honor, that there is no possible shape of secondary evidence in that case.

As I said, we do not ask your honor to strike out the testimony. I do not know what your honor may do, but we do not go that far. It is the first time that branch of the case has been reached, and it ought to be decided with a great deal of care. We hesitated about asking your

honor to go that far. I do not know but probably the gentleman who closes on the part of the prosecution may ask your honor to go that far.

Mr. WILSON. We would like to know now.

Mr. KER. In my own mind I feel very clear, but I feel diffident and timid about asking your honor to take that step. But I have no hesitation at all now in asking your honor to do what we do ask, and that is, to instruct the jury in accordance with this prayer—that his failure to produce those books, those stubs, those checks, upon cross-examination, to substantiate his statement made in his examination-in-chief, would, if produced—

have disclosed evidence disadvantageous to such defendant, and that such failure casts suspicion on all the other evidence adduced by said defendant, and is a circumstance tending to prove his guilt.

Like any other concealment, like anything else that he does that shows a desire to evade telling the truth and display fully his entire case before the jury.

The State *vs.* Ober, 52 N. H., 459. This case was decided in 1873. Ober was indicted for keeping spirituous liquors for sale. On examination he was asked if he had not sold spirituous liquors within one year previous to the finding of the indictment. He declined to answer, as it might tend to criminate him. Counsel for the State argued that Ober's declining to answer made it a pertinent matter of evidence to be taken against him. Ober's counsel objected.

The COURT. That is a new authority that is not here on the list.

Mr. KER. Ober's counsel objected to the question. The court overruled the objection, and in the charge to the jury expressly instructed them that they might consider that declination to answer and give it such weight as they thought it entitled to upon the question of his guilt or innocence of the offense alleged against him. Judge Foster, delivering the opinion in the superior court, said that that was correct. (See page 464 and note to page 465.)

The COURT. Has not the Supreme Court of the United States substantially decided this question?

Mr. BLISS. Where?

The COURT. I refer to the case of *Hanson vs. Eustace's Lessee*, 2 How., 708.

Mr. BLISS. That decision was before the passage of the act.

The COURT. I know that; but the principles laid down in that case are principles which apply to the inferences to be drawn from the refusal of a party to produce evidence after notice.

Mr. INGERSOLL. What did your honor say?

The COURT. I understand the doctrine of the Supreme Court is there settled as to the inferences to be drawn from the refusal of a party to produce written evidence. Of course this decision was made before the law permitted a party to become a witness for himself. But here the man was on the stand and on cross-examination, and he merely reiterated the refusal already made by his counsel over and over again.

Mr. INGERSOLL. And that had been acted upon by the prosecution.

The COURT. And had been acted upon by the prosecution; they had given their secondary evidence.

Mr. KER. The non-production we contend amounts to a failure to answer on cross-examination.

Life and Fire Insurance Company vs. Mechanics' Fire Insurance Company of New York, 7 Wend., 31. I do not think your honor has that authority. This was an action of assumpsit and notice was given to produce books and papers. In the lower court the judge charged the jury

that they might give such weight to the refusal to produce the books as they thought proper. Judge Sutherland, in deciding the case, on page 34, says :

The rule is this: The party in such a case may give secondary or parol proof of the contents of such books or papers, if they are shown or admitted to be in the possession of the opposite party ; and if such secondary evidence is imperfect, vague, and uncertain as to dates, sums, boundaries, &c., every intendment and presumption shall be against the party who might remove all doubt by producing the higher evidence.

That is upon a mere refusal, outside of the question of cross examination altogether.

The COURT. That is one of the authorities referred to in the opinion of the Supreme Court in the case in 2 Howard.

Mr. KER. It refers to a failure to produce alone ; but we have joined the two, making the separation at the conclusion of the prayer.

Sergeant *vs.* Fowler, 1 Grant, 355. I do not think your honor has that case. Sergeant was thrown from his horse, and his thigh was injured. Fowler was a doctor, who attended him. He could not determine the nature or the extent of the injury. On the Sunday after the plaintiff, Sergeant, was injured, the doctor brought his son, also a physician, and they both examined the wound and told him that he would have to be cupped, or something of the sort. Fourteen days after the injury complained of the doctor wanted to apply some splints. The patient said he would die in bed anyhow, and he might as well die as to be tortured to death. The plaintiff then got another surgeon, or several of them, and they found that Dr. Fowler had been treating the patient wrongly, and the plaintiff brought the action to recover damages for the fourteen days of suffering and the shortening of his limb, caused by the incompetency of the doctor. Sergeant's counsel, in his closing address to the jury, was allowed to comment upon the fact that Fowler's son was not examined, calling it the damning feature of the case.

The neglect to produce evidence that is known to be in one's power is necessarily suspicious, and thus evidence against him ; and it is on this principle that the court allowed counsel to comment on the defendant's failure to call his son, who aided him in his diagnosis of the case.

There the failure to corroborate himself by his son raised a presumption against him that the superior court said was proper for comment. How much more so was the failure to produce the stub, the letter-book, and the papers that he was asked to produce, and that might corroborate him beyond a doubt, or might stamp his evidence with the stamp of truth.

The COURT. That was a question as to whether the counsel should be allowed to comment upon the failure to produce that proof ; but that is a different question from the right of the court to instruct a jury to draw an inference.

Mr. DAVIDGE. It is not a matter of law at all.

Mr. KER. The Supreme Court says :

The neglect to produce evidence that is known to be in one's power is necessarily suspicious, and thus evidence against him.

That is what the Supreme Court said, and it is on this principle that the court allowed counsel to comment on the defendant's failure to call his son, who aided him in his diagnosis of the case.

Andrews *vs.* Frye, 104 Mass., 234. This was a suit on a contract or agreement made between plaintiffs and defendants that defendants should assume and pay certain demands against the plaintiffs. The

laws of Maine at the time declared that all sales of spirituous and intoxicating liquors should be void with certain exceptions—sales to some county officer that I suppose were necessary. The defendants kept a drug store. Judge Gray, in delivering the opinion of the supreme court, says :

One of the plaintiffs having offered himself as a witness in their behalf—

I presume they were defendants below—

was asked on cross-examination whether the plaintiffs had a license to sell intoxicating liquors, and declined to answer. This refusal to answer, like any other refusal to produce evidence in his own power, was competent evidence against him and his partner. A party offering himself as a witness in his own behalf stands differently in this respect from a third person brought into court to testify in a case in which he has no interest.

There the court admitted the testimony not only against the defendant himself, but against his partner who was a codefendant, on the principle, I suppose, that he was a witness for both.

Page *vs.* Stevens, 1 Post, 357. This is a Michigan case. This was a bill filed by Page to foreclose a mortgage. There was a question as to some payments of money on account of the mortgage. Campbell, C. J., in delivering the opinion of the court, said :

The books are not produced at all. Where so much depends on the fullness and accuracy of the entries, it would be altogether improper and dangerous to dispense with their scrutiny. Every presumption must be against them, when withheld.

That is very strong. *Every presumption must be against them when withheld.*

John Connors *vs.* The People, 50 N. Y., 240. The New York statute, I believe, is precisely similar to ours. Connors was indicted for an assault with intent to kill. He became a witness in his own behalf, and upon cross-examination he was asked, "How many times have you been arrested?" The question was objected to, and the objection was overruled. He again refused to answer. The court then asked, "Were you arrested before?" That was objected to. The witness answered, "Yes, sir." Church, C. J., in delivering the opinion of the court, says :

The decision of this court in Brandon *vs.* The People (42 N. Y., 265) should be controlling upon this point. The prohibition in the Constitution is against compelling an accused person to become a witness against himself. If he consents to become a witness in a case voluntarily and without any compulsion, it would seem to follow that he occupies for the time being the position of a witness with all his rights and privileges, and subject to all his duties and obligations. If he gives evidence that bears against him, it results from his voluntary act in becoming a witness and not from compulsion.

Now, suppose that that witness had said, "I won't answer the question of the court," the same question would arise as here.

Mr. DAVIDGE. That case has been overruled.

Mr. BLISS. You will have an opportunity to reply to it, Mr. Davidge.

The COURT. We will not take it by piece.

Mr. KER. The case of Brandon *vs.* The People, that is referred to in that decision, is in 42 N. Y., 265.

Mr. DAVIDGE. That was distinctly overruled.

Mr. KER. The prisoner was indicted for larceny. On trial, on the cross-examination, she was asked, "Have you ever been arrested before for theft?" The question was objected to, the objection was overruled, and the defendant answered in the affirmative. The court sustained the question, and the opinion was delivered by Judge Hunt.

Stover *vs.* The People, 56 N. Y., 315. Stover was charged with receiving \$250 in bank bills that had been stolen. The opinion of the superior court was delivered by Judge Grover.

The court, in substance, charged the jury that they were at liberty to consider as a circumstance the failure of the accused, while a witness, to give any account as to where the money found upon him had been kept in the interval from the time he claimed to have received it until it was found. To this portion of the charge his counsel excepted.

* * * * *

It was at the option of the accused whether or not to become a witness. When he has exercised this and become a witness he is made competent for all purposes in the case. If by his own testimony he can explain and rebut a fact tending to show his guilt or innocence, and he fails to do so, the same presumption arises from his failure as would arise from the failure to give an explanation by any other witness, if in his power so to give it. The reason for the presumption is alike in both cases. It arises from the known desire of parties to repel or explain accusatory evidence against them, if within their power, and the basis of the presumption is that the case shows that it is within their power, if innocent; hence the failure tends to show the absence of innocence.

There is more strong language from that court.

Commonwealth vs. Morgan, 107 Mass., 199. Morgan was charged with publishing a libel. He became a witness in his own behalf. He was asked on cross-examination whether he was not the publisher of the Saturday Evening Express. The question was objected to, but the objection was overruled, and he answered. Judge Choate:

By taking the stand as a witness he waived his constitutional privilege of refusing to furnish evidence against himself and subjected himself to be treated as a witness.

Commonwealth vs. Mullen, 97 Mass., 545. Mullen was indicted for being a common seller of intoxicating liquor. On his cross-examination as a witness, this state of affairs arose, that makes it a somewhat peculiar case: Before cross-examination his counsel stated to the court that he offered the witness for the single purpose of testifying whether or not there was or had been any sash in the door, and not for any other purpose. He told the court openly, before he put him on the stand, that he called him for that sole purpose. I apprehend, your honor, that if any other witness was called for a single purpose he could not be taken any further in cross-examination than the purpose for which he was called. The district attorney asked him whether or not there was not a sash with glass in the partition near the door. Defendant's counsel objected, but the objection was overruled, and the answer was given. Judge Bigelow, in giving the decision of the court, says:

Like all other witnesses, he is to tell the truth and the whole truth concerning any matter proper to be inquired about. If he offers himself as a witness he waives his constitutional privilege of refusing to furnish evidence against himself, and may be interrogated as a general witness in the case.

The People vs. Timothy Casey, 72 N. Y., 393. Casey was charged with committing a felonious assault upon John H. O'Brien. He became a witness in his own behalf, and upon cross-examination was asked whether he had been engaged in other altercations and had committed other assaults. Earle, J., page 398, says:

When a prisoner offers himself as a witness in his own behalf, he is subject to the same rules upon cross-examination as in other cases. He may be asked questions disclosing his past life and conduct, and thus impair his credibility. Such questions may tend to show that he has before been guilty of the same crime as that for which he is on trial, but they are not on that account incompetent. When he offers himself as a witness, and seeks to take the benefit of the statute which authorizes him to testify in his own behalf, he takes the hazard of such questions. He must himself determine before he offers himself, whether such examination will benefit or injure him.

I say, your honor, that the nineteenth and twentieth of these prayers are of the same nature. There is a case to be found in volume 9 of *The Reporter* for 1880, 453.

The COURT. You are on the nineteenth and twentieth prayers now, and have left the sixteenth.

Mr. KER. I told you when I began that they were analogous.

The COURT. You spoke just now of the nineteenth and twentieth?

Mr. KER. Yes, sir. I say the same law applies to both. I am taking those together—the fifteenth, sixteenth, nineteenth, and twentieth. In this case in *The Reporter* (*Williams vs. Commonwealth*) there had been a deed executed in the office of Mr. Nichols. Upon the trial before the lower court Mr. Nichols represented one of the parties as counsel. The point was raised that Mr. Nichols ought to have been called as a witness, and as it refers to a case in which Mr. Ingersoll is somewhat interested, I presume it will be interesting to him. Finletter, J., charged the jury:

If Mr. Nichols had knowledge of the matter which he received from his client—

He was for the defendant—

the plaintiffs could not compel him to testify to the knowledge; Mr. Williams could have called him; and when a party has a witness whom he could examine, and does not, the presumption of law is that were he called, his testimony would be against him who could have called him as a witness and did not.

The COURT. You refer now to Betts to contradict Moore?

Mr. INGERSOLL. The cross-examination of Betts, Pelham, R. P. Williamson, and L. P. Williamson.

Mr. KER. I am giving a general reference. Here is Bosler, and here are R. P. and L. P. Williamson, and here are Pelham and Betts, all come in the same category. Even suppose we had not included their names in the prayer, while your honor might think that it would not be worth your while to take up any matter that had not been included, yet I presume your honor will, regardless of the prayers, when you come to discuss the law, give the law as your honor knows it.

The COURT. The court is not obliged to instruct a jury upon questions of law unless his attention is called to them by counsel, though he may do so. The safest way is for counsel to call the attention of the court to any points they wish instructions upon.

Mr. KER. The counsel in this case have been collected from all parts of the Union, and have been used to the differing practice in the States they came from. Your honor has the advantage of having been here before us. I know that when your honor undertakes to state the law to the jury you will tell them the whole of it, without any exclusion, without keeping anything back.

The Supreme Court says in this case in the 9th Reporter:

There is nothing in the error assigned to justify the reversal of the judgment. The record sustains the assertion of the judge complained of in the first assignment, at least substantially. Nor was there any error in the remark which he made as to the argument that Mr. Nichols had not been called by the plaintiff. If there is a competent witness who is not called by a party, it is a presumption which the jury are entitled to draw that his testimony would be unfavorable.

Judgment affirmed.

This is outside of the names mentioned in the prayers. It goes to the very principle that I have been arguing to your honor. Failure to call a witness, failure to answer, failure to produce check-books or letter-books and the papers that were called for on the cross-examination, is a failure that, under the mildly drawn prayer we have offered to your honor, we ask your honor to say to the jury is a suspicious circumstance. His papers, if produced, would possibly be given in evidence against him, and that, as the prayer concludes, "is a circumstance tending to prove his guilt."

Take the case in that shape, omitting the names, and that principle is

there; it is found in every case that your honor will take, no matter how it is applied in the abstract.

There is one other case that I will call your honor's attention to, which relates to the second and seventeenth prayers. It is the case of *The United States vs. Lyman Cole*, 5 McLean, 601.

The COURT. That is a case we have had before.

Mr. MERRICK. The court is familiar with that case.

Mr. KER. I will not read it; it will be a useless waste of time for me to read it, because I think your honor is perfectly familiar with it.

The COURT. It has been referred to before.

Mr. KER. Oh, yes; your honor is as familiar with it as you are with your A, B, C's.

Mr. MERRICK. [To Mr. Ker.] You had better refer to 85 Pennsylvania.

The COURT. Is it Pennsylvania State Reports?

Mr. MERRICK. Yes, your honor.

Mr. KER. *Commonwealth vs. Bartilson et al.*, page 483. That is the case in which they pleaded a conspiracy and alleged overt acts. Under the law of Pennsylvania they are not bound to allege overt acts. But in this case they allege overt acts within the statutory period of two years in that State. The court held that the pleading of the overt acts was not a sufficient pleading of the conspiracy.

If on a charge of conspiracy it appears that two persons by their acts are pursuing the same object, and often by the same means, the one performing part of an act, and the other completing it for the attainment of the object, the jury may draw the conclusion that there is a conspiracy. (Roscoe on Criminal Evidence, 415.)

All the leading text writers assert this doctrine, and it is sustained by numerous decisions which it is not necessary to refer to. Acts and declarations of the parties prior to the statutory period may be given in evidence, provided they tend to show a conspiracy existing at the time charged in the indictment. It is true they would not be admissible for the purpose of proving a distinct crime barred by the statute. But where, in conspiracy, an overt act is done within two years, and said act is but one of a series of acts committed by other parties, evidently in pursuance of a common design and to carry out a common purpose, such acts would be evidence, provided they tend to show that the last act was a part of the series and the result of an unlawful combination; and such evidence may satisfy a jury of the existence of a conspiracy at the later period. And this, though some of the prior acts may have occurred at a time when, as an independent conspiracy, it would have been barred by the statute. For, as before said, the overt acts are the evidence from which a conspiracy may be inferred. Hence it is that, while as a general rule in criminal cases, the venue must be laid in the county in which the offense is committed, yet in conspiracy it may be laid in any county in which an overt act has been done by any one of the conspirators.

The particular point there is that in the indictment the conspiracy was charged as of a period beyond the statute of limitations, and the overt act was laid within the statute and claimed to be a renewal. The court decided that the conspiracy should have been charged as of the date of the act within the statute, because that act proved the conspiracy at that time.

Mr. MERRICK. That is, that in pleading it they alleged the conspiracy outside of——

The COURT. [Interposing.] That is, that the overt act was evidence of the offense of conspiracy within the period.

Mr. MERRICK. Yes, sir.

Mr. KER. I have given your honor all that I have here on my notes, and have stated the authorities. If your honor shall need any of them, I shall be very glad to give them to you. With what I have given you we will now submit the prosecution's side of the case.

The COURT. [To the counsel for the defendants.] Gentlemen, have you anything to say in reply to this argument for the prosecution?

Mr. DAVIDGE. May it please your honor, it is, in my judgment, a very remarkable circumstance that the only prayers, with the exception of the last two adverted to by Mr. Ker, which the counsel for the prosecution undertake now to maintain are all obnoxious to the same general criticism. That is, that in the trial of a criminal cause they all undertake to substitute suspicion, surmise, and speculation for evidence.

This experiment is not tried here to-day for the first time. Nothing had been more common in the administration of the criminal law than to endeavor to eke out the insufficiency of evidence by the aid of supposed legal presumptions. But I think I may say that just so often as that experiment has been submitted to the review of appellate courts it has been most signally rebuked. In respect of this general attempt, allow me to read to your honor a passage from a case that has already been brought to the attention of the court—the case of *Chaffee & Co. vs. the United States*, 18 Wallace, and I read from page 545, near the end of a very extraordinary opinion delivered by Mr. Justice Field. There was a refusal here to produce books and papers, and the judge undertook to elevate the refusal to the dignity of a presumption of law. In other words, he undertook to make it supply the place, by legal intentment, of evidence. Now what did this learned judge, delivering the opinion of the Supreme Court, say, after commenting on the ruling below?

The purport of all this was to tell the jury that although the defendants must be proved guilty beyond a reasonable doubt, yet if the Government had made out a *prima facie* case against them, not one free from all doubt, but one which disclosed circumstances requiring explanation, and the defendants did not explain, the perplexing question of their guilt need not disturb the minds of the jurors; their silence supplied, in the presumptions of the law, that full proof which should dispel all reasonable doubt. In other words, the court instructed the jury, in substance, that the Government need only prove that the defendants were presumptively guilty, and the duty thereupon devolved upon them to establish their innocence, and if they did not they were guilty beyond a reasonable doubt.

In that way this fallacy that runs through the fifteenth, sixteenth, nineteenth, and twentieth prayers was disposed of by the Supreme Court. His honor is familiar with those prayers, and I do not now deem it necessary to read any others, and I am under promise to take as little time as cannot be avoided. Apply this criticism to the nineteenth and twentieth prayers, and I think I may say that your honor will not consider them for a moment.

If the jury find that James W. Bosler, R. P. Williamson, L. P. Williamson, Charles Pelham, or either of them, was a person whose testimony would have been material on the part of one or more of the defendants, and was a witness, or were witnesses, that should have been called to testify on behalf of such defendant or defendants, and was or were not called to so testify, the failure to call such witness or witnesses is a circumstance for the jury to consider when deciding upon the evidence against defendant or defendants.

Can there be anything more monstrous than a proposition of that sort? Suppose we did not call witnesses who apparently ought to be called, and we come to tell you why we do not call them, and have a very good reason for not calling them, would your honor listen for a moment to the explanation? Your honor would say at once: "I cannot encumber the trial with your reasons, pro or con, as to why this, that, or the other thing happened, or did not happen." If a party is not to be allowed to explain why he did not call witnesses, are the jury, in utter ignorance of the real situation and the circumstances that influenced the judgment of that party, to draw their blind, wild, inferences? One only has to read these things to dispose of that. The twentieth prayer is:

If the jury find that William H. Betts was a witness whose testimony would have been material on the part of the defendants, and when called to the stand and examined as a witness on the part of the defendants, was not examined or interrogated upon questions that were material in the issue, and in contradiction of the testimony given by A. W. Moore after the foundation having been laid for such contradiction, upon cross-examination, the failure to so examine or interrogate him raises the presumption that the testimony of the witness Betts in that respect would not have been favorable to the defendants, and is a circumstance for the jury to consider when deciding upon the evidence against the defendants.

Now, suppose we began at the beginning of this record and ran through, bringing to the mind of your honor any and every circumstance connected with the management of the cause on the part of the prosecution and the inferences that might or might not be drawn from that management, and sought to base upon that a prayer that would give to the conduct of counsel the force of law, what would you think of it? Now, if these nineteenth and twentieth prayers—and I may make the same remark in respect of the two earlier prayers—mean nothing more than that a jury is at liberty to consider, as we all know a jury will consider, all facts and all circumstances, there is no necessity for making them the subject of instructions from the court to the jury. A practice of that sort is vicious, as calculated to mislead the jury by inducing them to attribute to that circumstance an importance that does not belong to it, based upon the simple fact that the court has thought fit to select it from the great mass of circumstances and make it the subject of a special charge. Now, when the argument was going on I may in all frankness say that it appeared to me that the range of the argument was entirely too wide, both in respect of the prosecution and the defense. It seemed to me that my Brother Ingersoll drew very freely upon what was *not* done, and that my Brother Merrick drew with exceeding freedom upon what was *not* done; and that when conduct of that sort passes beyond a certain line we are really trying a case not by the evidence in it, but by the evidence that according to surmise and conjecture might have been in it and ought to have been in it. That is a miserable substitute in a court of justice for that evidence which by the Constitution of the country is to be the foundation of any verdict whereby a citizen is to be deprived of his liberty.

Let me turn for a single minute to these two earlier prayers, the fifteenth and the sixteenth. They belong to the same category. What is the principle? They called for books and papers. They gave us a notice that took in everything, I think, but the after-birth of the defendants. It swept the high sea. It had neither beginning nor end. It was like Milton's description of Satan as he lay on the burning marl, without size and without proportions. They wanted everything. Your honor told them that like Oliver Twist they asked for too much and declined to uphold the notice. They then gave a more restricted notice, but it was in turn a very sweeping one. Your honor held that to be a good notice. I have nothing to say in respect to the ruling. I assume it to have been right. What next? What is the consequence? A party is called upon to produce books and papers and he says very frankly through his counsel, "I will not produce them." What is the result? Where the case is a criminal case, recollect that the man receiving the notice cannot be subjected to any species of coercion by the Government any more than he can be subjected to torture. The right to make him speak or act or produce books or papers or anything else involves simply the principle of torture. Your honor has said, "There is no such principle known to the common law; cer-

tainly there is none under the Constitution of the United States; but, gentlemen, you have free scope now to establish by secondary evidence the contents of all these books and all these papers." Your honor said one more thing right there or nearly enough to it to become a part of it. Your honor said that you would not after that allow the defendants to contradict the secondary evidence by the primary evidence; and so the case went on. What, then, was the issue? It was an issue on the secondary evidence. Their witness, and I think I may say their only witness, Rerdell, swore to the content. If anybody will believe Rerdell, they have the benefit of his evidence. Dorsey was put on the stand, and he was asked on cross-examination whether he would produce the books and papers, and he said no. Now, the point is made that you ought to tell this jury, as a matter of law, that the refusal of Dorsey on cross-examination to produce these books and papers after the issue had been narrowed to the limits that I have described, they having the privilege of introducing secondary evidence, and the case proceeding upon that issue, casts a suspicion, as argued by Mr. Ker, upon the whole evidence of the witness. I say, may it please your honor, that such a proposition is simply monstrous. I cannot tell exactly what they mean. It appears to me that my friend, Mr. Ker, is running in the direction of arguing that it is a pre-umption of fact, and then again he takes a higher flight, it appears to me, and maintains a far different proposition, to wit, that it is a presumption of law. If he only means that what fell from Dorsey in this particular or any other particular and the way in which it fell from him, the manner in which he said it, and in every circumstance on examination or cross-examination may be weighed by the jury in determining what weight they will ascribe to the evidence of Dorsey as against the evidence of Rerdell, I cannot see that the prayer is objectionable in substance. But we all know the design of a prayer like that. We all know that such a prayer is designed to mislead; not to guide a jury but to darken. We all know that. We who practice law know that no device is more common than to give an adventitious and false importance to a circumstance or to a segment of a case by prevailing on a judge to elect it from the common mass, and thereby to make it a subject of importance in the estimation of the jury.

Something has been said as to what you would do as to striking out the evidence of Dorsey—not *in toto*—I do not think that any proposition as wild as that has ever been uttered—but striking it out in respect of this particular department of the case. It would not hurt the case much if you struck it all out in respect of this department, for I presume nobody would attach any weight to the secondary evidence, emanating as it does from Rerdell. It all goes back to that point, as your honor intimated when some time ago the matter was before you. You said secondary evidence must be sufficient, alluding as I supposed to its questionable source; but your honor would not go beyond that. I say, however, that the question what you would do with it is not the point. It is too late now to move to strike out evidence. It would be a very novel practice after the evidence had closed and after the case had gone to the jury, preceded by the longest and loudest speeches in juridical history, to move the court to take up and review the record and repair any damages here and there. All that should have been thought of before the Government announced its case as closed. The Government went to the jury upon that case, and not upon a case to be manufactured or restated or remade at this stage of the argument. That is all I desire to say. I do not doubt that the jury have the right to consider all the circumstances in determining the weight which they will attach

to the testimony of a witness; but I know perfectly well that no acts and no words will fall from your honor that in any respect will be calculated to give undue importance to a fact, but that you will remit any presumption of fact involved in these four prayers to which I have called your honor's attention, in common with all other presumptions of fact, to the arbitrament of this jury.

Now, to go back to number two for a minute. What is number two? I will not even read it. That is the result of another common device, as old as Government, as old as tyranny. What does it mean? If you will read it carefully you will find it means simply this: That the acts of parties alleged to be coconspirators may take the place of the great central fact whether there was a coconspiracy. You will find, I think, that, *ex industria*, that second prayer is the play of Hamlet with the Prince of Denmark omitted. You will find that the common design is omitted. You will find that the combination of minds is omitted, and that the design of the prayer is to lead up this jury from acts that may be innocent, from those co-ordinate, coincident acts, to the grand central fact which is after all to be found by the jury, suppressing the element of combination and the element of common design that I know has been prominent in your honor's mind throughout this case. With the second prayer there was something said about another one, the seventeenth. I think I ought to read that. It is impossible to state it without reading it. There is not enough in it to inhere long enough in my mind to enable me to state it. I am not sure it is not true. It is true if platitudes are true:

SEVENTEENTH.

A conspiracy is rarely, if ever, proved by positive testimony. When a crime of high magnitude is about to be perpetrated by a combination of individuals, they do not act openly, but covertly and secretly.

I suppose the jury understand all about that, as do the officers of the prosecution. They did not need three men to be commissioned by the Department of Justice to tell them that.

The purpose formed is known only to those who enter into it.

That may or may not be. Generally I think it is true.

Their guilt can generally be proved only by circumstantial evidence.

Often it is so and often it is not. This is a Bunsby declaration.

It is said by some writers on evidence that such circumstances are stronger than positive proof.

Some say one way and some say the other way. Everything, after all, depends upon the circumstances themselves. I suppose there is no standard of weight in the matter. I am not aware that Congress, in dealing in the subject of weights and measures, has done anything in this department.

A witness swearing positively, it is said, may misapprehend the fact or swear falsely—

We all know that is true. I wonder they admitted so much—
but that circumstances cannot lie. The common design is the essence of the charge—

That is true; very true.

And this may be made to appear when the defendants steadily pursue the same object, whether acting separately or together, by common or different means, all leading to the same unlawful result.

That is true, if they will only insert the heart to the prayer, the Hamlet of the play. That is, by a combination of minds, each knowing the part to be performed by the other; not the details of that part, but generally or in detail the part to be performed by the other or the others—in other words, each animated by a common design. Coincident lines culminating in a center, *per se*, do not make crime, unless the jury find that the virus of guilt is in those centripetal lines that meet in a common center. That is all I have to say about their prayers.

Mr. INGERSOLL. No. You have not discussed the thirteenth.

Mr. DAVIDGE. But they have not argued the thirteenth.

Mr. INGERSOLL. There is an objection to it.

Mr. DAVIDGE. I cannot go over them all in the limited time that I have.

Mr. INGERSOLL. Ask the court to read it.

Mr. DAVIDGE. I suppose the court will read them all. I am very sorry for the court. Is there anything in the thirteenth prayer, especially, I mean? There is something in all of them. Let us see as a matter of curiosity what the thirteenth is. Ah, yes; it is a funny prayer. I will read it. Now, just listen to this, your honor. I am very sorry I even thought of passing it.

THIRTEENTH.

If the jury find that the testimony of the witness, Rerdell, though that of an accomplice, is corroborated by other testimony in the case and circumstances that have been adduced in evidence, such testimony is not to be discredited because it is that of an accomplice. Therefore—

Ergo, in other words—

if the jury are satisfied that said testimony is true in any material part thereof, and that in such material part it has been confirmed by unimpeachable evidence, such confirmation affords reasonable ground for belief that such testimony is true in all its other parts.

That is another illustration of the disease of these gentlemen, that is to take everything in the way of presumption from the jury and remit it to the court. They do not seem to recognize the fact that there is such a thing as an inference to be drawn by that tribunal, but that every inference is an inference of law and entitled to that dignity. They do not stop there. They go on and say—and I put the case, for I am not here to reflect in any degree upon Mr. Rerdell but only speak hypothetically—that a rascal who swears all around a circle and is confirmed in a segment, perhaps a very narrow segment, perhaps a little arc of a very large circumference, is presumed to tell the truth all around that circle; and it is not only a presumption but a presumption of law. I say that it is just the opposite. I say that with the most remarkable talent for stating things upside down they invert the principle of law, that principle being that a party, not even an informer but only declaring himself to be an informer is to be so treated. We do not accredit Rerdell with the dignity, you observe of being an informer. They wanted to decorate him in that way, but we say he is no informer at all but only a party claiming to be an informer. For that reason such a party is to be corroborated, I will not say in every minute detail, but in such manner and in respect of every essential and material piece of evidence as to induce the jury to accept him.

The COURT. I suppose you use the word informer in the sense of accomplice, because I see nothing at all in the rule which disparages the testimony of an accomplice applicable to the case of an informer who

is a mere spy in the employ of the Government and not implicated in the commission of the crime itself at all.

Mr. DAVIDGE. I am simply now discussing the principle of this prayer. I say in one of my prayers that the rule is this, and I have taken some pains to state it:

FIFTY-FIRST.

A witness professing to be an informer—

It ought to be an accomplice, under the correction of your honor, but it escaped me at the time I wrote it—

is, on that ground alone, declared by a rule of law unworthy of belief unless corroborated, but such corroboration is of no avail whatever when from the evidence of such witness it is apparent that he has deliberately testified falsely in relation to any material fact. In such case another rule of law places such witness beyond the pale of belief.

Surely your honor would not give this prayer. If good in other respects your honor surely would not give it without appending to it the very important qualification that if this man has deliberately lied in respect of any material fact his sin is not washed out by corroboration. He is denounced as much and more by the second rule of law than by the first rule, although it may be the denunciation of the first rule was removed by the cleansing process of such corroboration, as I have mentioned to your honor.

There are some things that we want to call to your honor's attention with regard to our prayers, and in order to save time I will endeavor to discuss them from the stand-point of principles, grouping together as many prayers as I can to illustrate the particular principle.

The COURT. The Government may wish to reply to your argument on their prayers.

Mr. DAVIDGE. You would not have that now.

Mr. MERRICK. We prefer to have them open on their prayers. Let us have one argument of it all.

Mr. DAVIDGE. I do not care. We will not get through to-day.

Mr. INGERSOLL. Oh, yes, we will.

Mr. MERRICK. Yes; we will get through.

Mr. CHANDLER. Our prayers so plainly contain correct principles that we need not say much with regard to them.

The COURT. It is not too late in the day to be economizing minutes.

Mr. DAVIDGE. I will do anything that your honor wishes.

The COURT. Take your own course.

Mr. CARPENTER. Why not take a recess first?

Mr. MERRICK. Need we take a recess to-day?

Mr. CARPENTER. We might take one for half an hour.

The COURT. Do you want a recess?

Mr. MERRICK. I have no right to speak.

Mr. DAVIDGE. I suppose the close by the Government will not transcend the limits of the opening, and will not discuss any other prayers than those discussed by Mr. Ker.

The COURT. The closing speech must be a reply.

Mr. DAVIDGE. I suppose so. Otherwise we would be taken at a disadvantage.

Mr. WILSON. The court will understand us as objecting to all these instructions.

The COURT. When the court gives instructions to the jury that will be the time for you to take your exceptions.

Mr. WILSON. Yes.

Mr. INGERSOLL. We do not want the court to understand that the prayers we do not argue against we admit to be correct.

Mr. DAVIDGE. We are only replying to their views.

The COURT. [To the counsel for the prosecution.] What course do you propose to take? Have you anything to say in reply to Mr. Davidge's argument?

Mr. MERRICK. Will they not open on their prayers before we reply? I supposed they were going to pursue that course.

Mr. DAVIDGE. I take it all back.

Mr. MERRICK. Your first views are generally right. After meditation you generally take the wrong course.

Mr. DAVIDGE. No doubt you think the first is right because it was rather in your favor. That is another surmise of yours.

Mr. MERRICK. Hardly a greater surmise than yours as to the second.

The COURT. Well, Mr. Davidge, if you choose to go on you can open on your prayers.

Mr. DAVIDGE. My brethren are of a different opinion, and I yield to them.

The COURT. Then we will hear a reply to Mr. Davidge's argument.

Mr. MERRICK. If we are going to take any recess let us take it now for fifteen or twenty minutes. I do not care whether we have a recess or not.

The COURT. I do not care about any recess.

Mr. MERRICK. I will consult with the Attorney-General a moment with reference to what we had better do. [After consulting with the Attorney-General who was in court.] We will reply hereafter to the whole when they open upon their prayers. We only want one more speech on our side.

Mr. WILSON. If your honor please, we claim the right to open and close as to our prayers. They have the right to open and close as to theirs.

Mr. INGERSOLL. Certainly.

Mr. MERRICK. I deny that right.

Mr. INGERSOLL. Then let us settle it now.

Mr. MERRICK. I deny that right. The plaintiff opens and closes upon the prayers when presented, generally. That is the universal rule in this court, if I am not mistaken. There is probably the most venerable patriarch of the bar beside your honor, a gentleman who knows better than any one else as to the practice here.

Mr. DAVIDGE. I think my opinion ought to have some weight, because I have been engaged in practice at this bar for some time. I am willing to have it either one way or the other. I do not attach any great importance to a closing argument addressed to the court. I will be glad to know whether the idea is that if I go on and open on our prayers that in reply to me they will reply as regards our prayers and what I have said in regard to theirs together, and then we close.

Mr. MERRICK. We claim the close.

The COURT. I understand the practice to be that when the prayers are submitted on both sides, the plaintiff or the prosecution, as the case may be, opens and closes.

Mr. DAVIDGE. That was my impression at the beginning. Mr. Ker then should go on and say what he has to say about ours.

Mr. MERRICK. He has nothing to say about yours now.

Mr. DAVIDGE. Then this is no argument.

Mr. MERRICK. We have nothing to say in the opening about your prayers.

Mr. WILSON. According to that the result would be this: The prosecution would go on and offer their prayers, and we would discuss them, and they would have the opening and the close; and we offer ours and offer our reasons for them, and they answer, and we reply, and the argument would be governed by the simple question as to whether or not we offered our prayers when they offered theirs. We submitted our prayers and let them go into the record, to the end that all parties might have an opportunity to examine them. We certainly did not intend to give the prosecution any advantage by so doing. I never would have presented a prayer to the court in advance if I had supposed that by the simple matter of putting them into the record so that everybody could see them we were to be deprived of a substantial right.

The COURT. It is a mere matter of practice.

Mr. WILSON. Is it not the practice, your honor, that the prosecution offer their prayers and have the right to open and close; and after their discussion have not we the right—

The COURT. [Interposing.] No. Before the court proceeds to instruct the jury both sides are expected to submit their prayers, and the prayers are argued after they have been thus submitted, the prosecution opening and closing upon the whole.

Mr. MERRICK. I think Brother Wilson misunderstood me, your honor.

The COURT. In the opening in this case Mr. Ker has not made any reference at all in regard to your prayer.

Mr. WILSON. Not at all.

The COURT. I do not see that that is any reason why you should complain. You can go on and open your prayers with two counsel; but the other side—

Mr. MERRICK. [Interposing.] I was going to remark, if your honor please, that Mr. Wilson misapprehended me if he thought that I based the rule as to the relation of the parties to the argument upon the circumstance simply that the prayers are all presented together. The rule is this: That when the prayers are presented they shall be all presented together, with the right reserved, of course, of bringing in any others incidentally that may become necessary by the developments of the argument, and that the plaintiff or the prosecution opens and closes.

The COURT. I think that is the practice.

Mr. WILSON. I do not know about that. Perhaps my familiarity with the practice in this court is not sufficient to authorize me to speak. I supposed after arguing all the instructions that have been asked we may then present other prayers for instructions and argue them.

Mr. MERRICK. They go without argument.

Mr. WILSON. No; they do not.

Mr. MERRICK. Yes.

The COURT. The court would not hear argument upon a further proposition. It would take the proposition and instruct upon it.

Mr. WILSON. I beg to say that I have never yet known any rule which cut out counsel from bringing a legal principle before the court.

Mr. INGERSOLL. If the stenographer will go back to what was said before Mr. Ker opened, I think it will then appear that an arrangement was made, and that it was this: That Mr. Ker would open as to their prayers, and that we should reply, and then they should say what they desired, and that thereupon we would call the attention of the court to such of our prayers as we desired. That was the way I understood it.

The COURT. I do not know whether there was any such understanding or not.

Mr. MERRICK. I do not know of any such. Your honor can see the absurdity of such a proceeding, if you will allow me to use that word in this particular. Their prayers are the converse of ours, and in two or three instances, I think, the negative is used in reference to our prayers.

Mr. BLISS. Mr. Davidge, in discussing our thirteenth immediately proceeded to take their fifty-first as substantially the converse of it, or what would appear to be a modification of it. Such instances run all the way through.

Mr. DAVIDGE. I only did it in my argument to illustrate my objection to their thirteenth.

Mr. MERRICK. We have said all we desire until we make the closing argument.

The COURT. You have said all that you will be permitted to say until the close.

Mr. INGERSOLL. Will the court take a recess for half an hour?

Mr. BLISS. Had we not better settle as to what shall be done?

Mr. MERRICK. It is settled.

The COURT. It is settled. Mr. Davidge, or whoever is to make the argument, will go on. He is to close in answer to you and open as to his own prayers. That was the common-law practice before we changed the practice of addressing the jury.

Mr. BLISS. As to our recess, does your honor mean just half an hour? We will probably want all our time in the argument to-day.

The COURT. We can prolong it a little.

Mr. BLISS. I was in hopes we would not. I think we can get through with our recess in half an hour. We ordinarily take a little more time than that.

The COURT. Very well. Say until two o'clock. That will be forty minutes.

At this point (1 o'clock and 20 minutes) the court took a recess until 2 o'clock p. m.

AFTER RECESS.

The COURT. Mr. Davidge, are you ready to proceed?

Mr. DAVIDGE. May it please your honor, the counsel for the defense have availed themselves of the recess to confer together, and have reached the conclusion that further argument of our prayers is unnecessary. If they do not commend themselves to your honor's mind, we think we cannot enforce them by argument. Hence, acting for myself and for my brethren, I submit the prayers for the defense.

Mr. BLISS. With reference to the prayers of the defendants I will call your honor's attention to only a few of them.

Mr. DAVIDGE. We have not argued them, and under the ruling there is nothing open.

Mr. BLISS. I submit that there is. Having stated at the opening to-day that they would argue certain of the prayers and not argue certain others, we certainly were entitled to expect that they would carry out that arrangement, and that we would have a right to reply.

Mr. DAVIDGE. The ruling of the court is that the Government had a right to open upon all the prayers. They chose to open upon only a

few offered by them, I think four or five. Then we had a right to cover the whole field. I confined myself to the propositions of law advanced by the Government. Now they have the reply to my argument.

Mr. MERRICK. It is a matter with your honor entirely, of course. There is no rule about any such matter as that. If they do not choose to argue their prayers we can go on and argue them during the time which has been allotted to us. The time was divided between the two sides, and we have the right to consume our time.

The COURT. There was no apportionment of the time, as I remember.

Mr. BLISS. Your honor will notice that on the adjournment on Friday there was a stipulation that the argument should close to-day.

Mr. DAVIDGE. Will you agree to close to-day? That is the point.

Mr. BLISS. One moment. The stipulation was this:

Mr. BLISS. I think there will be no trouble in closing the argument on Monday, if the defense confine themselves to anything like the time they intimate.

Mr. INGERSOLL. I am willing the court should limit us to Monday.

Mr. BLISS. If your honor will limit us to Monday, we will divide the time with the other side.

Mr. WILSON. Will you do that now?

Mr. BLISS. Of course, we will divide the time with the other side.

Mr. WILSON. And close to-day?

Mr. BLISS. And close to-day. We expect to, of course.

Mr. WILSON. "Expect to." That is not what I want.

Mr. MERRICK. If the court wants to hear any argument, it will intimate what it wants.

Mr. BLISS. We have no right to argue beyond to-day, and do not expect to argue beyond to-day. I will say that without any hesitation. We want to finish up to-day as much as anybody.

Mr. DAVIDGE. I presume your honor will settle the matter.

The COURT. If they don't choose to go on now, where will that place you? Do you insist upon your right to present your views in regard to their prayers?

Mr. BLISS. Yes.

Mr. DAVIDGE. That ought to have been done in the beginning.

The COURT. And then they have their reply?

Mr. BLISS. I suppose so.

The COURT. That is what they claim and what you resisted before.

Mr. MERRICK. I differ with Mr. Bliss about that. Now is their chance.

Mr. BLISS. We have the close of the whole thing, beyond all question.

The COURT. On that theory of opening and closing both sets of prayers together you have the opening and closing. If they do not choose to reply to your opening, that shuts off your closing.

Mr. MERRICK. That would be the case with a jury, but is it so with the court, your honor? We are helping the court.

The COURT. I think the rule of argument applies as well to one case as to the other. Still, as to some of these prayers, I should myself like to have some light.

Mr. MERRICK. You have a right to call for it, of course.

Mr. INGERSOLL. I think, if the court please, that this argument started out upon a misapprehension. It certainly did, as far as I was concerned. My idea was that the Government was to present such views as they pleased with regard to their own prayers. It seems that Mr. Ker confined himself entirely to the prayers of the Government.

Then he said that we had the right to reply to what they might say, and that they would close on their prayers. That is the way I understood it. Secondly, that we would then give such ideas as we might wish to present to the court on our prayers, that they would reply, and that we would close. I think the argument started out with that view.

The COURT. It did start out in that way. Mr. Ker, however, confined himself in his opening to his own prayers.

Mr. BLISS. Your honor says it started out in that way. I may say to your honor what our understanding of it was. We may have been wrong. Our understanding of the matter was this: that Mr. Ker in his opening was to confine himself to our prayers; that then they were to reply upon our prayers, and to state their views upon such of their prayers as they desired to call your honor's attention to, and that then we were to have the final close. That was the view with which Mr. Ker started out, inasmuch as they said expressly that many of their prayers they did not propose to discuss, and it would save time not to have them discussed. We decided at the moment that it was of no use to discuss in the opening such of their prayers as they did not intend to discuss, and therefore we would wait until they had come in with their discussion and meet it. That was our view. We may have been wrong in the understanding. We understood, your honor will therefore see, that we were to open as to our prayers alone, and they were then to reply and open as to theirs, and we were to reply on all.

The COURT. They waive then, as I understand, the opening on all their prayers, and the argument so far seems to have gone on that theory. Mr. Davidge waives the opening upon their prayers.

Mr. DAVIDGE. Upon ours.

The COURT. Yes. The Government may present such views in regard to their prayers now as it thinks proper.

Mr. INGERSOLL. And then we will have the close.

The COURT. Yes; you can have the close.

Mr. INGERSOLL. That is fair.

Mr. BLISS. I thought the understanding this morning was that we had the close on the whole case.

The COURT. I thought so, too; but there seems to have been a misunderstanding in respect of Mr. Ker's speech. Mr. Ker is dull of hearing, and probably he did not hear all that was said.

Mr. BLISS. Mr. Ker did precisely what we understood was to be done, and did it after consultation with us. There is no question about that.

The COURT. There is no doubt about what the general impression was at that time, that the opening was to be on your side, and then the other side was to follow, and you were to have the close upon the whole. I think that is the usual practice. My Brother Bradley, who is high unwritten authority on the subject, says that that has been the practice of the court.

Mr. BLISS. Your honor will see that certainly we ought not to be required to open upon their prayers and then they close upon them. They have not said a word upon their prayers. That, your honor, it seems to me, is putting us to the height of disadvantage. We will accept their arrangement. They do not desire to say anything on their prayers and we do not desire to say anything more. The prayers may be considered as closed.

Mr. WILSON. If your honor please, we have three or four additional prayers.

Mr. BLISS. Oh, no, indeed.

Mr. DAVIDGE. That is altogether in the discretion of the court. The court may allow prayers to be offered up to the last moment. We do not propose any argument on them.

Mr. WILSON. I am not going to argue them, but simply to read them.

The COURT. If you do not propose to have any argument, very well.

Mr. BLISS. Even then, I submit that these gentlemen cannot sit here with their prayers all ready to put in and wait until there is no further chance for argument and then offer the prayers. If they had drawn them in consequence of the argument or had evolved them from something that had occurred in the argument, it would be natural to offer them now; but I submit to offer them in this way is not pursuing a decent and orderly course.

Mr. DAVIDGE. To offer prayers on propositions of law is a legal right which exists at any time before the jury leaves the court-room to deliberate upon their verdict.

Mr. BLISS. I am not disputing that.

Mr. DAVIDGE. Then it comes to the question of argument. My Brother Wilson does not propose to argue these prayers. If your honor should desire argument from the other side or from this side a matter of that sort would belong to the discretion of the court and you would order an argument. There will be no trouble about that.

The COURT. We will hear the prayers.

Mr. MERRICK. Allow me to say that, as I understand Mr. Bliss, the objection is this: That when the prayers were all submitted and it was understood that they were all submitted and given to the court the prayers now offered were in the pocket of the counsel.

Mr. BLISS. Certainly, that was my view.

Mr. DAVIDGE. That is an entire mistake.

Mr. WILSON. Let me explain. I want to let my Brother Merrick into the secret.

Mr. MERRICK. Do. I would like to hear some of those mysteries.

Mr. WILSON. This morning after 10 o'clock, after having read their prayers, I dictated these prayers to my short-hand clerk, and they were brought to me since I sat down at this table. They were never in long-hand until after the court met this morning.

The COURT. We will hear them. It is the right of the counsel to submit prayers up to the last moment before the jury retires.

Mr. MERRICK. Unquestionably.

Mr. WILSON. My Brother Chandler was present when I dictated them. [Reading:]

ONE HUNDRED AND FIRST.

Before granting increase of service or expedition of service the Second Assistant Postmaster-General was not bound to go over these routes himself, nor was he bound to send out any special agents to examine into them or into the necessity for such service. If the people petitioned for such increase or expedition, or both, and if such petitions were indorsed by Senators and Members of Congress, or if the people asked for such increase or expedition, or both, or if Senators and Members of Congress recommended such increase or expedition, or both, the Second Assistant Postmaster-General had the right to presume that such persons so recommending were acquainted with the routes and with the improvements and industries that were springing up in that new country, and the present and prospective needs for

the service, and such petitions and other recommendations would justify him in granting such increase and expedition.

ONE HUNDRED AND SECOND.

If the jury believe, from the evidence, that on the representations of a large number of reputable citizens, including members of Congress, that additional mail facilities were badly needed by the people living along or adjacent to the several routes in question; that the regions of country were being rapidly settled up; that the resources of the country were being developed; that additional mail facilities were requisite to aid in this development and as an inducement to the people to settle there, the Second Assistant Postmaster-General had a right to act upon such petitions as being true representations of the condition of the country and of the need of the service, and if he made orders upon such petitions and recommendations the jury would not be justified in drawing any inference in this case that in making such orders he was engaged in a conspiracy or actuated by improper motives.

ONE HUNDRED AND THIRD.

Unless it has been shown by the testimony beyond a reasonable doubt that the defendant Brady did not act in good faith, on the evidence before him, on the matters complained of in the indictment, you should acquit the defendant Brady.

The COURT. That is involved in several prayers already in.

Mr. DAVIDGE. I will take advantage of this little lull to say to the court that I prefixed those of the prayers that I drew with a statement that they were severally offered to the court. In the record I fear they all appear as offered *en masse*. That, your honor knows, would be objectionable. I hope, therefore, they will be considered by your honor as independent.

Mr. WILSON. They are separate and independent offers.

Mr. BLISS. I take it on either side each prayer is considered as offered separately. There is no question about that.

Mr. CARPENTER. Let it so appear on the record, and there will be no trouble about it.

Mr. WILSON. [Continuing to read:]

ONE HUNDRED AND FOURTH.

The court charges the jury that though they may believe from the evidence that the defendants interested in the contracts described in the indictment made personal efforts to and did secure an increase of service under said contracts, and that in accomplishing that result they employed means similar in their character to means employed by other defendants upon other routes, and conducted their business under said contracts in a manner entirely similar to the conduct of the business of other defendants on their routes, that such similarity of conduct of the business of the respective defendants does not afford evidence of a conspiracy between the several defendants charged in this indictment.

ONE HUNDRED AND FIFTH.

If the jury believe, from the evidence in this case, that Vaile and Miner were interested in certain routes, separate and distinct, and wholly inde-

pendent of Stephen W. Dorsey; that Stephen W. Dorsey was interested in certain routes wholly disconnected with and separate from those held by Vaile and Miner; and if the jury believe that Vaile and Miner, in respect of their routes, were pursuing methods for the purpose of obtaining increase or expedition of service, or both independent of the said Stephen W. Dorsey, and that Stephen W. Dorsey was pursuing similar methods in respect of his route, but independent of and distinct from Vaile and Miner, such acts of the said Vaile and Miner, and of Dorsey, separate and distinct from each other, and having no relation to each other, would not be evidence proving or tending to prove a conspiracy.

ONE HUNDRED AND SIXTH.

In the discharge of his duty as Second Assistant Postmaster-General, the defendant, Brady, had the right to so order the service on any route established by Congress as would secure the transmission of the mails in the most direct and speedy manner; and if there were routes circuitous, and by reason of circuitry, occasioning delay in the transmission of the mails, and there were other routes upon which the mails could be transmitted more directly and more speedily, he had the right to so increase and expedite the service on the direct routes as would secure the object just mentioned, and if he did so no inference of guilt can be drawn therefrom against him in this case.

Mr. HENKLE. If the court please, Mr. Vaile has prepared a few instructions this morning which he desired me to present to the court.

ONE HUNDRED AND SEVENTH.

The act of Congress required that all official papers upon which orders are made shall be filed with the true date of their filing marked upon them, and any paper or papers not thus marked or without any file marks, is presumed to be a paper not acted upon by the Second Assistant Postmaster-General, unless the jury believe from the evidence it was one of the papers taken into consideration.

The COURT. There are only two instances of that sort, I think.

Mr. INGERSOLL. That is all.

Mr. HENKLE. Yes.

Mr. MERRICK. Where the papers were found among other papers on the route.

Mr. INGERSOLL. Afterwards.

Mr. HENKLE. [Continuing to read:]

ONE HUNDRED AND EIGHTH.

It is not enough to state in an indictment for conspiracy in a general way that the defendants agreed to write, or cause to be written, false and fraudulent petitions, and did file false and fraudulent petitions, &c., with the Second Assistant Postmaster-General, but such petitions thus impeached should have been set out in the indictment in full, and their false and fraudulent character described, so that the defendants might know of what offense they were charged that they may be prepared to meet it.

The defendants cannot tell from this indictment which of the multitudinous petitions filed on these nineteen routes will be relied upon by the Government to establish the charge. Nor is this uncertainty helped out by the averments with respect to overt acts.

ONE HUNDRED AND NINTH.

The writing and filing of petitions and the making of statements in the form of affidavits is not criminal in and of itself; and to make them so such petitions and statements should have been set out in the indictment and their criminal character described, or such facts stated in regard to them as would clearly show that their innocent character is changed to a criminal one.

ONE HUNDRED AND TENTH.

Indictments are the basis of all criminal prosecutions, and should be broad enough to receive all the evidence that may be offered to prove its averments; and evidence cannot be used to help out defective or too narrow averments in the same. False affidavits do not necessarily mean altered affidavits. If any affidavits have been altered or changed, the pleader knew this before the indictment was drawn; and if they expected to rely upon that as evidence of crime, it should have so averred and set out.

The COURT. These are points that were raised at a preliminary stage.

Mr. MERRICK. Yes, all of them.

Mr. DAVIDGE. Your honor has a copy of the prayers of the defense. Will you be kind enough to turn to page 5789, and to the end of the fifty-third prayer?

The COURT. The last paragraph?

Mr. DAVIDGE. Yes. I want to strike out the last line and the word "be" in the preceding line:

Because that is not the kind of conspiracy charged in the indictment.

Those words were added by mistake by another party, and as I drew the prayer I stopped at the word "indictment." Will your honor draw your pencil through the words I have read?

The COURT. Yes, sir.

Mr. MERRICK. I understand that the counsel on the other side decline to argue their prayers, and therefore we are stopped. I want that to appear on the report.

Mr. INGERSOLL. Mr. Merrick does not want it to appear on the record that this is by virtue of any agreement with counsel.

Mr. MERRICK. That is all.

Mr. INGERSOLL. We do not claim that at all. We do not wish to put you or anybody in a false position at all. The record shows that we decline to argue further.

Mr. MERRICK. Decline to argue their prayers. Does the court desire to hear further from the Government on any of these prayers?

The COURT. I must say that I have not read them all.

Mr. INGERSOLL. We are perfectly willing that the Government should read their prayers and we will read ours, so that they will all be read.

Mr. MERRICK. You have over one hundred prayers.

Mr. INGERSOLL. They are very short. We will only read such as we want the court to hear.

Mr. BLISS. They are probably now making up for their past deficiencies in praying.

The COURT. I see that the eighty-eighth, ninety-first, and ninety-second prayers are likely to impose a good deal of investigation on the

part of the court, and I may be driven to taking a short cut on them. The eighty-eighth prayer says :

The court instructs the jury that it is charged in said indictment that the said defendants at a certain date filed, or caused to be filed, in the Post-Office Department—

1. False petition on route 34149.
2. False oath on route 34149, &c.

* * * * *

Now, unless the jury believe, from the evidence, that said oaths, petitions, and subcontract were filed on the dates charged in the said indictment, they will disregard each and all as overt acts. And in making up their verdict, the jury cannot take the filing of the aforesaid petitions, oaths, and subcontract into consideration as overt acts.

Mr. INGERSOLL. All those were filed before the 20th of May, 1879.

The COURT. Your prayer does not set out when they were filed.

Mr. INGERSOLL. The record shows that they were all filed before May 20, 1879.

The COURT. I could ascertain, of course, by going over the evidence.

Mr. INGERSOLL. If the court would like to have me, I will put the date opposite each one.

The COURT. In the ninety-first prayer you say :

The jury are further instructed that in making up their verdict they cannot take into consideration as overt acts the following, to wit :

Filing subcontracts by Dorsey and others on different routes.

For these reasons, namely :

- (1) The allegation is *not properly pleaded*. It is not sufficient to say that they fraudulently sent a paper.
- (2) It is impossible to *fraudulently file a subcontract*; and
- (3) Because of *variance in regard to date* of filing subcontracts on routes 38150 and 40104, they having been filed *before* the 23d day of May, 1879.

Mr. MERRICK. I suppose that is a matter for the jury to find.

The COURT. The ninety-second prayer is :

The jury are further instructed that they cannot take into consideration as overt acts, in making up their verdict, the following *orders* charged to have been made by

1. The order of March 8, 1881 (page 28), &c.
- Thomas J. Brady, to wit :

Mr. INGERSOLL. We set out on that twenty-three orders.

The COURT. Then the reasons are given :

NOTE.—*The reasons : Because not charged to have been done in pursuance of the conspiracy, or to effect the object thereof.*

The Government having failed to prove that they were ever certified to the Auditor.

Now, there is a question which I should like to hear argued. I have heretofore noted that the indictment in setting out a number of acts—and perhaps they are these—

Mr. INGERSOLL. [Interposing.] These are they.

The COURT.—Set out that they have been fraudulently made, or that the acts were fraudulently done by the Second Assistant Postmaster-General, and does not say that they were made in pursuance of the conspiracy.

Mr. WILSON. Nor to effect the object of the conspiracy.

The COURT. I should like to hear from the prosecution whether they claim that those acts set out in the indictment, and described merely as fraudulent acts, are claimed to be acts done in pursuance of the conspiracy.

Mr. BLISS. We do, sir, so claim ; covered, if by nothing else, by the general allegation on page 15, I think it is, of the indictment, where it is alleged what the process was :

Did fraudulently and maliciously combine, confederate, conspire, and agree together, between, and amongst themselves, by means of the said John W. Dorsey—

And the others—

then and there fraudulently to write and sign, and cause and procure to be written and signed, a large number of fraudulent letters and communications, and false and fraudulent petitions—

Going on and reciting the whole details all the way down.

Mr. DAVIDGE. But there you are stating the means.

The COURT. The statute creates a new offense, composed of two elements: One, the old conspiracy, and the other, an overt act in pursuance of it. The overt act is made necessary to complete the conspiracy. Now here are a number of acts done by Brady which are charged to have been fraudulently done, and yet not charged to have been done in pursuance of the conspiracy. Now I ask the counsel for the Government to show in the indictment where that apparent defect is cured.

Mr. BLISS. I also call your honor's attention to the decision of the Supreme Court of the United States in the case of *The United States vs. James H. Britton and Barton Bates*, made at this term, in which opinion is the following:

The offense charged in the counts of this indictment is a conspiracy. This offense does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone. The provision of the statute, that there must be an act done to effect the object of the conspiracy, merely affords a *locus penitentiæ*, so that before the act done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute. It follows as a rule of criminal pleading that in an indictment for conspiracy under section 5440 the conspiracy must be sufficiently charged, and that it cannot be aided by the averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy.

Your honor will see that that decision is distinctly to the effect that the offense does not consist of both the conspiracy and the acts done.

Mr. INGERSOLL. Will you not read the last line again?

Mr. BLISS. [Reading:]

This offense does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone. The provision of the statute that there must be an act done to effect the object of the conspiracy merely affords a *locus penitentiæ*, so that before the act done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute.

Mr. INGERSOLL. Go on.

Mr. BLISS. I have read all that I called his honor's attention to. I will hand this up to your honor.

Mr. WILSON. In that same connection I simply desire to call attention to the sixty-second prayer, on pages 5791 and 5792. It is really the same as that read by your honor, except that one itemizes them and the other speaks of them by reference to pages. Then the sixty-third, sixty-fourth, sixty-fifth, and sixty-sixth—

Mr. DAVIDGE. [Interposing.] I do not think, your honor, in the last case that the Supreme Court intended to repeal the statute. All that they meant to say was that the conspiracy was the gravamen of the offense, and not that other element which must cohere in order to make out the statutory crime. I find in a preceding case (*United States vs. Hirsch*, 100 United States, 34) they put it this way:

The gravamen of the offense here is the conspiracy. For this there must be more than one person engaged. Although by the statute something more than the common-law definition of a conspiracy is necessary to complete the offense, to wit, some act done to effect the object of the conspiracy, it remains true that the combination of minds in an unlawful purpose is the foundation of the offense.

Now, taking these two together, it is perfectly apparent what the Su-

preme Court meant. They meant not to eliminate the second element, but simply to indicate that the primary element was the conspiracy, and not that the secondary one was unnecessary.

Mr. BLISS. I will have to call the attention of the court to the opinion itself as to what the Supreme Court meant.

Mr. DAVIDGE. Apart from any statute, I suppose that at common-law an overt act, although unnecessary to be set out, yet, if set out, must be set out just as required by the statute—in pursuance of and to effect the object of the conspiracy.

The COURT. At common-law I do not suppose it was necessary to set out the overt act at all.

Mr. DAVIDGE. It was not necessary, but, whenever inserted, it ought to be pleaded always as in pursuance of and to effect the object of the conspiracy.

Mr. INGERSOLL. Would it be proper for me to hand the court a list of authorities upon that one point?

The COURT. Hand them to the other side.

Mr. MERRICK. I will reply to them if any authorities are to be handed in.

The COURT. The other side have a right to know that they are handed in, and to see the list.

Mr. MERRICK. And to reply.

The COURT. Yes, if they choose.

Mr. INGERSOLL. Then I suppose I might answer what they might say.

Mr. MERRICK. This is child's play.

The COURT. It is not likely that I shall have time to examine all your authorities.

Mr. DAVIDGE. As there are about fifty of them, I suppose not, your honor.

The COURT. I do not know whether counsel are in despair of doing anything with the court, as the reason why they do not argue their points. I acknowledge that there are some things upon which my mind has been pretty well settled, and one of those things is that, in consequence of our statute, there could be no conviction for conspiracy alone where the crime of conspiracy is not followed by an overt act. The law requires an overt act to complete the crime of conspiracy, and that where overt acts are set out in the indictment, as they must be, those overt acts must be specially, distinctly, and accurately set out, and must be declared—that is my impression—to have been acts done in pursuance of the conspiracy. It has been my belief, and it was upon this point that I cared particularly to hear from the counsel for the Government, that where a certain act is set out in the indictment as an act done by one of the conspirators, it may be treated, in the first place, as one of the means of carrying on the conspiracy, and in that respect it is not to be treated in any other way than as a means of carrying out the conspiracy; but if it is intended to be an overt act, it must be set out as an overt act done in pursuance of the conspiracy; that the mere statement that it was a fraudulent act would not be sufficient for that purpose; and I have called upon counsel for the Government to show some place in the indictment where these acts are that are set out in this prayer.

Mr. INGERSOLL. Two prayers, or three or four.

The COURT. Two or three prayers, where they have been set out as acts done in pursuance of the conspiracy. As I read the indictment, these acts are declared to be fraudulent acts, but not acts done in pursuance of the conspiracy. There are other acts which are properly

pleaded. I have not my copy of the indictment here, but I have it at my house. If I had that I could refer to the "In pursuance" point.

Mr. DAVIDGE. I have my copy here.

Mr. WILSON. There is not a single one of these orders set out in the indictment, alleged to have been made to effect the object of the conspiracy.

Mr. MERRICK. I will look at it more carefully. Mr. Ker does not seem to be in court just now. He supposed the argument would continue, and expected to be back again. This indictment is under his particular care. The ninety-second prayer refers to page 28, and so on. I suppose some of the charges upon that route are the charges upon the other routes, and the charges there in reference to the overt acts begin on page 27 of the indictment:

And that thereupon, and in pursuance of, and to effect the object of their unlawful, fraudulent, and malicious combination, confederacy, conspiracy, and agreement as aforesaid, the said John W. Dorsey, Montfort C. Rerdell, and Stephen W. Dorsey, afterwards, to wit, on the 11th day of November, in the year of our Lord one thousand eight hundred and seventy-nine, * * * within the jurisdiction of said court, did fraudulently file, and cause and procure to be filed in said office of the Second Assistant Postmaster-General, among the papers relating and pertaining to the said post route numbered 38113, a subcontract and agreement between the said John W. Dorsey and Stephen W. Dorsey to carry and convey the said mail on and over the said post route.

And so on to the end of the paragraph. Then the next paragraph is:

And afterwards, to wit, on the 8th day of March, in the year of our Lord, 1881, * * * the said Thomas J. Brady did fraudulently make, sign, and file—

Connecting itself with the allegations in the paragraph first read:

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful, fraudulent, and malicious combination, confederacy, conspiracy, and agreement, as aforesaid—

These things were done upon that route. And then, in another paragraph:

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful, fraudulent, and malicious combination—

These other acts were done, including the orders mentioned on that page.

The COURT. The conspiracy must be brought within the period.

Mr. MERRICK. Oh, of course.

The COURT. There must be shown to have been a subsisting conspiracy substantially as set out in the indictment after the 20th of May, 1879.

Mr. MERRICK. Certainly.

The COURT. And that any overt act in furtherance of that conspiracy, or in pursuance of the conspiracy, as I understand the language of that act, must be an act in its operation and effect done by one of the parties subsequent to the 20th of May, 1879.

Mr. MERRICK. Certainly. Then on page 28 is an act done—

The COURT. [Interposing.] Let me add one further remark, because I throw this out so that I may be enlightened before I say what I have to say to the jury. I observe in the indictment that various subcontracts are set out in the indictment as having been made and entered into in pursuance and in furtherance of the conspiracy. Suppose there be any other act done in furtherance of the conspiracy, would it be possible to sustain a conviction under this indictment upon such an overt act as that, that is, upon a subcontract? The conspiracy is to defraud the United States. An overt act in furtherance of a conspiracy to defraud

the United States, it seems to me, ought to be an act which would have some tendency that way. Now, the fact that you have set out the existence of a subcontract in furtherance of the conspiracy, if there is nothing better as an overt act than that, I think I should say to the jury that that would not be sufficient. But still I would like to hear from the prosecution on that subject.

Mr. MERRICK. The subcontracts as overt acts did not figure very largely in the last trial.

The COURT. They figured in the indictment.

Mr. MERRICK. They are put in the indictment.

Mr. WILSON. They do not figure as to the merits of this case.

Mr. BLISS. There is one way, sir, in which the filing of subcontracts does result in an injury to the Government, and yet I am not prepared to say that it results in defrauding the United States in a way to come within this statute. I merely state to your honor now what comes up as a practical question in some civil proceedings. If the Government seeks to recover back the moneys obtained from it by the act of the contractor, the act of filing the subcontract for the whole amount, it being in pursuance of an agreement between the contractor and the subcontractor, and being intended simply as a cover, that does certainly throw obstacle in the way of the Government, though, as I have said before, I will not undertake to say that it inflicts a fraud upon the Government. If, for instance, a man's hostler becomes subcontractor, and he then at once turns around and files his subcontract in pursuance of the agreement with his principal, and the money is paid, under the statute there is a possibility of recovering it of the contractor, while there cannot be a possibility of recovering it of the subcontractor, to whom the contractor passed it over in pursuance of an agreement. I merely mention that as one way, I confess, that occurs to me where filing subcontracts would work to the disadvantage of the Government, and I mention that only because it is a matter that has come up in practical administration in connection with these investigations.

The COURT. We have had no evidence on that subject.

Mr. BLISS. No, sir. You asked me whether there could be a suggestion made of any way in which the filing of a subcontract could be a fraud upon the Government. I merely suggest that.

Mr. DAVIDGE. It would not be a fraud. It would be an inconvenience, but anything on earth may operate that way.

The COURT. If there is a good bond, it would be no inconvenience, either.

Mr. WILSON. That is the reason why it cannot operate as a fraud, because the Government has taken its security and has its remedy on the bond.

The COURT. The fact that the subcontractor was a hostler is not a fact which would necessarily tend to produce a fraud against the Government.

Mr. BLISS. No, sir. I merely called attention to the fact that the use of the subcontract practically, in that way, in fact, might be an injury to the Government.

Mr. INGERSOLL. I do not see that it could.

The COURT. The Government loses a good deal of money in one way or another, as everybody must who deals largely in money matters, and yet without any crime.

There is some advantage now to a court in instructing a jury where there are prayers, no matter how numerous they be. Different propo-

sitions are probably repeated a half dozen times, and it gives the court the opportunity of instructing the jury half a dozen times over upon the same matter; and that may be necessary sometimes to make the jury understand what the court is charging. As we have a little spare time now, of course I am not disposed to withhold anything that it would probably be expedient to say. There was a case tried before me, holding the circuit court in this place some two years ago, in which I think the Fifth Baptist Church was the plaintiff, and the Baltimore and Potomac Railroad Company was the defendant. In that case the plaintiff claimed damages sustained by them as a congregation, in consequence of the railroad company having constructed its side-tracks near the church, in a lot, and they were in the habit of blowing off their ashes, steam, and smoke into the windows of the church, on Sundays and other days when the people were going to church and the children were going to Sunday school. The locomotives were backing in and out in a way that nobody can understand; at least, I never could understand why they do it so much. That was their habit.

Mr. WILSON. That was the way the engines rested, perhaps.

The COURT. The church brought suit against the railroad company in consequence of the damage to their building. That case was tried two or three times; the last time it was tried by me. The jury had not been able to agree upon former trials. Well, a good many instructions were presented upon both sides, and I adopted this course, and it appears to me now that it is as good a course, probably, for a judge to adopt as any other: To take up the prayers and make them the subject of a charge, at the end of each prayer applying the prayer practically to the facts of the case; not dealing with the prayers as abstractions of law, but making a practical use of them in connection with the facts in the case. That case went to the Supreme Court, and has recently been affirmed. I have seen a copy of the opinion of the Supreme Court in which they give what they call the charge of the court in answer to each prayer, and it seemed to me to operate well in that case, and the Supreme Court seemed to have so regarded it. I feel a little inclined to adopt that course here.

Mr. DAVIDGE. It seems to me, your honor, that there are not more than fifteen, I would say, propositions of law at the outside, if that many. I cannot see the use of passing upon each particular prayer. The prayers were offered by different counsel, and that will account for the fact that frequently four or five prayers represent the same principle of law.

The COURT. When I see that the jury understand my instructions I shall not repeat them any further.

Mr. DAVIDGE. It will take a very long time to go over the one hundred prayers.

Mr. MERRICK. As the prayers have not been argued, there may be some serpent lying hidden in the grass, which your honor will discover when you come to shake it. They do not want to shake the grass now.

Mr. DAVIDGE. They would have found it out before this.

Mr. MERRICK. We have not seen some of them.

The COURT. The whole course of the trial must have developed the points of the defense to a great extent.

Mr. MERRICK. Oh, yes.

Mr. INGERSOLL. We will go over the prayers, and those that are duplicated we will mark.

Mr. MERRICK. If they will withdraw those that are duplicates, it will abridge your honor's work very much.

The COURT. I do not know that it will.

Mr. BLISS. Mr. Ker has now come in, and I would like to have him state to the court his view upon the question raised by the court, although I think Mr. Merrick has substantially covered the ground.

The COURT. Yes.

Mr. KER. On page 27 the overt acts begin.

The COURT. The conspiracy begins at page 15.

Mr. KER. After the charging part in the indictment, setting out the means of the conspiracy and the object, it comes to the overt acts upon page 27:

And that thereupon, and in pursuance of, and to effect the object of their unlawful, fraudulent, and malicious combination—

There is a direct statement of what was done in pursuance of and to effect the object of the conspiracy. Then it goes on to state—

did fraudulently file, and cause and procure to be filed, * * * a subcontract.
* * * And afterwards, to wit, on the 8th day of March, in the year of our Lord 1881—

And then it sets out the order by Brady. Then it goes on to page 29.

The COURT. How does it set out that order? What does it say in regard to that order?

Mr. KER. In the body of the charging part of the indictment it says, that all those orders were made upon the basis of the number of men and animals sworn to in the affidavit. In stating the overt acts upon a route, it says upon route 38113 :

And that thereupon, and in further pursuance of, and further to effect the object of their said * * * conspiracy—

They first filed a subcontract, and afterwards, on a given day, Brady made the order of increase and expedition on the said route. Then going on again:

And that thereupon, and in further pursuance of, and further to effect the object of their said * * * conspiracy, on the 10th day of July, in the year of our Lord 1879, * * * on said post route No. 34149, a certain unlawful, false, willful, and corrupt oath.

And afterwards, to wit, on the said 10th day of July, in the said year of our Lord 1879, * * * Brady did fraudulently make and file, and cause to be made and filed, in the said office of the Second Assistant Postmaster-General, a certain order in writing for increased and additional service, in carrying and transporting the said mails on and over the said post route numbered 34149.

And then it sets out:

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful * * * conspiracy—

On route 35015 an order was made for increase and expedition. Then again, on page 37:

And that thereupon, and in further pursuance of, and further to effect the object of—

The conspiracy there were on route 38134 false and fraudulent petitions filed. And afterwards, on the 8th day of July, there was a fraudulent affidavit filed. And afterwards, on the 8th day of July, there was an order for increase and expedition.

The point is, are you bound always to say when you set out the acts that they were done in pursuance of the conspiracy; to reiterate that at every stage and turn? Here are routes designated by numbers, referring back to "said route," stating that it was done on that particular route.

And that thereupon, and in further pursuance of, and to effect the object of the conspiracy—

On the route mentioned there were certain acts done by the different people mentioned in the indictment. Your honor by looking at them will see that each one charges the same. On page 73:

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful, fraudulent, and malicious combination, confederacy, conspiracy, and agreement, as aforesaid, afterwards, to wit, on the 18th day of October, in the year of our Lord 1879—

On route 34149 there was a fraudulent claim for pay for the third quarter up to the 30th day of September, 1879, by reason of the false order. It sets out a claim in the same way, treating that as an overt act in pursuance of the conspiracy and to effect the object of the conspiracy. I do not think, if I took all day, I could make it any plainer. Each paragraph mentions that the act was done in pursuance of the conspiracy. Suppose it was set out as one of the means to effect the object of the conspiracy that one man went to one place and afterwards another man to another place, is there any necessity to state that one man went to one place and afterwards the other man went to another place all the way through, when each route is dealt with by itself, and it is set out in the charge in the indictment that these orders were to be passed upon fraudulent oaths? You have to take the allegation of the overt act. You have to take the context to get it. Otherwise you would have had a multiplicity of charges of the same sort, a multiplicity of allegations that would have given no effect to the indictment or to the charge. All your honor has to do is to read the different paragraphs where it is set out that it was done in pursuance and to effect the object of the conspiracy.

The COURT. But when you come to set out Brady's order you describe it as an order he made on a certain date and that he made it fraudulently. Do you think Brady's intention attached to some other act is to be carried forward into that?

Mr. MERRICK. It goes all the way through it.

Mr. BLISS. That is the idea. The allegation that it was done in pursuance of the conspiracy commences each allegation and follows right along for each route.

The COURT. I understand that.

Mr. BLISS. I will hand your honor that opinion in the case of the United States *vs.* Britton and Bates.

The COURT. There is some peculiar language in that opinion about the *locus penitentie*.

Mr. BLISS. Your honor will see that the language is essential to the correctness of that opinion. It is not mere *obiter*, and I may say that it is entitled to the more weight because it is an opinion delivered by Mr. Justice Woods' and differs from an opinion of Justice Woods as circuit judge in Alabama.

Mr. INGERSOLL. Do you think that adds much weight to the decision?

Mr. BLISS. No, sir; nothing can add weight to a decision of the Supreme Court of the United States.

Mr. INGERSOLL. Except being right.

Mr. WILSON. They decided in that case a very important principle.

Mr. BLISS. We will not go into an argument of it.

Mr. MERRICK. If they want to, let them go.

The COURT. If I have time I will look at it.

Mr. WILSON. You will find it takes the life out of this indictment.

Mr. MERRICK. Does it, indeed ?

Mr. WILSON. Yes, every bit of it. There is not a bit of blood left in the indictment.

Mr. BLISS. In that case the question was whether a certain thing was an offense against the United States. Here the question is whether the United States has been defrauded.

Mr. INGERSOLL. We will not argue it.

Mr. MERRICK. Of course you don't want to argue it. We are perfectly willing you should.

The COURT. Adjourn the court.

Thereupon (at 3 o'clock and 15 minutes p. m.) the court adjourned until to-morrow morning at 11 o'clock.

TUESDAY, JUNE 12, 1883.

The court met at 11 o'clock.

Present, counsel for the Government and for the defendants.

CHARGE OF THE COURT TO THE JURY.

The COURT. Gentlemen of the jury, the patient and intelligent attention which you have given to the evidence in this case, to the discussions which have incidentally arisen through all these months, and to the powerful addresses which have been made to you by the counsel on both sides, have lightened to a great extent the duty of the court. I feel that it would be an unnecessary and it might be a dangerous undertaking on the part of the court to begin with the history of this case as it has been read out before you from the beginning to this day and attempt to go over all the ground and compare and collate the evidence one part with another for the purpose of assisting your minds in reaching a proper verdict. The arguments of counsel have superseded any necessity of that kind. All that could be presented has been presented, and the first ability in the land on both sides has been exerted in that very department. You have listened to the arguments attentively. You have heard the evidence yourselves. You have seen the witnesses before you. You have had all the means that any jury could require to make up a sensible and an honest opinion in regard to the issues involved.

It is proper, however, that the court should call your attention to some points in the case, and probably at more length than your patience will bear with comfortably. I wish to assist you in every way in my power without at all trespassing upon your domain, but simply by way of advice and counsel, first in regard to the questions of law to which I may advert, and which are involved in the case, and to which attention has been called by the prayers of counsel on both sides, and then to some features of the evidence possibly. In the first place, I think I ought to say to you that you are to decide this case according to the evidence. That is the solemn obligation which each of you has taken upon his own soul. You are not to allow yourselves for a moment to be swayed or influenced by any other considerations under heaven than the law and the evidence in the case. What has a jury to do with the demands of the popular mind, with articles in newspapers, and with appeals to you that the country expects a conviction at your hands ? These are

things that ought never to come inside of these precincts. Thus far the waves may come, but a jury which does its duty should say they shall come no farther. I can scarcely imagine a more sublime spectacle than a jury organized under the laws of the country, sworn to try a case according to the evidence, and performing that duty manfully and conscientiously according to their own convictions and in defiance of popular clamor. Let popular clamor have its sway in its own sphere. Let it go into politics. There it has its appropriate field. Popular influence and public clamor and all influences of that kind should be excluded from the court-room.

On the other hand, appeals to your sympathies for the defendants on account of their social relations or other relations in life, and the effect which your verdict if against them might have upon others connected with them and near and dear to them should have no weight whatever with you. Appeals of this character on the one side and on the other, in important cases, are always made for the purpose of reaching the hearts and the weakness and the tenderness of the jury. They ought to have no consideration at all. The mercy of the law is in the law itself. The administration of criminal justice is based upon principles which make it, I may say, impossible for an innocent man to be convicted, in this country certainly. The law presumes every man to be innocent until he is proved to be guilty beyond a reasonable doubt. There is the mercy of the law. There is the protection to wives and children. There is an ample shield for the innocent. None other ought to be protected in a court of justice. When courts of justice become the mere instruments of popular clamor, or merely sham tribunals for the trial of crimes, it will be a bad day for the country. Let everything else drift as it may at loose ends and be carried away by passions, emotions, clamor, and prejudice, but as long as the administration of justice is preserved in its purity and in its integrity in the courts the country is safe. Without that the country must go to destruction. The rights of no people, the institutions of no people, can be protected except in the courts of justice.

I may say something else here. The law is supreme. The law must be obeyed. When violated, its penalties must be enforced. The policy of the law is to be found in the law itself. No public minister, no public officer of any description has any right to set up his own policy against the policy of the law. Such an officer occupies a place of trust, often a trust of the greatest magnitude. The interests of the people of the whole country are committed to his hands. He is an officer of the law and the law should be his guide. It is his duty to obey the law and not set up his own policy against the policy of the law under any circumstances whatever. To allow that would lead to great and innumerable abuses as you all must see. We will all move along smoothly and the country will prosper and thrive best when every man in his place performs his duty as a good citizen in obedience to the law. It is very true that occasionally an emergency may arise which will justify a public officer in departing from the law and casting himself for indemnity upon the legislature afterwards; but those are cases of emergency, such as sudden invasion of the country, calamity by conflagration, or destruction of property by inundation. For a regular policy which is to guide a department of the Government it is not to be allowed at all that a public officer shall set up his own policy against the law. That is a question that may arise here. Still I may say as applicable to the many points in this case that a mere violation of public duty on the part of an officer is not necessarily criminal. He may mistake his duty. He may

think that he has the right and that he will promote the public good by departing from the law and following his own ideas. If he does so he violates the law it is certain; but unless his motives be criminal or corrupt he may not be amenable as a criminal.

These remarks are pointed, as is perfectly obvious to you all, to the position of General Brady and to the claims set up by him as I understood them in his testimony. For example, when the law directs that the Second Assistant Postmaster-General in allowing increase of service or expedition shall have regard to the productiveness of a route and other circumstances, I do not think myself that it is a fair and reasonable construction of the law on his part to say, as he did undoubtedly on the stand in regard to these star routes in all the Western country, that it was not his habit to pay any attention to productiveness; that his doctrine was that the mail should reach every settlement in the country daily and expeditiously, however remote the settlement might be or however small. That is the doctrine, I understand, of a present member of the Cabinet who was a witness in this case. Sitting here and trying this case, I cannot recognize any such law as that or any such right as that. Still I do not say, and it is not my place to say, that the defendant, General Brady, in following out his policy and the policy of Mr. Teller in regard to this subject, acted from corrupt motives. That is a question for you to determine under all the evidence in the case.

There is another remark which I may add in this connection. The law prohibits, under penalty, I believe, but certainly prohibits, any public officer from expending money beyond the appropriations placed in his hands, or from making contracts for the expenditure of money beyond the appropriations. In the management of these star routes you have the undeniable evidence—it is documentary evidence and not disputed—that after Congress had appropriated for the use of these star routes in 1878—I believe that was the year—all the money which the Post-Office Department demanded or asked for that fiscal year from the 1st of July, 1879, to the 1st of July, 1880, in December, five months after the fiscal year had begun, to such an extent had these orders for increase of service and expedition and these large allowances been carried by the Second Assistant Postmaster-General that a deficiency was manifest as close at hand, and an appeal had to be made to Congress for the purpose of meeting the deficiency. An act was passed with such guards on the subject as Congress thought fit to set up to prevent any future departure or violation of the law of that kind. It is possible all that might have been done merely from a mistaken sense of duty or from an exaggerated sense of regard for the public good. Men get into positions in which they think they are magnified. They often become enthusiasts in their departments, and go on recklessly in their enthusiasm, regardless of law and almost all other considerations, but carried forward by a kind of official fanaticism for their own branch of the service. If that happens, and there is no corrupt motive, no criminal purpose, but the orders have been made honestly, although from a mistaken sense of duty, the act is not criminal in itself.

Now, we will come a little closer to some of the prominent features of this case. The indictment itself charges a conspiracy. I will turn to section 5440. The indictment is framed under this section of the law:

If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars

and not more than ten thousand dollars and to imprisonment not more than two years.

This statute was passed the 2d of March, 1867. It was changed by the act of the 17th of May, 1879, merely as to the punishment. As to all the rest it is word for word. This is a statutory definition of the crime that you are engaged in trying. It makes no matter what the books may say about other crimes or analogous crimes, conspiracies, or definitions of conspiracies. Here is the definition of the crime that you are trying. That is, that two or more persons must conspire together. Let us see what that means. Almost everybody knows what is meant generally by conspiring together. There must be some intelligence between the parties. They must have unison of mind. They must have a common purpose. A man may be useful to a conspiracy who is not in the conspiracy at all. He may be doing something to forward the conspiracy and yet he may be no part of the conspiracy, because he may not have been taken into the counsels of the parties who conspired. They may assign him certain things to do and although he may do what he is told to do by the others, yet if he is not in the conspiracy and has not come into intelligent communication with the others, he is not one of the conspirators, although he may have done something to forward the conspiracy. It occurs to me that this very case shows an illustration of what I mean. Peck, for example, is one of the defendants who was originally charged. He is dead now. He may have been one of these willing and intelligent conspirators. He certainly did many things originally to help them along in their common purpose; but I could imagine and I could account for his conduct without necessarily coming to the conclusion that he was one of the conspirators. He was not here at the time this conspiracy was organized if it was organized. His bids seem to have been put in by others in his name. He seems to have had no participation in the getting up of the bids, in putting the bids in, in finding the securities or in carrying the contracts into execution afterwards. His part seemed to consist in making affidavits. He made enough of them; but still it is possible that he might not have had any participation in the conspiracy at all. It is possible he might have made those affidavits, since the contracts were given out to him nominally, to the best of his knowledge and belief on the representations of others, and yet not have been a member of the conspiracy in a criminal sense. But I speak of him now because he is out of the way, he is dead, and we have had no investigation of his connection with the case. If he had been on trial, the aspect of the facts might have been changed. But I speak now of him as he appears in this business, merely for illustration, that a man may, by his own acts, do certain things, the effect of which will forward the objects of the conspiracy without himself having been a conspirator. It requires intelligence and understanding on the part of the conspirators, a combination of views and a unity of purpose, and those must be of a criminal kind. I need not go into any further discussion of that subject here than such discussion as will be practical in this case. The law-books say that a conspiracy may be to do a lawful thing by unlawful means, or an unlawful thing by lawful means. But we need not trouble ourselves about that. The conspiracy here is charged in the indictment to be a combination of intelligent beings with a unity of purpose, a common purpose, to defraud the United States by means of false affidavits furnished by the contractors to the department, and of fraudulent orders on the part of Brady. That is the practical conspiracy that we have to examine here.

Now, there is another thing I wish to say something about, and that is the statute of limitations. The statute of limitation covers with its protection all crimes that were perpetrated more than three years prior to the finding of the indictment. Whatever may have been the crime—at least this crime, if any—these defendants are not liable to trial for, or to be punished on account of, anything except what they did as conspirators within three years from the finding of the indictment. The indictment was delivered in court on the 20th of May, 1882. You cannot find a verdict of guilty against any of these defendants for anything they have done of a criminal character, described in this indictment, prior to the 20th of May, 1879, because from the 20th of May, 1879, to the 20th of May 1882, covers a space of three years. If they are convicted you will have to convict them for what they did within the three years immediately behind the finding of the indictment. You may probably wonder, then, why the court has allowed so much time to be spent in receiving evidence of acts done by these several defendants long prior to the 20th of May, 1879. If they are not to be punished except for what they have done since the 20th of May, 1879, why investigate what they did prior to that time? That is one of the mysteries of the law, and when it is explained the principle will commend itself to the conception of every fair-minded man, whether lawyer or layman.

A conspiracy is never, or hardly ever, arranged or organized in the light—and I say hardly ever, because some political conspiracies may be exceptions. A political conspiracy often takes place under the skies, before the world. But other conspiracies, conspiracies to commit fraud and get money unfairly, are arranged in the darkness, in retirement, not publicly. It is not necessary, either, that the members of such conspiracy shall be all together at the same time. They may become members of the conspiracy through correspondence or through verbal communication. They may become members after the thing originated, from time to time. That necessarily makes it difficult to ascertain the facts. The facts can only be learned through circumstances and through the several acts of the parties themselves at different times and in different places; and after exhausting inquiry in hearing these subjects, finding out all the circumstances, the jury must infer from the evidence before them whether the evidence leads to no other fair conclusion than that of conspiracy between the parties.

It is not a chain. I heard some argument during the trial in regard to the chain of circumstantial evidence. It was said that the strength of the chain was to be measured by the weakness of the links, and if there was a failure in one circumstance the case broke down. That is not an illustration to throw light upon the question at all. It is an illustration which is calculated to mislead the mind. And that is the fault of a great many metaphors, and, in fact, most of them. They are mere delusions. An iron chain, of course, is no stronger than its weakest link; that is very true. And there may be circumstances so linked together that they may be compared to the links of a chain, one connected with another in a certain line of evidence, one fact depending on another. That sometimes is the case in the trial of causes. But where you have a multitude of facts, and all the circumstances pointing in one direction, they are more like the vanes upon the public buildings of a city. If you see all these vanes turning to one point, you know how the wind blows. If there happens to be one of those vanes too rusty or old or out of repair not to turn, that does not affect the indications of the others. There may be certain facts in a case which do not point the same way as the other facts. That may arise from the

defect of proof or from want of knowledge in regard to those facts. But if there be enough of facts all pointing in one direction, not in a chain, you may look in that direction for the indication of what they mean. If there be other facts in the case that do not point that way, but point in a different way, then it is for you to consider and decide whether these prevailing indications, these general indications, establish in your own mind such evidence of conspiracy that there can be no doubt of the fact.

There is another thing. No man was ever convicted except by his own acts; he must be convicted by his own conduct. Nobody else has a right to bring him into difficulty. I shall have something further to say on that point after a while.

Before I proceed to consider the prayers, there is another question which was presented yesterday for the first time, and which arises upon the face of the indictment. However, I will lay that aside for a moment, too. I have not yet finished what I was going to say in regard to the formation of the conspiracy anterior to the 20th of May, 1879.

In 1877 the department advertised for bids for service on a large number of what are called star routes. After that advertisement came out, Mr. S. W. Dorsey, who was then a Senator of the United States, residing in this city, according to the evidence seemed to feel an interest in the subject, and his brother, John W. Dorsey, felt an interest in it; and there is some evidence of what Mr. Peck, his brother-in-law, said in regard to putting in bids. John W. Dorsey and Peck were absent, and it was necessary that somebody should be here before bids were to be put in, to make arrangements. As I recollect the evidence, upon the suggestion of a letter of John W. Dorsey, his brother, the Senator, undertook to supervise the subject, and called in the assistance of Mr. Boone in the first instance. Boone rendered a good deal of assistance in correspondence and making preparations. Peck was not here at all. John W. Dorsey came on late in the fall, but all these arrangements were made before he came, made certainly under the inspection and general superintendence of Senator Dorsey, and at his house; the parties often met there; there was their office. Preparations were made to put in bids, and correspondence was carried on. He was active in procuring bonds, and in fact seemed, according to my construction of the evidence—you may judge of that—to exert a controlling influence over everybody within his sphere on that subject, correcting their estimates, changing their proposed bids. He was, of course, incompetent to become a contractor. The bids were put in in March, 1878, after all these arrangements had been carried on under Senator Dorsey's eyes and under his instructions. Miner had been brought on here. Miner put in bids; Peck put in bids; John W. Dorsey put in bids; and those were the three who did put in bids. Vaile was not then in the concern, or connected with it. At the letting in March, 1878, about one hundred and thirty contracts were awarded to those three men, and if the evidence is to be accredited, those three men, though bidding separately, were mutually interested in their several bids. I understand that to be the evidence upon that point. Of course you are to judge of it for yourselves. Here was a unity of purpose and of interest on the part of these three men to whom the contracts were awarded. Now, Senator Dorsey, as I said, was not one of the bidders, and could not be, although he seemed, according to the evidence, to be the most active man in making all the preparations that were necessary for putting in the bids, and afterwards in carrying out the contracts for the time.

It is objected that he, of course, was outside, and could not bid. But it makes no matter, so far as that combination is concerned, whether he had an interest in those contracts or not. If he chose to enter actively into those arrangements with those persons, and if he had a sinister or unlawful view, as they had, in getting up their combination in that way, he was just as guilty without a contract as with it. His guilt or innocence does not depend upon whether he had a contract or an interest in a contract. If they were engaged in an unlawful conspiracy, and he assisted in it, then whether he assisted from love of his brother and affection for his brother-in-law, and was entirely disinterested, or whether he engaged in it for interested purposes, is a matter of no consequence at all. The question is what he did, and not why did he assist them.

Well, all these arrangements were made, and the awards were given out in March, 1878, and these three men, John W. Dorsey, Peck, and Miner, became the contractors, with this mutual interest. That thing ran along, and there was likely to be a failure on many routes, and, to prevent an entire failure along the whole line of routes, Vaile, who was a capitalist, was brought in, and from the fall of 1878 Vaile became a partner with those gentlemen in carrying on their routes.

Now you have the evidence as to what those gentlemen did—Vaile and Miner, Peck and John W. Dorsey, and S. W. Dorsey—during that period. It is claimed by the prosecution that the evidence shows that this was a criminal combination in its inception, and we went back to that period for the purpose of ascertaining the character of the original agreement between those parties, what was the arrangement between them, for what purpose they combined. Did they combine for an honest purpose, or did they combine, with their interest in this way, with a view to obtain afterwards, by means of fraud and those devices described in the indictment, allowances for increase of service and increase of speed upon the routes contrary to law and contrary to honest purposes? If that was a fraudulent combination, if you are satisfied that Vaile and these men were carrying it on fraudulently at this time, then you have established the character of their combination behind the statute of limitations.

Then we advance down to March, 1879. Mr. S. W. Dorsey comes out of the Senate on the 4th of March, 1879. On that very day he writes a decisive note to the department, in which he assails some papers that Vaile claimed gave him priority over Dorsey upon those routes in the way of a lien. Vaile came here on the 6th, and then a new distribution of the routes was made. S. W. Dorsey comes forward then and John W. Dorsey and Peck step out. You are to judge what that indicates. Whether it was merely carrying out, when there was no longer any obstacle, what was the real substance of the arrangement before; whether Peck and John W. Dorsey were mere men of straw in regard to these contracts and S. W. Dorsey the substantial party, or whether at that time an entire new organization took place. S. W. Dorsey comes in and takes 30 per cent. of these contracts, Miner takes 30 per cent., and Vaile takes 40: that makes the 100. That takes the whole one hundred and thirty routes. So that from some time in the latter part of March, 1879, for any interest in the routes, Peck and John W. Dorsey are out. But some of the contracts were in their names, and expedition could not be obtained except by their affidavits, because the regulations of the department required that the affidavits for expedition should be made by the contractor. In that way it is that the Government claims that Peck and John W. Dorsey still remained in the combination; that they continued to make affidavits after this new

arrangement. By the new arrangement, as I think all testified, it was agreed, as I have said, that Vaile should have 40 per cent. of the routes, although they stood in other men's names; that S. W. Dorsey should have 30 per cent. of them (although he had not a contract in his own name), and that Miner, who was one of the original contractors, should have 30 per cent. So that Dorsey and Vaile, neither of whom had a contract at all before, neither of whom was an original contractor, and both of whom were powerless to make affidavits succeeded to the rights of these other parties who had retired; and it was agreed all around that those going out should execute the necessary papers to carry on the business, and those who remained in should, between themselves, execute interchangeably any papers that were necessary to carry on the business. Upon those new parties coming in the old parties remained in the combination, for the purpose of carrying on the business, executing any papers that were deemed necessary to carry out the purpose of the combination, whether lawful or otherwise. If it was a lawful and honest agreement there was nothing improper in the arrangement; it was all right. Everything depends upon the purposes of the parties under the arrangement. If Peck and John W. Dorsey, who went out, knew that it was a combination to which they were parties, and that their purpose was to have fraudulent petitions gotten up and fraudulent orders made for increase of service and expedition upon their several routes, and they agreed to continue that same business, helping it along after they went out, for the benefit of those who succeeded them, then, if their purpose was criminal, I do not see how their going out at that time would release them from the charge.

And so as to those who came in. If they came in with this purpose, entered into these arrangements with a corrupt and fraudulent purpose as against the Government, it makes but little odds how the routes were distributed amongst themselves. It is the conspiracy which is the efficient element in this crime; and that conspiracy was not dependent upon the contracts. A party might remain in conspiracy after he had parted with his interest. It is very true that the indictment does allege that these parties were all interested in the contracts on the 23d of May. But that was a wholly superfluous and dangerous averment to make. But being surplusage it was not necessary to prove it, because it is the conspiracy that is the question, and not whether they had an interest or not in the subcontracts. The averment that they were all interested in the contracts had nothing to do necessarily with the conspiracy. They were not bound to prove that fact, and if they failed to prove it it was not fatal to the case.

John W. Dorsey and Peck went out. They had no contracts substantially. Except so far as the contracts stood in their names they had no interest in the contracts. But still they might have remained in the combination for the purpose of defrauding the Government, if that was the purpose of the combination. It all depends on that.

Then we have this arrangement made in March. It was not finally consummated till the 1st of April. Here is a new distribution. Still, we are outside the statute. We have not come within the statute yet. We received the evidence of them merely for the purpose of getting at the character of this partnership. Was it a legal partnership? Was it a legal combination between these parties, or was it a combination for the purpose of defrauding the Government? If it was the latter kind, for the purpose of defrauding the Government, then it was continued on in that way after the 1st of April, 1879.

That brings us on until the 20th of May. In order to sustain this

indictment we must get this conspiracy on this side of the 20th of May. We must find it there, and we must find the overt acts, too, because the overt acts follow the conspiracy. If this combination fell to pieces between the 1st of April and the 20th of May we have no evidence of that fact. The combination, whatever it was, that was consummated between the parties on the 1st of April continued along according to its terms. If it was an unlawful combination, we have no evidence that it was broken up between the 1st of April and the 20th of May, and the presumption would be, in the absence of any proof of its dissolution, that it continued after the 20th of May. Certainly it is a presumption which the jury would have a right to draw, in the absence of proof that any other arrangement was made between the 1st of April and the 20th of May. The jury would certainly have a right to presume that the new organization continued on within the period of the statute of limitations.

Now we have so far brought the conspiracy within the period of the statute of limitations, if it was a conspiracy. If it was an honest arrangement, then you need not trouble yourselves, gentlemen of the jury, about dates of organizations or anything of the sort. If the parties all meant well and fairly, and there was no purpose to defraud the Government, these things are all lost and amount to nothing, and the parties are entitled to acquittal. But if it was otherwise, you have a right to judge of the character of the association since the 20th of May, from the antecedent history to which I have called your attention.

But it is not enough that there should be a conspiracy. The law requires that the conspiracy should be a subsisting conspiracy, and that within three years before the finding of the indictment; and besides that, that some one or more of the conspirators should have done some act in furtherance of the object of the conspiracy. The conspiracy itself is not enough; that act must be shown to have been done since the 20th of May, 1879, because nothing can be done in pursuance of some other thing until that other thing has first existed. Some difficulty comes up there. I may say that most—yes, much the larger part—of the petitions that have been denounced as fraudulent, and some of which look very much of that kind on their face, were gotten up before the 20th of May, 1879. For example, on route 34149 there is a petition charged to be false, and it is charged to have been filed on the 10th of July, 1879; that would be within the period of the statute, as an overt act. In fact it was not filed on the 10th of July, 1879, but it was filed on the 3d of April, 1879. The petition, therefore, which was filed on the 3d of April, 1879, was, of course, filed prior to the 10th of July, 1879, and it was filed, in point of fact, behind the period of the statute of limitations. Still another question comes up—and that is the case with a great many of these petitions and with a great many of these affidavits. Some of these affidavits of Peck's were made eight or nine months, and, I believe, one of them nearly a year before the date of filing. Now we will consider this false petition as filed April 3, 1879; but it is charged to have been filed July 10, 1879. The petition was on file, but seems not to have been used. The question is whether one of these parties, interested in procuring an order for expedition and an increase of service, and using a petition already filed in order to procure his order, can be said to have filed that petition on the 10th of July, 1879. There is a section of the Revised Statutes which covers this very point, and which I have not time now to look up, though I have examined it before. I propose to leave it to the jury in this case to say whether any of these petitions or affidavits that were on file

prior to the 20th of May, 1879, were used by any of these defendants in procuring expedition or increase of service after that date.

Mr. BLISS. After the 20th of May?

The COURT. After the 20th of May.

Although they had been filed before, if Vaile or Dorsey or any of the parties to this indictment in point of fact made use of a false affidavit or any false papers on file, knowing it to be of that character, for the purpose of procuring increase of service or increase of expedition, I shall hold that that use of the paper made it an act in pursuance of the conspiracy, if there was a conspiracy. You understand me, gentlemen. There were numerous affidavits filed in the department before the 20th of May, 1879, in regard to these routes and not acted upon. There were numerous petitions filed not acted upon. If they were made use of by any of these defendants after that time for the purpose of procuring these allowances for expedition or increase of service, then I hold that that was an act done in pursuance of the conspiracy, if there was a conspiracy.

Mr. INGERSOLL. Would it be proper for me to ask the court whether that would be so unless it is alleged in the indictment that they were used?

Mr. MERRICK. I think you had better let the court go on with its charge.

The COURT. The indictment charges that these orders were procured by means of false affidavits.

Mr. INGERSOLL. But when it comes to the overt act.

The COURT. As to the dates, the dates in an indictment are of but little consequence. The man who files the affidavit in the first place might escape by the lapse of time, because he had done that act of filing anterior to the period of the statute of limitations, when one of the others who succeeded him and made use of that paper, knowing it to be a false and fraudulent paper, would himself be liable as committing an overt act.

Mr. INGERSOLL. If there was an allegation.

The COURT. I regard the overt act which declares that the filing was done on a certain day by a certain party of a certain false paper or affidavit as meaning that the paper was presented on that day and used on that day by the party. That is my view as to the substantial charge of the indictment. It was the use of a false paper. The man who made the paper might be protected by the statute, and the others who used the paper knowing it to be a false paper would not be protected. As to all that the jury will have to judge.

Upon this route, 34149, the false petition was in fact filed the 3d of April, 1879. It is charged to have been filed on the 10th of July, 1879. That date in the indictment, like other dates in an indictment, is of no consequence. It is only material as to when it was used. On the same route the oath is charged to have been filed the 10th of July, 1879, when, in point of fact, it was filed the 3d of April, 1879.

On route 35015 the oath was charged to have been filed the 23d of May, 1879. That was within the period. In point of fact it was filed the 15th of May, 1879. So in the same case there are seven petitions all charged in the indictment to have been filed on the 10th of July, 1879. One of them was filed the 13th of May, 1879, behind the period of the statute, and four of them were filed on December 6, 1878. On two of them there is no date of filing marked.

On route 35051 the indictment charges that four certain petitions were

filed the 2d of August, 1879. In fact they were filed the 10th of April, 1879, all behind the period of the statute.

On route 38134 the indictment charges that the petitions were filed on the 8th of July, 1879, when, in point of fact, they were filed the 22d of April, 1879, behind the statute. On the same route the indictment charges that the oath was filed July 8, 1879, when, in point of fact, it was filed the 8th of May, 1879. That was behind the statute.

On route 38135 the indictment charges that the oath was filed the 26th of June, 1879, when, in point of fact, it was filed the 18th of April, 1879. In the same case the petitions are charged to have been filed the 26th of June, 1879, when, in point of fact, one was filed the 17th of April, 1879, and the other four were filed the 8th of May, 1879, all behind the statute.

On route 38140 the petitions are charged to have been filed the 23d of May, 1879, within the period. In point of fact they seem to have been filed one on May 10, 1879, and the other in April, 1879. The oath in that case is charged to have been filed on the same day, May 23, 1879, but was filed the 30th of April, 1879.

On route 31156 the oath is charged to have been filed the 12th of June, 1879, within the period, when, in point of fact, it was filed the 6th of May, 1879.

On route 40104 there is a fraudulent subcontract charged. The indictment charges some of these subcontracts as fraudulent and entered into in pursuance of the conspiracy. I do not see how a subcontract can very well be fraudulent as to the Government. The subcontract was charged as filed the 23rd of July, 1879, when, in fact, it was filed the 8th of May, 1879. On the same route a false oath is charged to have been filed the 23d of July, 1879. That oath was, in fact, filed as far back as the 25th of December, 1878.

I believe that there is not a single instance in which any of these papers were, in point of fact, filed within the period of the statute.

Mr. BLISS. Does your honor mean these that you have enumerated, or others?

The COURT. These and others.

Mr. BLISS. The oath on route 41119 was clearly filed within the time.

Mr. INGERSOLL. But the charge is not sufficient.

Mr. BLISS. I am not discussing that.

Mr. INGERSOLL. The date is very good, but the charge is worse than the others.

Mr. BLISS. I think there are some others.

The COURT. It may be, but in the short time that I have had I have not been able to find them.

Mr. BLISS. Mr. Ingersoll admitted that in his summing up.

Mr. INGERSOLL. I admitted it as to the date, but I insist that the charge in the indictment makes it bad.

The COURT. I will come to that point.

Mr. BLISS. I was going to ask your honor whether you noticed that the date on which the filing of all these papers is alleged to have taken place is the date upon which the order which we say was made, was made upon the papers.

The COURT. Yes.

Mr. BLISS. Taking the filing as preceding the order on that day.

The COURT. No. They were charged to have been filed—

Mr. MERRICK. [Interposing.] On the date of the order.

Mr. BLISS. On the date of the order all the way through, being the date they were used. That is the claim we make.

The COURT. That is true. Under the ruling of the court then it was the use that was made of the paper, for the purpose of procuring the order, which fixes the time at which the paper was presented. So that a paper, although filed in point of fact and resting in the pigeon-holes of the department unused prior to the 20th of May, 1879, but used afterwards and since the period of the statute of limitation, would be an overt act in pursuance of the conspiracy within the period of the statute.

Mr. BLISS. The oath on route 44140 was also filed on the 24th day of May.

The COURT. I did not go over them all.

Mr. INGERSOLL. That was on Sanderson's route.

Mr. BLISS. No.

The COURT. A question was made yesterday for the first time of this kind: The indictment up to page 27 is occupied with preliminary matter or with the setting out of the conspiracy. The charge of conspiracy begins on page 15 and goes on to page 27. Mr. Brady, one of the defendants, occupies a number of pages in the charging part of the conspiracy, but at page 27, at the foot of the page, commences the setting out of the several overt acts. I will read from the indictment, beginning there:

And that thereupon, and in pursuance of, and to effect the object of their unlawful, fraudulent, and malicious combination, confederacy, conspiracy, and agreement as aforesaid the said John W. Dorsey—

and the others procured to be filed a subcontract. I do not think that is of any consequence. I think that a subcontract cannot be a fraudulent act done in pursuance of the conspiracy. The fraud must be got at in some other way than by a subcontract, and it must be manifested in some other way than by a subcontract. This subcontract was not of a fraudulent character; at least there is no allegation to show that it was. I am not disposed to treat these averments in regard to subcontracts as amounting to anything at all as overt acts. After charging that in pursuance of the conspiracy this subcontract was filed, another paragraph begins as follows:

And afterwards, to wit, on the eighth day of March, in the year of our Lord one thousand eight hundred and eighty-one, at the county and District aforesaid, and within the jurisdiction of the said court, the said Thomas J. Brady did fraudulently make, sign, and file in the said office of the Second Assistant Postmaster-General a certain order in writing—

And so on. There Brady is charged with having made a fraudulent order. The first overt act charges John W. Dorsey, Montfort C. Rerdell, and Stephen W. Dorsey with an overt act done in pursuance of the conspiracy. That in form is all right, but the overt act is so trifling that I would not regard it. In point of form it is correct, for it charges that that thing was done in pursuance of and to effect the object of their unlawful conspiracy. But when it comes to charging Brady with making his fraudulent order it does not say that it was done in pursuance of the conspiracy. It says that it was a fraudulent order made on a certain day for the benefit, gain, and profit of the said John W. Dorsey and others—

As he, the said Thomas J. Brady, then and there well knew as aforesaid.

That refers to what is charged in the indictment in regard to the conspiracy. It is charged that Brady entered into the conspiracy with the others for the purpose of making orders of a fraudulent kind for expedition or increase of service on routes where he knew they were not needed, or, in the language of the indictment—

As he, the said Thomas J. Brady, then and there well knew as aforesaid.

"As aforesaid" refers to the conspiracy charged. Still I can hardly regard that as enough. It ought to have charged him with having made this fraudulent order in pursuance of and in furtherance of the object of the conspiracy. I have consulted forms of indictments since yesterday where an overt act is required, and I have consulted some authorities on the subject. They all require that the overt act must be set out as an overt act done in pursuance of the conspiracy. I apprehend that that defect, if it be one, is a defect in this indictment. I am not surprised at it, because the indictment must have cost the draughtsman a great deal of labor, and he must have gone over an immense amount of material in drawing it up calculated to confuse the mind. Undoubtedly he could not have been as well acquainted with the facts of the case then as he is now. But I am inclined to think that that difficulty is cured by section 1025, which is in these words:

No indictment found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected, by reason of any defect or any imperfection in matter of form only which shall not tend to the prejudice of the defendant.

If this was really anything else than a matter of form I should be obliged to sustain the objection. What is meant by matter of form only is explained by the last line of the law, which says:

Which shall not tend to the prejudice of the defendant.

Looking at this indictment I do not think that the omission in question would tend to the prejudice of the defendant. It is not a matter of substance. It is charged to have been a fraudulent order, and it is charged to have been the kind of order that Brady is charged to have conspired about, and, although I think it would have been much better to have declared and set out that it was an overt act done in pursuance of the conspiracy, yet I am satisfied that it would be cured by this statute.

There is another reason why the objection should not be sustained now. This indictment has gone through the fire. For more than a year it has been under almost constant fire. We have had demurrers, pleas in abatement, and all kinds of motions the ingenuity of able counsel could devise. But this defect has not been named in any of the demurrers so far as I remember. Now, a defect in an indictment is a subject of demurrer or it may be good reason for arrest of judgment, or it may be good ground for reversal; but I do not know that a question on the validity of any part of an indictment can be raised on an instruction asking the court to charge the jury in regard to it. When the court comes to charge the jury it is not passing upon the validity of the indictment. The business of the court is to advise the jury in regard to the conclusions of law arising on the evidence and matters in which they are concerned as judges of the evidence and the law ultimately. The jury are not judges of the validity of the indictment. The court therefore cannot be called upon to instruct the jury that there is one part of the indictment which they are trying which is invalid in the absence of a demurrer. This point cannot be raised, therefore, at this time, in my judgment.

The same defect, if I may call it so, pervades the whole indictment from page 27 up to its termination at page 89. Whenever a new route is taken up the indictment sets out properly:

And that thereupon, and in further pursuance of, and further to effect the object of their said unlawful, fraudulent, and malicious combination, confederacy—

And so on, the defendants procured certain fraudulent papers or petitions to be filed ; but when it comes to setting out Brady's act, the act of a different party, but still one of the defendants and a member of the conspiracy, it merely charges the act as fraudulent and not as an act done in pursuance of the conspiracy. The statute declares that there must be an overt act done by one or more of the defendants in pursuance of the conspiracy and undoubtedly that would be an objection to all these overt acts of Brady's but for this statute, provided it had been made at the proper time and place. That is my judgment. I shall hold therefore that this indictment is valid and that the overt acts are properly charged against Brady.

I have taken up so much of your time, gentlemen, in my own way and have laid aside the several prayers. I will now take up the prayers and see what I have omitted. I have substantially answered the first, second, third, fourth, and fifth prayers of the prosecution. On the sixth prayer I shall have a word to say, and I will read it to you :

SIXTH.

The law provides that compensation for additional service in carrying the mail shall not be in excess of the exact proportion which the original compensation bears to the original service.

That is a true statement of the law in regard to increase of service. If the contract provides for carrying the mail once a week, and an increase of service is made to six times a week, the law provides that the compensation shall not exceed six times the original contract price.

Mr. INGERSOLL. The contract.

The COURT. The law. It makes no difference what the contract is if the law does not allow it. I may say here that in regard to all the contracts we have had before us, when increase of service has been made as far as I remember that increase of service has been a duplication or a triplication of the original service and a corresponding increase of the compensation. If it was a thousand dollars a year for one trip it was \$6,000 for six trips.

Mr. BLISS. I think there are four orders, your honor, in which the amount for trips and expedition is not separated, so that we cannot distinguish them.

The COURT. I understand that ; but the law does prescribe that as a limit.

The law likewise provides that no extra allowance shall be made for any increase or expedition for carrying the mail, unless additional stock and carriers are thereby made necessary ; and in such case the additional compensation shall bear no greater proportion to the additional stock and carriers necessarily employed than the compensation under the original contract bears to the stock and carriers necessarily employed in its execution ; and the stock and carriers necessarily employed in the execution of the original contract mean those then actually in service.

You understand the difference between increase of service, which is a mere increase in the number of trips, and increase in the expedition or time. There cannot be much fraud in increasing the service unless there is a willful throwing away of money. An officer might allow six trips a week out in the country where there was nothing but wild beasts. That would certainly be an abuse of his power. But if he chose to give out that contract, and the man performed the service under the contract, he would be entitled to his pay, unless there was some conspiracy to have it done. It is a very different thing in regard to expedition. Everything depends on the strength of the oath there. I may say that there never was a law more insufficiently guarded than this. It says :

Unless additional stock and carriers are thereby made necessary.

Then comes in the regulation of the department. That regulation gives the contractor an oath to take, and he swears that the number of men and animals now necessary is so many, and the number of men and animals on the projected increase of speed will be so many. I differ from counsel for the prosecution in regard to that oath. I do not think that the contractor is bound to state in his oath how many men and horses he now uses. I do not think that the regulation requires that. The question is, how many are necessary. I think it was well said by Mr. Ingersoll, in his argument on that point, that the Government would be in great danger of loss from any other interpretation. For example, if it was actually necessary to use ten men and ten horses upon a route on the existing service, and twenty men and horses on the projected expedited service, then the contractor would be entitled to double compensation. But if he was allowed to swear that he only had so many on the existing service, he would be tempted to run his service with five men and horses. For a little while the horses could stand it and the men could stand it. He would swear truly that the whole number he was using was five men and horses. He might swear truly that the number necessary on the expedited schedule was twenty men and horses. According to the construction claimed by the Government, he might make an oath with a good conscience which would increase his pay 400 per cent., or increase it 200 per cent., when in fact, if an affidavit was honestly made as to the number of men and horses actually necessary and proper to be used, the number on the existing schedule would be ten and the number on the expedited schedule would be twenty, and he would only get 100 per cent. of increase.

As I said before, on another occasion, this affidavit business is where all these frauds come in, if there are any. By the law there is no affidavit provided for at all. The law imposes the duty upon the Second Assistant of allowing the same proportion for the increased service as was allowed for the former service, having regard to the increased number of men and animals required. The law itself does not authorize an affidavit; but it seems from the evidence that a habit grew up in the department even before Brady's time of calling upon the contractor to make an affidavit. That was the practice to some extent, until at length, in 1879, it ripened into the regulation, which we have promulgated in the regulations of that year while General Brady was there, and that provided that the contractor should make an affidavit setting out how many men and horses are now necessary on the present schedule and how many would be required on the expedited schedule. It seems that such affidavit was generally taken to be correct. There are some instances in which the allowance was not made exactly in conformity with the affidavit, for example, on the Bismarck and Tongue River route. The affidavit for the increase of expedition called for one hundred and fifty men and one hundred and fifty horses for the service. That was manifestly monstrous, and the Second Assistant did not allow it. He allowed liberal compensation, though, at the rate of about \$37.65 a mile for the service. But the rule was an invitation to fraud. General Brady said that he regarded and treated his contractors as all honest men. He regarded their oaths as true. Of course he could not go out there and make his examinations personally. He had other means, however, but from the evidence we have had in this case I have been very strongly impressed with the freedom with which these contractors have made their affidavits and the liberality with which those affidavits have been made in regard to their own interests.

When it is known that a slight deviation from the truth, in an affidavit, may increase a contractor's profits by many thousands of dollars the temptation is too strong for the virtue of the most of men.

It is a very remarkable thing, too, it appears to me, in regard to these affidavits that the affidavits show that the present expedition was always with a very meager force. It is wonderful how astute men become in the discovery of contrivances for their own interests. None of these contractors failed to find that out. For example, a service which at present requires ten men and horses, and on the projected increase of speed would really require twenty men and horses, if the contractor will swear that at present he requires only five men and horses he need not stretch his conscience at all at the other end; he may swear now at this time that instead of ten being necessary, only five are necessary, and that twenty men and horses are necessary for the increased service, and thus, as I said before, he increases his compensation by 300 per cent. just by the change from ten to five. If he should swear the first figure down to two he would increase his compensation by 900 per cent. It is like the movement of a rod on an angle. A very small deviation from the point of the angle will make a very wide difference at the end of the rod. It was the contractor's interest all the time to swear down the present number, and then if he could stretch it a little at the other end, it was easy to make it very remunerative. It seems to me that this was a regulation that needed to be watched with great vigilance practically, and that the contractor ought not to be allowed to come into the office and say, "I have got Senator So-and-so to recommend an increase of service and expedition, and here is my affidavit as to the men and horses," and get the order before leaving the office. There was a check upon that in Mr. Brady's rule. He said he had a general rule. But it is a dangerous custom. It invites fraud. It encourages perjury. It is a system upon which no private man would conduct his own affairs. What would be the consequence if there should be a delay in expediting one of these routes? What hurry was there for the mail to cross from Bismarck to Tongue River through an uninhabited waste for three hundred miles to accommodate a soldier post, and to be traveled night and day? There was enough demand to give them a daily mail if they wanted it. General Miles said, when he complained once, that they had not had a mail for thirty days. Men who were in the habit of getting information only once in thirty days would be perfectly satisfied I should think if they got it each day. When expedited it required the mail carriers to travel night and day for three hundred miles through a waste of country between such a place as Bismarck and such another place as Tongue River and Fort Keogh, a military post. There was a still more remarkable case in my opinion on the Mineral Park and Pioche route, and there was another route, of which I have forgotten the name, on which, during a great portion of the winter the carriers had to travel on snow-shoes, and they had to follow the streams up around to their heads. There were no bridges.

Mr. BLISS. You mean the Bridge Creek route, I suppose.

The COURT. I think so. Certainly it is the duty of the Second Assistant Postmaster-General to know something about the orders he was making. Certainly he ought to have enough regard for the duties that he owed to the public to guard his office from unnecessary extravagance and waste. Why should expedition be granted to such an extent as to require the mail carriers to travel night and day through regions of country unsettled and uninhabited, where, when there was a flood,

the streams of those mountains obliged them to go around their heads before they could get across, and to do that day and night? The subcontractor was bound to perform the service under penalty of being fined. That was a kind of administration that shocked my sense of propriety and prudence and good judgment and fidelity to the public Treasury. Still, as I said before, men become enthusiasts in their business and go wild and sometimes honestly become extravagant, extravagant to a degree that every sane man would pronounce extravagant, but led off by one idea. If that was the case here, all that would not be criminality. Certainly General Brady regarded himself as in some way not only the successor but the rival administrator of his branch of the Government to what had preceded, and was called the Jewellian policy. The Jewellian policy, as General Brady describes it, was a policy which expended the money of the Government mainly upon the railroads of the country and not upon these remote settlements. His was one of the other kind. I do not think that General Brady did exact justice to Mr. Jewell in that description. Although it is not in evidence here, yet I will take the liberty of saying that the Jewellian policy as I understood it myself at the time was a policy which brought the expenses of the department as near as possible within its resources, a policy of economy in all points and extravagance nowhere and unnecessary service nowhere. That was the Jewellian policy as I understood it, and as I had it from Mr. Jewell himself. At any rate whether it was Jewellian or not it seems to me that was the proper policy.

There was an argument made about the petitions of the people. General Brady says he paid no attention to these petitions, or very little, and I dare say he did not. If the petitions were fraudulent he probably did not know it. I am not disposed to charge him with knowledge of the fraudulent character of those petitions. It is charged in the indictment that one object of the conspiracy was to get up these petitions as a pretext upon which to found these orders. If that was so, and if he was in that conspiracy, then he is chargable with the character of the petitions, whatever they were, because he entered into a conspiracy to get them up. Whether he looked at them or not, they were gotten up in pursuance of the conspiracy in such a case.

In such a case as that, where the officer was already in the conspiracy (if you should be fully satisfied on that question), neither the petitions, the affidavits, or the recommendations made by members of Congress, all or any of them, are worthy of much consideration by you.

As to recommendations given by members of Congress on behalf of expenditures of public money in their respective districts, and amongst those who, in patronizing phrase, are sometimes designated "my people," we all know with how great facility such recommendations may be obtained. The history of the passage of what is generally called the river and harbor bill shows how readily members of Congress will vote the public money for the promotion of objects of merely local character. In the administration of his office it was Brady's duty to guard and protect the general interests of the public against attempts from any quarter whatsoever to induce him to swerve from that fidelity to his trust which was required of him as well by the law as by his own personal honor. His office was a public trust, and its duties ought to have been fulfilled with perfect integrity, and with no other object in view but the public interests and obedience to the laws.

Another branch of this sixth prayer is that—

The law provides that no compensation shall be paid for any additional regular service rendered before the issuing of the order under which such service is to be rendered.

That is the law.

SEVENTH.

In considering the acts of the various defendants the jury will bear in mind :

1st. That forgery is a crime under the law.

That is so.

2d. That to alter in any particular, after it has been signed, a paper required or authorized by law to be executed is a forgery.

That is so.

3d. That to file any such forged paper in a department of the Government to obtain its action thereon is a crime.

That is so.

4th. That a false oath or affidavit, filed in a department of the Government, is criminal under the statutes of the United States, and punishable like forgery.

That is not exactly true. If it is filed by the man who makes it, or by the man who knows it is a false oath.

Mr. INGERSOLL. The language makes the oath a crime, instead of the act of a person. I suppose they meant the act of a person.

The COURT. That is a printer's mistake.

5th. That the filing of a false, fraudulent, altered, or forged paper in any department of the Government, with the design and intention thereby to deceive any executive officer of the Government with reference to a matter subject to his jurisdiction, for the benefit of the person filing the paper or causing it to be filed, is a crime under the statute law of the United States.

That is so. The fact is that all frauds upon the United States are:

6th. That the presentation of any claim to an executive department of the Government for payment, when said claim is fraudulent and so known to be by the person presenting the same, is a crime against the United States.

That is so by statute.

7th. That the presentation for payment to any department of the Government of a claim against the United States founded upon fraud, or upon a contract obtained by fraud, is a crime, if the person presenting the same or causing it to be presented is cognizant of the fraud.

That is true, too.

EIGHTH.

If the jury find that any of the orders of increase on the routes specified in the indictment were made on petitions, part of the signatures to which were forged by any one of the defendants, and on affidavits made by any one of the defendants and subsequently to the time when they were sworn to, interlined, erased, or filled up, or changed by any other of the defendants and made to speak falsely, and then filed in the Post-Office Department, these circumstances would afford strong if not conclusive evidence of a criminal combination among the parties participating in such transactions, and benefiting by the orders obtained in consequence thereof.

No, I am not prepared to go quite that length. If the thing was done in pursuance of the general design of the conspiracy——

Mr. INGERSOLL. [Interposing.] That is it.

The COURT. Then, with that qualification, I would grant that prayer.

NINTH.

The duty of making contracts on post routes and changing the same by increasing or expediting the service thereon, is, under the regulations of the Post-Office Department and the acts of Congress giving such regulations the authority of law, committed to the Second Assistant Postmaster-General, and he is responsible therefor; and the orders passed by him in the premises, although entered upon the journal which is signed by the Postmaster-General, derive their authority primarily from the Second

Assistant Postmaster-General; and if the jury find that the orders in evidence in this case, as the orders of the Second Assistant Postmaster-General, were not made by him in obedience to instructions specifically given in that regard by the Postmaster-General, then the Second Assistant Postmaster-General can in no way protect himself from any and all of the consequences, civil and criminal, of such orders by reason of the fact that the Postmaster-General signed the journal of the department in which these orders are recorded.

That I need not answer.

The tenth I have answered, too.

The eleventh raises a question of law upon the act of April 7, 1880 :

In the second section of the act of Congress of April 7, 1880 (chapter 48), it is provided, "That the Postmaster-General shall not hereafter have the power to expedite the service under any contract either now existing or hereafter given to a rate of pay exceeding fifty per centum upon the contract as originally let."

That is the law.

If the jury find that upon any of the routes mentioned in the indictment, the defendant, Brady, prior to the seventh day of April, 1880, made an order for expediting and the allowance of increased pay and compensation therefor, and after the seventh day of April, 1880, the defendant, Brady, made another order to increase the number of trips, and allowing as pay for the increased trips a sum of money based upon the then existing cost of the trips including the expedition, that is, allowing for each of the trips so added a sum of money equal to the original cost of a trip with the cost of expedition added thereto, such an order and allowance of pay was a violation of the spirit of the law which the jury may take into account in considering the motive of Brady and the other testimony and circumstances concerning the charge laid in the indictment.

It is not a violation of the spirit of the law, but it is a violation of the letter of the law. The order may possibly have been within the spirit of the law; but it certainly is a violation of the letter of the law. It is just this, gentlemen: After an overhauling of this business to some extent by Congress the act of the 7th of April, 1880, was passed, which declared:

That the Postmaster-General shall not hereafter have the power to expedite the service under any contract either now existing or hereafter given to a rate of pay exceeding fifty per centum upon the contract as originally let.

Prior to that time one or more of these contracts had been expedited above 50 per cent. upon the original amount of the contract, and the number of trips increased also. After the passage of this law he made a still further allowance, not exceeding 50 per cent. upon the contract as then enlarged, as it was at the time. So that he treated the contracts which were then in operation under previous orders of expedition and increase as the basis upon which he allowed 50 per cent. additional. That, I understand, is the fact. The point is made that those allowances were beyond his authority. The law declared that no allowances, after the passage of the act, should be made beyond 50 per cent. upon the contract as originally let. The trips were once a week on slow time, and it had already been increased beyond that. I should say that it was a violation of the letter of the law. Whether his construction of the law was an innocent or a criminal construction of the law is for you to judge.

TWELFTH.

Section 3650 of the Revised Statutes provides that: "When any such additional service is ordered, the sum to be allowed therefor shall be expressed in the order and entered upon the books of the department."

That is the law. The law was not always observed. These orders sometimes were made for increase of trips and expedition together, confused and mixed; you could not tell exactly from the form of the order

how much was allowed for one and how much for the other. But the law provided that when an increase of service—that is, an increase in the number of trips per week—was made it should be expressed in the order and entered upon the books of the department. But some orders were for a round sum, for increase and expedition both in one order, not separating one from the other. That was not a compliance with the law. Whether it was a criminal non-observance of the law or not is for you to decide, gentlemen. I remember, in connection with that one route—the old case on Bismarck and Tongue River—where there was trouble about it, and Miner put in a proposition that he would run it three times a week, in sixty-five hours, for \$35,000. There was nothing in the proposition to show anything about the men and horses or service, or anything of the kind. It was a simple proposition that he would do it for that sum—so many hours, three times a week. His offer was not accepted, but he was allowed \$27,900. How much of that was on account of increase of service, and how much was on account of expedition, the order does not state. I may say just here that, somehow or other, that \$27,900 grew up to be \$35,000, and subsequent increases doubled it to \$70,000. But there is nothing to show how it came.

THIRTEENTH.

If the jury find that the testimony of the witness, Rerdell, though that of an accomplice, is corroborated by other testimony in the case and circumstances that have been adduced in evidence, such testimony is not to be discredited because it is that of an accomplice.

That far it is right. An accomplice is a competent witness, though he stands under a cloud. And the court generally will instruct the jury that they ought not to convict anybody of a serious crime on the unsupported evidence of an accomplice. But if the accomplice is corroborated by established facts already proved in the case, or by other witnesses testifying to the same thing that the accomplice does, then the jury are safe in giving whatever credit they think the accomplice is entitled to. This is a little obscure sometimes. The accomplice is not to be credited if he is unsupported, but if he is supported he is to be credited. It looks very much as if it was the supporting evidence that is to be believed, and that that is sufficient without the evidence of the accomplice. Standing alone, the evidence of the accomplice is not enough. But in the progress of the trial the facts come out, some facts proved by one witness and some by another, and the case becomes surrounded by its features and form, and takes shape. Then if the testimony of an accomplice falls in with all those surrounding circumstances, corresponds with the shape and form of the case, he may be believed.

Therefore, if the jury are satisfied that said testimony is true in any material part thereof, and that in such material part it has been confirmed by unimpeachable evidence, such confirmation affords reasonable ground for belief that such testimony is true in all its other parts.

With that much of it I do not concur. The accomplice is good as far as he is supported; when he stands alone he falls.

FOURTEENTH.

Although the defendants are authorized by law to testify as witnesses on their own behalf, yet their testimony, like that of accomplices, is not to be regarded without suspicion; and the jury, in weighing its credibility, may take into consideration the deep interest which they have in their own acquittal and the great temptation under which they are to procure such acquittal by disregard of the sanctity of an oath.

Therefore, if the jury find in the present case that the testimony of the defendants who have appeared as witnesses on their own behalf is not full and explicit, or if they find it to be evasive, or if they find that the defendants, upon cross-examination, have failed to testify fully and to remember such facts as must necessarily have been within their knowledge and recollection, then they will be justified in refusing to give to such testimony the credence due to disinterested witnesses; and they will not regard the testimony of any two or more witnesses so testifying and corroborating each other as entitled to any greater credence than that of one alone.

My answer to that is this: That until comparatively within a few years parties were not competent witnesses. The law has now made them competent witnesses. They appear before you under well-known circumstances. They have every temptation, of course, to testify as strongly in their own favor as possible, and you will have to weigh their evidence with a regard to the knowledge of those facts and their temptation. They are like other witnesses, as to competency. But when a man is testifying as a father or as a son or other relative we all make allowance for the weakness of human nature, and in proportion to the strength of the temptation is the liberality of our allowance. It reminds me of the old practice at common law in an action of debt. The defendant was a competent witness for himself; he could perjure himself; he could swear that he had paid the debt. That is the only case in which I have any knowledge where a party at common law was a competent witness. But to be supported, he had to call in eleven compurgators, eleven of his neighbors of good character, who would testify that they believed him. Our law does not require that the defendants, who are competent witnesses for themselves, shall bring in eleven compurgators who will swear to their belief that what they say is true. But the common law grew out of the felt wants of society; it grew out of the nature of men. The rules of the common law were founded on practical knowledge of the motives which governed men; and when it required the defendant who was testifying for himself to bring in eleven of his neighbors to swear that they believed him, it showed that when a man swore for himself he needed to be confirmed. And I think practically we ought to consider with care, certainly, the testimony of a witness who is on the stand giving evidence on his own behalf under circumstances of this kind. That is all I can say—to weigh and consider their evidence under all the circumstances and give it such weight as it is entitled to.

MR. INGERSOLL. What does the court say as to the latter part of it, as to more than one, four, or five witnesses swearing the same way and corroborating each other?

THE COURT. [Reading:]

And they will not regard the testimony of any two or more witnesses—

That is, defendants—

so testifying and corroborating each other as entitled to any greater credence than that of one alone.

No, I do not concur with that. What I have said is an answer to that prayer.

FIFTEENTH.

When a defendant in a criminal cause becomes a witness on his own behalf, and has been notified to produce books and papers admitted by him or shown to have been in his possession, and which, if produced, would have been competent evidence in the cause, and upon cross examination such defendant witness reiterates his refusal to produce such books and papers, the jury is entitled to presume that such books and papers, if produced, would have disclosed evidence disadvantageous to such defendant, and that such failure casts suspicion on all the other evidence adduced by said defendant, and is a circumstance tending to prove his guilt.

I cannot grant that prayer. It is not correct, in my judgment. The general rule is that a man is not bound to give evidence against himself. I mean, by that, that he is not obliged to go on the stand and testify against himself. But, if there be evidence in his possession which may have the effect of criminating him, and that evidence is of a documentary character, and the Government gives him notice to produce it, he may produce it, in compliance with that notice, or not. His simple refusal to produce the evidence does not at all establish what the prosecution proposes to prove by the evidence. That would be very unjust, because it might not be sufficient, if produced, for that purpose. He has a right to say, "This is my evidence, I am not going to produce it." And what follows from that? There is no inference from that at all. The law does not allow any unfavorable inference to be drawn from his simple refusal. But if he refuses to produce the evidence the other side may give secondary evidence of the contents of such documentary evidence as he has refused to produce, and if that documentary evidence be sufficient to establish the fact which the prosecution seeks to establish the question will depend upon the secondary evidence. It is the fault of the other party that it is secondary. If there be imperfection in this secondary evidence he has no right to complain of that. The secondary evidence is good for all that it can fairly prove; and if in some respects it is deficient the man who holds the primary evidence in his hand or in his pocket and had it in his power to produce it will not be allowed to say, "That is not so." After holding back the primary evidence he cannot afterwards contradict or impeach the secondary. Here is what the Supreme Court of the United States says upon that subject in the case of *Hanson vs. Eustace's Lessee*, 2 How., 708:

The refusal to produce books under notice lays the foundation for the introduction of secondary evidence. It affords neither presumptive nor *prima facie* evidence of the fact sought to be proved by them. A party cannot infer from the refusal to produce books which had been called for that, if produced, they would establish the fact which he alleges they would prove. The party in such a case may give secondary evidence of the contents of such books or papers; and if such secondary evidence is imperfect, vague, and uncertain as to dates, sums, boundaries, &c., every intendment and presumption as to such particulars shall be against the party who might remove all doubt by producing the higher evidence.

(*Life and Fire Insurance Company of New York vs. Mechanics' Insurance Company*, 7 Wend., 31.)

I think that case has been referred to in this argument at some time or other. And further:

All inferences shall be taken from the inferior evidence most strongly against the party refusing to produce; but the refusal itself raises no presumption of suspicion or imputation to the discredit of the party, except in a case of spoliation or equivalent suppression. There the rule is that *omnia præsumentur contra spoliatores*. In other words, with the exception just mentioned, the refusal to produce books or papers upon notice is not an independent element from which anything can be inferred as to the point which is sought to be proved by the books or papers.

That is an answer to that prayer by the highest authority, and in language clearer than I could use.

Mr. MERRICK. It is an answer to the first part, and very satisfactory, of course. As to the second part, beginning in the fourth line:

—and upon cross-examination such defendant witness reiterates his refusal to produce—

The COURT. [Interposing.] I will say a word about that:

—and upon cross-examination such defendant witness reiterates his refusal to produce such books and papers, the jury is entitled to presume that such books and

papers, if produced, would have disclosed evidence disadvantageous to such defendant, and that such failure casts suspicion on all the other evidence adduced by said defendant, and is a circumstance tending to prove his guilt.

I do not see that he is under any more disadvantage when he is under cross-examination than when he is under notice. I think it is the same. He is not bound to produce books when he is on cross-examination any more than he was when he was under notice. The same rule would apply to both.

SIXTEENTH.

And the jury is further instructed that the manner in which the counsel for the defendant, S. W. Dorsey, offered to produce said books and papers should in no way lessen or mitigate the force of any presumption or inference to be drawn from the non-production of the same, for the reason that such offer was so qualified that the court could not recognize it, even if counsel for the Government had accepted it, and the jury will therefore regard such offer only as further evidence, establishing by the admission of the said defendant, of his possession of the said books and papers, and the fact that they were within reach and within the power of the said defendant to produce the same during the trial, if he had thought proper to do so; and the jury will therefore draw from the non-production of said books and papers the presumptions and inferences as directed in the instructions heretofore given by the court.

You remember, gentlemen, that after the notice to produce these books was given to Mr. Dorsey, Mr. Ingersoll, on behalf of Mr. Dorsey, came in with a proposition that he would refer the examination of the books to three gentlemen to be selected in a certain way. That is not the way we try cases in court. The court could not allow such a proposition to be carried out. If it had been acceded to by the other side, the court would not have allowed it to be carried out. A man who has received notice to produce his books, and does not want to have his books run through and examined by curious eyes that might alight upon them in the court-room, has the right to stitch together the leaves, except as to such portions as contain the evidence sought for by the notice. But he is not obliged to produce the books at all. If he will produce the books in obedience to the notice, he may take that course. But the court cannot assist him by appointing three or four gentlemen not connected with the court, not on the jury, to examine the books and see what evidence they contain. But if he produced the books, he might have stitched the leaves together which he did not want seen, and leave open such parts of the books as contain the evidence sought for, if there was any such. That is the answer I make to the sixteenth.

The seventeenth prayer is a description of what a conspiracy is. That I think I need not answer any further than I have.

EIGHTEENTH.

In a case of conspiracy *one* alone cannot be found guilty. There must be two or more.

Still, in this case, there is a further prayer that, as Rerdell was one of the defendants, and he has pleaded guilty, the question is whether the jury are at liberty to convict any other one of the defendants, provided they believe that he was in conspiracy with Rerdell. I think so.

NINETEENTH.

If the jury find that James W. Bosler, R. P. Williamson, L. P. Williamson, Charles Pelham, or either of them, was a person whose testimony would have been material on the part of one or more of the defendants, and was a witness, or were witnesses, that should have been called to testify on behalf of such defendant or defendants, and was or were not called to so testify, the failure to call such witness or witnesses

is a circumstance for the jury to consider when deciding upon the evidence against defendant or defendants.

Who is L. P. Williamson?

Mr. MERRICK. He was the copartner on Tongue River.

Mr. CARPENTER. Nothing is said about any man of that sort.

Mr. INGERSOLL. There is no such man anywhere that I ever heard of.

The COURT. Charles Pelham is the lawyer?

Mr. BLISS. Yes, sir.

The COURT. Moore, on cross-examination, was asked whether he did not state certain things to Pelham that were inconsistent with and contradictory of the evidence he gave in court, and he said he did not. I cannot grant this prayer as to Pelham, because the failure to call him would not be a failure to call a witness to anything except as to a conversation that the witness Moore is said to have had with Pelham, not that he could testify to a fact in the case at all. The fact that Pelham was not called after such cross-examination as that is a demonstration to my mind—and I think it will have great weight with the jury—that you could not make out by Pelham the facts which you seemed to intimate by your cross-examination in regard to his conversation with Pelham. You could not contradict the testimony of Moore, because Pelham was here, and you called Moore's attention to what he said to Pelham, and Moore said that he did not say so to Pelham, and when you did not call Pelham, there it stopped. Moore remained uncontradicted, so far as that went. It goes no further. It merely relates to something that Moore might have said in a conversation. It does not strengthen Moore's testimony as to the facts in the case.

Mr. INGERSOLL. That is it.

The COURT. It only shows that if Moore lied here, he lied there, too.

Mr. INGERSOLL. Suppose we found out afterwards that Mr. Pelham was his attorney, and did not know it at the time?

Mr. MERRICK. You cannot make anything out of that.

Mr. INGERSOLL. Suppose we did.

The COURT. I do not know.

Mr. MERRICK. That does not help it.

The COURT. You ought to have found that out before.

Mr. MERRICK. I think you had better let the court go on without interruption.

The COURT. As to these others, Bosler and the two Williamsons, if the jury can recollect exactly where their testimony ought to come in, and can tell whether it was given or not, they may draw any inferences.

Mr. BLISS. As to Bosler it is very clear as to the affidavit of June, 1881—

Mr. WILSON. [Interposing.] I do not believe we ought to argue this case now.

Mr. MERRICK. You have been doing it all the time.

The COURT. If there be a question over a fact, and that question could be settled by calling a witness who was known to have been present at the transaction, and that witness is not called, it is a fact which the jury may consider in regard to the other evidence.

Mr. INGERSOLL. That applies to both sides, I suppose.

The COURT. Yes, that applies to both sides.

TWENTIETH.

If the jury find that William H. Betts was a witness whose testimony would have been material on the part of the defendants, and when called to the stand and ex-

amined as a witness on the part of the defendants, was not examined or interrogated upon questions that were material in the issue, and in contradiction of the testimony given by A. W. Moore after the foundation having been laid for such contradiction, upon cross-examination, the failure to so examine or interrogate him raises the presumption that the testimony of the witness Betts in that respect would not have been favorable to the defendants, and is a circumstance for the jury to consider when deciding upon the evidence against the defendants.

I make the same answer to that as to the nineteenth prayer.

Mr. MERRICK. The same answer as to Pelham.

The COURT. Now, gentlemen, I have gone through with the prayers for the prosecution. If you gentlemen for the defendants will now be kind enough to point out which of the defendants' prayers have not been substantially answered I will turn to them and answer them. I find that I have taken a great deal more time than I supposed I should.

Mr. HENKLE. Your honor has not answered the first prayer.

Mr. CARPENTER. The jury would like to take a short recess, if the court please, I understand them to say.

Mr. DAVIDGE. If the jury can take a recess we can employ the time in running over these prayers.

The COURT. Very well, we will take a recess.

Mr. MERRICK. For fifteen minutes?

The COURT. For fifteen minutes.

At 2 o'clock and 48 minutes p. m. the court took a short recess.

AFTER RECESS.

Mr. INGERSOLL. I call the attention of the court to the first prayer.

The COURT. You want an answer to that?

Mr. INGERSOLL. We would like it; yes, sir.

Mr. MERRICK. If your honor is not going directly through them, I would suggest that your attention be called at one time to all that they desire an answer to.

The COURT. I do not feel inclined to interfere with the jury as to the order of their investigation. This prayer is:

It is the duty of the jury first to determine whether there was such a conspiracy as that set out in the indictment.

Mr. INGERSOLL. Just leave out the word "first."

The COURT. [Reading:]

And in considering this question they are to start with the presumption that there was no such conspiracy.

Mr. MERRICK. His honor has answered that already as to the presumption.

The COURT. No. The conspiracy is personated here as a sort of defendant, in whose favor presumptions of innocence shall arise. I have no objection to instructing the jury that as to each of these defendants there is a presumption of innocence at the beginning, and the jury must be satisfied of their guilt as charged beyond a reasonable doubt.

Mr. INGERSOLL. That is sufficient.

The COURT. That covers the ground, I suppose.

Mr. HENKLE. I call the attention of the court to the latter part of that prayer, after the semicolon.

The COURT. [Reading:]

And if they can account for all the facts and circumstances in the case upon any hypothesis consistent with the non-existence of such conspiracy, it will be their duty

to find that there was no such conspiracy, in which event they will, of course, find the defendants not guilty without further inquiry.

I cannot grant that.

Mr. HENKLE. I desire to reserve an exception.

The COURT. I am going to explain why :

And if they can account for all facts and circumstances in the case upon any hypothesis consistent with the non-existence of such conspiracy——

Mr. INGERSOLL. [Interposing.] Upon any reasonable hypothesis.

The COURT. A hypothesis growing out of the evidence in the case.

Mr. HENKLE. Certainly.

The COURT. You have not stated it that way.

Mr. HENKLE. I would like to add that.

Mr. INGERSOLL. That is proper—any reasonable hypothesis growing out of the evidence.

The COURT. A man might be found murdered upon the highway, and if a jurymen is to be allowed to indulge his imagination as to all the hypotheses to account for that loss of life, he might suppose that he was killed by an ærolite, which would be inconsistent with the charge of murder.

Mr. HENKLE. Does your honor give it in the modified form ?

The COURT. Oh, yes ; I will give it in that form—“ any reasonable hypothesis based upon the evidence.”

Mr. INGERSOLL. I call your honor's attention to the twenty-first prayer.

Mr. MERRICK. What is to be done with the intermediate prayers ? Are those all answered ? I suppose it is to be understood that all the intermediate ones are answered, your honor ?

The COURT. Yes.

Mr. MERRICK. I do not want to have any mistake about it.

The COURT. What about the twenty-first ?

Mr. INGERSOLL. I ask the twenty-first.

The COURT. That is in these words :

The hypothesis of guilt of the offense charged in the indictment should flow naturally from the facts proven and be consistent with them all. The evidence must be such as to exclude any reasonable hypothesis but that of their guilt of the offense imputed to them ; or, in other words, the facts proved must all be consistent with and point to their guilt, not only, but they must be inconsistent with their innocence.

If the evidence can be reconciled either with the theory of innocence or guilt, the law requires the jury to give the accused the benefit of the doubt, and to adopt the theory of innocence.

That is stating it more strongly than I have ever seen it stated before.

Mr. BLISS. That portion about the facts being all consistent with and pointing to their guilt, I think your honor has already answered.

The COURT. Yes.

Or, in other words, the facts proved must all be consistent with and point to their guilt.

All that part of it I cannot grant. I grant the rest of the prayer, striking out all after the word “ or,” after the semicolon in the fourth line.

Mr. INGERSOLL. The last paragraph:

If the evidence can be reconciled——

The COURT. [Interposing and reading:]

If the evidence can be reconciled either with the theory of innocence or guilt——

Do you mean either the theory of innocence or guilt ?

Mr. INGERSOLL. Yes, sir.

The COURT. [Reading:]

the law requires the jury to give the accused the benefit of the doubt, and to adopt the theory of innocence.

That is correct.

Mr. INGERSOLL. I call the attention of the court to the twenty-second prayer, commencing at the second paragraph.

The COURT. Oh, yes; I have substantially told the jury that. That prayer is:

The issues to be determined are, first, whether the alleged conspiracy was entered into for such object—

That is, for the purpose of defrauding the United States—

and, secondly, whether any one or more of the parties to such conspiracy afterwards did any act with the intent to effect such object. And unless both these issues are found for the Government the verdict of the jury must be for the defendants.

It must be a conspiracy, and one or more acts done in pursuance of the conspiracy within the period of the statute limitations.

Mr. INGERSOLL. Now, the next paragraph.

The COURT. That is all you care about.

Mr. INGERSOLL. The next paragraph commencing, "To constitute conspiracy."

Mr. MERRICK. Your honor answered that in your charge.

Mr. INGERSOLL. I would like to call the attention of the court to the next paragraph but one, commencing, "Acts and conduct."

The COURT. [Reading:]

Acts and conduct on the part of the defendants, however consistent with the theory of a conspiracy, do not constitute such conspiracy, unless sufficient to satisfy the jury that there was a combination of minds and that the parties did in fact enter into the conspiracy as charged.

That is true with simply this explanation: That we have no means of knowing what passes in a man's mind, except by his acts and conduct.

Mr. DAVIDGE. That is implied in the passage.

Mr. INGERSOLL. The twenty-fifth, if the court please.

The COURT. That is:

There is but one conspiracy charged in the indictment.

That is true. There is but one conspiracy charged in the indictment, and that is a conspiracy that existed on the 20th of May, 1879, or since. The date of the conspiracy is fixed in the indictment as the 23d of May, 1879. The date is of no consequence, provided the conspiracy was within the period of the statute and since.

Mr. INGERSOLL. I call the attention of the court now to the thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, and thirty-seventh.

The COURT. Begin at the thirty-first.

Mr. DAVIDGE. I can shorten that, your honor. They all relate to the proposition that has been argued in respect of the repeal of section 5440 by the act of May 17, 1879. They were merely put in for the purpose of saving the point, which is already determined.

The COURT. Still you want me to answer it. In answer to the thirty-first, thirty-second, thirty-fourth, thirty-fifth, and thirty-seventh prayers I say: This indictment is based upon the statute of the 17th of May, 1879. That is the same statute which I read to you as section 5440 of the Revised Statutes, except that the punishment has been altered. This indictment is under the statute of the 17th of May, 1879, for this reason:

That nothing could be included in the indictment except what has transpired since the 20th of May, 1879. On the 20th of May, 1879, the statute of May 17, 1879, was in full force. If there was a law violated by these parties it was the act of May 17, 1879.

Mr. MERRICK. Those prayers are all denied?

The COURT. Yes. The thirty-seventh prayer I do not——

Mr. MERRICK. [Interposing.] I do not understand what that means.

The COURT. [Reading:]

If the time of any act charged as an overt act shall be found by the jury to be before the 17th of May, 1879, they must acquit the defendants.

Mr. INGERSOLL. That should be before the 20th of May or the 23d, I should think. No, the 17th is right.

Mr. DAVIDGE. That is critically correct.

The COURT. I refuse that.

Mr. DAVIDGE. You refuse all the prayers bearing upon that point?

The COURT. Yes.

Mr. WILSON. The fifty-eighth, fifty-ninth, sixtieth, and sixty-first are all upon the same point, and they are overruled, I suppose.

Mr. BLISS. The fifty-ninth is not necessarily to be overruled.

Mr. MERRICK. Yes, it is.

Mr. BLISS. The only point about that is that the 17th of May is outside of the period of the statute of limitations, and it might open a question. I would leave it to say that the conspiracy was entered into between May 17 and 23. That would be good. I want to avoid that trouble.

Mr. DAVIDGE. It has no relation to a subject of that sort.

Mr. BLISS. I know; but it is capable of that interpretation.

Mr. DAVIDGE. Not a bit of it.

Mr. MERRICK. The charge has answered it before. It does not make any difference when it was entered into.

The COURT. I have told the jury over and over again that there must have been an existing conspiracy with an overt act since the 20th of May, 1879.

Mr. MERRICK. That covers the whole of it.

Mr. WILSON. These are refused as requested?

The COURT. Yes. The sixtieth is refused, too.

Mr. WILSON. I suppose the fifty-eighth, fifty-ninth, sixtieth, and sixty-first all stand in the same category?

The COURT. Yes.

Mr. INGERSOLL. The court has, I believe, instructed the jury as to the eighty-eighth, eighty-ninth, ninetieth, ninety-first, and ninety-second. Perhaps I had better call the attention of the court to ninety-third, ninety-fourth, and ninety-fifth.

The COURT. Yes; I have substantially ruled upon those.

Mr. INGERSOLL. The ninety-sixth.

The COURT. What do you say as to the ninety-sixth?

Mr. INGERSOLL. As to the ninety-sixth and ninety-seventh, according to our view those routes appear to have been the property of J. L. Sanderson, contracted for at full rates; and, if so, we ask that the overt acts upon those routes shall not be considered as overt acts in this case.

Mr. BLISS. We say it does not make any difference for whose benefit they defrauded the United States, whether for their own or for Sanderson's.

The COURT. Who was the contractor on that route?

Mr. BLISS. Miner, I think, and it was sublet.

The COURT. I shall refuse that.

Mr. DAVIDGE. And so with the next?

Mr. INGERSOLL. The next is the same.

Mr. WILSON. In that same connection, the sixty-second, sixty-third, and sixty-fourth are upon the same subject, and I want them disposed of.

Mr. BLISS. Those are the overt acts as to the presentment of claims.

Mr. WILSON. As to the orders of Brady and as to the presentment of claims.

Mr. BLISS. Has not the court ruled upon those in connection with the ninety-second?

Mr. INGERSOLL. We are simply calling attention to them.

The COURT. Oh, yes; I overrule them.

Mr. WILSON. We reserve an exception.

Mr. INGERSOLL. Now, the ninety-ninth.

The COURT. The ninety-ninth is correct substantially, I think.

Mr. MERRICK. That applies to all witnesses on either side.

Mr. INGERSOLL. Yes, sir; on either side.

The COURT. [Reading:]

The jury are instructed that they are the exclusive judges of the weight that is to be given to the evidence of each witness. The jury have the right to take into consideration the circumstances under which each witness testifies, the motive that each witness has, his appearance upon the stand, and if the jury believe that Rerdell, or Moore, or any other witness, knowingly swore falsely in any material point, the jury have the right to disregard the entire testimony of such witness.

Mr. INGERSOLL. That is right.

The COURT. That is the law as laid down in the case of the *Santisima Trinidad*.

Mr. MERRICK. And that applied to all the witnesses, for the defendants and all.

Mr. INGERSOLL. That is what it says.

The COURT. That is the universal law. If a witness on the stand deliberately swears falsely to any matter material in the case, knowing that his testimony is false, there is nothing in that man's character that we can rely upon for the truth. There is no truth in him. It would be unsafe to trust him for anything.

Mr. WILSON. I desire to call your honor's attention to the fifty-fourth, fifty-fifth, and fifty-sixth prayers. They refer more to the structure of the indictment.

Mr. INGERSOLL. The court has answered all those.

Mr. WILSON. I think so, too, but I want the point saved.

The COURT. Yes, I have answered that. The fifty-fourth is refused because it has been answered already; the fifty-fifth is refused for the same reason; the fifty-sixth the same.

Mr. INGERSOLL. There is only one more, the nineteenth.

Mr. MERRICK. I think your honor has answered that prayer.

Mr. INGERSOLL. I would like to have his honor look at it and read it, and see if he thinks it is the law.

The COURT. That is an excellent statement of the law upon the subject, and although I have really charged substantially to the same effect, yet I will read it because it is a very clear exposition of the law upon that point.

Mr. BLISS. I think it is from Judge Dillon.

Mr. INGERSOLL. No matter who wrote it.

The COURT. [Reading:]

The proof of guilt is upon the Government, and the law clothes the defendants with a presumption of innocence which attends and protects them until it is overcome by testimony which proves their guilt beyond a reasonable doubt, which means that the evidence of their guilt, as charged, must be clear, positive, and abiding, fully satisfying the minds and consciences of the jury. It is not sufficient in a criminal case to justify a verdict of guilty that there may be a strong suspicion, or even strong probabilities of guilt, but what the law requires is proof, by legal, creditable evidence of such a nature, that when it is all considered by the jury giving it its natural effect, they feel, when they have weighed and considered it all, a clear understanding and entirely satisfactory conviction of the defendants' guilt.

Mr. INGERSOLL. That is the law, I believe.

Mr. DAVIDGE. Now, we desire the privilege of excepting in detail to any passages in the charge of the court this morning, after the record is printed.

The COURT. Oh, no; you will have to take your exceptions before the jury leave the box.

Mr. DAVIDGE. To the charge of the court?

The COURT. Yes. There were some prayers presented yesterday by Mr.——

Mr. DAVIDGE. [Interposing.] Your honor has always allowed this privilege when giving a long charge like this, covering two hours or more.

The COURT. Yes; but you see how unjust it would be.

Mr. DAVIDGE. How so?

The COURT. I am going to tell you. If you call the attention of the court to a mistake which the court has made in its charge that mistake may be corrected with the jury before us, but after the jury have gone, you pick out some blot in the charge——

Mr. DAVIDGE. [Interposing.] We do not propose to pick out any blots.

The COURT. Then I will imagine that in some other case some other lawyer might do so.

Mr. DAVIDGE. It is hardly to be presumed that the court will unsay what it has said, and I never understood the practice to apply to any statement by a court that was subject to any doubt whatever; but where the court has deliberately stated the law you have given to counsel the liberty, when the charge is printed, to make specific exceptions.

The COURT. No; that is not the rule.

Mr. DAVIDGE. That has been the practice, I believe, as a general thing.

Mr. MERRICK. The rule is exactly the other way.

The COURT. I have not had as much practice, probably, as you, Mr. Davidge.

Mr. BLISS. His honor ruled at the last trial that he would not do it.

Mr. DAVIDGE. I know nothing of that trial.

Mr. MERRICK. The rule is that the exceptions must be taken before the jury leave the box.

Mr. DAVIDGE. Supposing that the privilege would be granted, I did not take notes as your honor from time to time uttered your views. There are two matters, however, that I find I did note, more from the force of habit than anything else.

I desire to reserve an exception to so much of the charge as states that the averment with reference to an overt act that it was in pursuance of and to effect the object of the conspiracy is mere matter of form.

I desire to reserve another exception to the statement of the court that under this indictment, knowingly using an affidavit, for instance, is equivalent to filing, as an overt act. Your honor will recollect that

the overt act charged is that the parties filed. You say that whether they filed or not, although they had nothing to do with the filing, and although the indictment charges them with filing, yet the use is equivalent to the filing. I do not understand that to be so.

I desire to except to all that portion of the charge where it appears to me you make a new averment in lieu of the ones made in the indictment.

I desire further to except to so much of the charge as relates to the statute of limitations. I think, however, on reflection, that that is included in the exceptions that are contained in a series of prayers for the defendants.

The COURT. Yes.

Mr. DAVIDGE. Now, those are all that I have noted, and I only noted them in the first half hour or hour, supposing that the ordinary privilege would be granted to the defendants.

The COURT. What shall we do with the other prayers to which you have not called the attention of the court? How shall they be regarded—as withdrawn?

Mr. MERRICK. They should be regarded as withdrawn.

Mr. BLISS. They cannot certainly be overruled and excepted to without some attention being called to them.

Mr. INGERSOLL. In looking them over, if the court please—

Mr. DAVIDGE. [Interposing.] Your honor will observe that we have been acting upon our recollection of your honor's charge and have conformed our action to our memory of that charge, which may be very defective indeed. I supposed, therefore, that you would certainly extend to us the privilege of excepting to the charge when it should be printed, and when we could see and critically examine the different passages of it. You now call upon us to act in the dark.

The COURT. I think I had better go over all the omitted prayers and pass upon them.

Mr. INGERSOLL. I will state to the court the point I make: That where the court has passed upon a question involved in the prayers, I did not ask any more about it. That is our view. For instance, to show the court how I have acted, take the fifth prayer:

Brady had a legal right to make orders for increases of trips and for expedition of service—

And the court said that, provided he acted in good faith. So I do not care to ask that. The sixth the same, and the seventh the same, which the court has really answered.

Mr. DAVIDGE. I think this arrangement would be satisfactory to all parties: Wherever your honor has expressed yourself on any point which is involved in any prayer, and your declaration is in opposition to the view taken in the prayer, then the prayer shall be regarded as refused.

The COURT. Of course.

Mr. MERRICK. Let me suggest one single thing. I think the safest plan would be for your honor to take these prayers and go over them and decide every point.

Mr. BLISS. For instance, if your honor will look at the fifty-second prayer, and treat it as overruled—

Mr. INGERSOLL. [Interposing.] If the court please, we will withdraw all the prayers to which we have not specifically directed your honor's attention.

Mr. DAVIDGE. We do not want anything more.

Mr. INGERSOLL. We do not want anything done about which there could be any question. There might be some prayer where my judg-

ment might differ from your honor's as to whether you answered it or not. So we withdraw all of them to which we have not called your attention.

Mr. WILSON. Now I desire to reserve exceptions to certain portions of the general charge given by the court to the jury :

To that portion of the charge which relates to the productiveness of these routes I except.

To that portion of the charge where the court in substance said to the jury, as I understood it, that it was not necessary that these parties should be mutually interested in these contracts after the 20th of May, 1879, as charged in the indictment, I desire to except.

I desire also to reserve an exception to that portion of the charge in which the court stated to the jury that the presumption was that the combination continued from the 1st of April to the 20th of May.

The COURT. I said that, in the absence of proof that the new arrangement had been dissolved, the presumption would continue the existence along after the first of May.

Mr. WILSON. I will except to it in that form also.

The COURT. That is no variation from the form I put it in whatever; it is the same thing.

Mr. WILSON. Of course it is impossible for me to recollect the exact phraseology the court used. I only take these exceptions by reference to subjects.

Mr. Davidge has already reserved an exception, I believe, to your honor's instruction as to the overt acts.

I desire to reserve an exception also to what the court said in respect of the seventh prayer for the prosecution, in which, as I understood, your honor said that all frauds against the United States are criminal.

I also reserve an exception to what the court said in respect of the eighth, eleventh, twelfth, fourteenth, eighteenth, nineteenth, and twentieth prayers of the prosecution severally.

Mr. BLISS. Your honor, in the course of your charge——

The COURT. [Interposing.] Let me ask, Do you withdraw the prayers you presented yesterday ?

Mr. MERRICK. Mr. Ingersoll withdrew all.

Mr. WILSON. All are withdrawn with the exception of those to which your attention has been called to-day.

Mr. MERRICK. So I understand.

Mr. BLISS. There were certain suggestions that came up in the course of your honor's charge which I desire to put in the form of requests, though I apprehend none of them will be disputed on either side. I desire that you charge the jury that though Peck is not on trial, they may still find any one or more of the defendants guilty of a conspiracy with Peck ; that they have a right under the indictment, if they think the evidence is sufficient, to so find. Also, that although Rerdell has pleaded guilty, they may still treat him as one of the conspirators the same as if he had not.

The COURT. I so ruled as to Rerdell.

Mr. BLISS. I did not hear you. As to Peck, your honor rather seemed to withdraw him.

The COURT. Peck is dead. I do not remember when he died.

Mr. BLISS. It is unimportant. My request is that if the evidence sustains it the jury are entitled to find that one or more of these defendants conspired with Peck, and if they so find, they may bring in a verdict of guilty.

Mr. MERRICK. It does not make any difference.

The COURT. I don't think that is necessary. Peck is dead, and not to be tried.

Mr. MERRICK. Let him go. Let him rest in peace.

The COURT. It is true that a man may be convicted of conspiracy with another who is not named in the indictment at all; but if it appears to the court that the party named is dead, I do not see how he can be convicted.

Mr. BLISS. Suppose one party has conspired with another and both are indicted and then one dies, the decisions are clear that the remaining one can be convicted of conspiracy with him.

The COURT. Yes.

Mr. BLISS. That is what I mean.

The COURT. What I inquired about is this: This conspiracy is confined to a certain date.

Mr. BLISS. Yes; it appears that he died long after that. Mr. Dorsey testified that he died on the 21st of August, 1881, I think, or somewhere along there.

The COURT. I have no objection to that prayer. I think your prayer can be sustained.

Mr. BLISS. Your honor stated that no man could be convicted by any but his own acts. I ask your honor to add to that that if he enters into a conspiracy he is then bound by the acts of others committed in pursuance of the conspiracy to effectuate its object, the same as if he had done the act himself.

Mr. DAVIDGE. He said that all through the prayers.

Mr. BLISS. He did not say it in his charge.

The COURT. My attention has not been called directly to that point.

Mr. MERRICK. No.

The COURT. It is a very important point in the case, too.

Mr. MERRICK. As Mr. Davidge says, your honor has ruled it all along through the trial from time to time. Your honor so ruled at the time you determined that testimony should be admitted as the acts of one against all. You honor first ruled that the acts of one were permitted against himself, and then, upon the establishment of a *prima facie* case, or such a case as your honor thought was sufficient for the court, you admitted the acts of one to go to the jury as evidence against all. If the jury find that there was a combination and conspiracy between them, then the acts of one bind all the defendants, because being done in pursuance of the conspiracy.

Mr. INGERSOLL. Nobody disputes that.

Mr. MERRICK. They admit that.

Mr. INGERSOLL. We admit it.

Mr. BLISS. I was out during one portion of your charge, your honor, and therefore I am not quite certain whether you covered this point or not; I ask you to charge the jury that in considering the fact of the non-production of any books or papers, they will treat it in the case of the failure so to produce by a witness on the stand with such inferences as they may think are justified by that fact in connection with his deportment and bearing and in connection with the other evidence in the case, showing, if it does show, that such books or papers were in his possession or under his control. I am directing it to a question of the presumption of fact; that while there may be no presumption of law other than that the secondary evidence stands from a failure to produce books or papers, yet that they are entitled from the failure to produce books or papers to draw such inferences as to the contents of those books

or papers, and such other inferences as the evidence seemed to them to justify.

Mr. INGERSOLL. The court has covered that.

The COURT. I cannot grant that in that shape.

Mr. CARPENTER. It is already covered.

The COURT. If a party received notice to produce his books and fails to produce them, his failure to produce them creates no evidence against himself that far. It throws the burden of proving the fact by secondary evidence on the other side. The other side then produces this secondary evidence, and if that evidence is not satisfactory in any way to the person who has failed to produce his books, he has himself to blame for it. He has got the books, and if the secondary evidence is not true, that results from the fact of his failure to produce the primary evidence which was in his possession. Under these circumstances the jury are to draw such inferences as to the facts connected with the whole transaction in connection with the notice to produce, and the failure, as the evidence will justify.

Mr. MERRICK. That is all. The jury will draw such inferences as they think the failure to produce on notice or on cross-examination will justify.

The COURT. As to the cross-examination, I don't care anything about that, because it is nothing more than the refusal.

Mr. DAVIDGE. The same old thing.

The COURT. The same old thing. Do you want me to say anything about the other prayers as to the effect of one man's evidence against the others?

Mr. MERRICK. No. They have conceded that to be the law as I stated it.

Mr. INGERSOLL. If there is a conspiracy established, and one of the conspirators does an act to further the conspiracy, it is the act of all. We admit that.

Mr. BLISS. That is all I have to say.

Mr. WILSON. I think the court ought to add to that that in proving the conspiracy they cannot take the acts of one person against another, or the declarations of one against another.

The COURT. That is a very important suggestion.

Mr. DAVIDGE. Your honor has ruled in accordance with that.

The COURT. I have ruled it during the trial, but I have not heard any prayer to the point on this occasion.

Mr. WILSON. I have one here, but I thought your honor had covered it.

The COURT. If you suppose it is covered, very well.

Mr. WILSON. I have one here on that very subject.

The COURT. I do not want to be understood as refusing to answer such a prayer as that.

Mr. MERRICK. There is nothing on the record.

The COURT. That is all now, gentlemen.

The FOREMAN (Mr. Crane). Some of the jury desire to know if they can have a copy of the judge's charge.

The COURT. You cannot catch it any more than you can catch the air. All that there is of the charge is in your memories now. I have not written anything at all. There are several reasons for not doing so. One is that I dislike writing. I am getting to be an old man, and I do not like the labor of writing. Another reason is that I did not know what aspect the case might assume up to the last minute.

Mr. MERRICK. I presume your honor might say to the jury that if

they have any difficulty and want further instructions, and will address the court, your honor will give them assistance.

The COURT. Yes.

Mr. DAVIDGE. I expect they know that.

Mr. MERRICK. It will not do any harm to tell them.

The COURT. The jury, intelligent as they are, do not possess all knowledge.

Mr. MERRICK. That is a point that has not come up before.

The COURT. Gentlemen of the jury, if you are at a loss about any question of law and will apprise the court of the fact, the court will with pleasure try to explain your difficulties at any time. On questions of fact I cannot interfere with you. You are superior to me as to those. [To the clerk.] Administer the oath to the bailiffs, and let them take the jury to some private and convenient place, to be kept without fire and light.

Mr. INGERSOLL. Especially without fire.

[Three bailiffs were here sworn and took charge of the jury.]

Mr. MERRICK. If your honor please, one of the jurors indicates that he would like to have some dinner.

The COURT. Oh, well; we will not starve the jury. The jury are entitled to their dinner.

Mr. MERRICK. That is what I thought.

The DISTRICT ATTORNEY. If the court please, the marshal asks that, as some of the deputies or bailiffs are new in their office, the court will give them instructions as to how far they can communicate with the jury and what they can allow the jury to receive.

The COURT. The jury is to be taken to their quarters. They are not to be allowed to separate. They are to be kept together. No person is to be allowed to enter the room or have communication with them. The bailiffs are not to communicate with the jurors themselves in any way, except to communicate such messages as the court shall authorize them to communicate.

The FOREMAN. How about sleeping accommodations?

The COURT. Of course you will have sleeping accommodations provided for you in case you want to sleep. The marshal informs me that he will be able to furnish the jurors with fair accommodations in the building. I think that is best. They will be furnished with their meals out. They can be accompanied by the bailiffs to their meals. Gentlemen, if you find that you have difficulty about making up your verdict before night the marshal will furnish you with accommodations. You will probably be more comfortable in some room in this new building than you would be in a hotel. You are entitled to the pleadings in the case, and that is all. There are five thousand pages of evidence in the case. I think it would embarrass any jury, and embarrass any twelve lawyers in the land to take those five thousand pages, in five or six volumes, and go over them and compare one piece of evidence with another. The best way possible to become acquainted with a case is to be with it from the start, hearing and seeing in just the manner that the jury have done in this case. They can understand the case a great deal better in that way than by reading the evidence. The law, which is wise in everything, is wise in that particular. [After a pause.] The marshal makes a suggestion, which is a very appropriate one. If the jury should remain out during the night their friends might want to send them coats or cloaks or something of that kind, and if there is no objection I will authorize the deputies to receive from their friends every-

thing of that kind, being careful that nothing contraband is concealed in them.

Mr. INGERSOLL. We have no objection.

Mr. BLISS. We have none.

Mr. INGERSOLL. We do not care.

The FOREMAN. Can we receive any communications in regard to our business transactions?

The COURT. No. That ought not to be allowed except by permission of the court.

Mr. DAVIDGE. I suppose they can be submitted to your honor.

The COURT. Yes. We will take a recess now, gentlemen, with the understanding that the court will meet here to-morrow morning, but will come if sent for in the mean time at any hour before bed-time.

Mr. BLISS. At what time to-morrow? Eleven or ten o'clock.

The COURT. Ten o'clock.

Mr. INGERSOLL. I suppose if the jury want the court they can send for him.

The COURT. Yes.

Mr. MERRICK. Up to 12 o'clock to-night?

The COURT. Hardly until twelve.

Mr. DAVIDGE. Say eleven.

The COURT. Gentlemen, if you send for me before 10 o'clock I shall come.

Mr. DAVIDGE. The adjournment will be until 10 o'clock to-morrow morning.

The COURT. There will be no adjournment.

Mr. MERRICK. Recess.

The COURT. We will take a recess until 10 o'clock to-morrow morning.

At this point (3 o'clock and 47 minutes p. m.) the jury retired and the court took a recess until to-morrow morning at 10 o'clock.

AFTER RECESS.

(Ten o'clock a. m., Wednesday, June 13, 1883.)

Present, counsel for the Government and for the defendants.

The COURT. [To the crier.] Has the jury reported yet?

Mr. DONALDSON (the crier). No, sir.

The COURT. [At 10.19 a. m., to Mr. Donaldson.] Go to the jury and ask them, for the court, if they have agreed upon a verdict.

[After a short time Mr. Donaldson returned from the jury-room and reported privately to the court.]

The COURT. If the jury, or any one of them, say that they want instructions upon any question of law, they are entitled to have it. They did not say that they all wanted instructions?

Mr. DONALDSON. No, sir.

The COURT. Even if one juror has difficulties with a question of law and desires instructions from the court, I think he is entitled to relief. You may report to the jury that the court is of opinion that if they, or any of them, have difficulties upon any question of law, and will come into court, the court will try to relieve them.

[The crier again went to the jury-room, and returned and reported privately to the court.]

The COURT. [At 10.35 a. m.] The messenger reports to the court that the juror thinks it is a question of law, while the foreman thinks it is a question of fact; so that there is evidently a disagreement. [To Mr. Donaldson.] You can tell them to come down and let the point be stated to the court, and the court will judge whether it is a question of law or a question of fact.

[At 10.37 a. m. the jury came into the court-room, when, before they had taken their places, Juror John H. Vernon fell on the floor with an exclamation as if in great pain, and was apparently unconscious.]

The COURT. The audience will keep their places, and not crowd around him.

[Mr. Vernon was then carried into the adjoining room.]

The COURT. The balance of the jury had better retire to their room. This man, for the time, must be in charge of a doctor. Let the rest of the jurors be sent to their room until he recovers.

The COURT. [After a pause, having been informed that Dr. Z. T. Sowers was present in the court-room.] Dr. Sowers is requested to take charge of this patient.

[At 10.43 a. m.] I had better not take a recess until I see the result of this affair. I had better remain here until I see this over, and see what other order is required.

[At 10.52 a. m.] The wife of one of the jurors has sent a parcel of clothes for her husband's use. They are in the hands of the marshal, who has examined them to see whether there is anything improper in them, and he says there is nothing. I suppose there is no objection to allowing the package to be given to him.

Mr. BLISS. We have no objection.

Mr. WILLIAMS. No objection on our part.

The COURT. [At 10.55 a. m.] I have a good deal of doubt in my mind in regard to the consequences of this occurrence. This man has been drinking a good deal; he is a hard drinker. During the progress of the trial, on one occasion, I took him aside and gave him a pretty sharp admonition, and he promised to abstain; but I have observed from his appearance for several days past that he has resumed his hard drinking. I suppose, being confined to the jury-room, and cut off from his supplies of that kind, it has resulted in this attack. I do not know what it is, whether *mania a potu*, or what; but he is not fit to be on the jury now. I suppose the doctor will give him a prescription that probably will be brandy or whisky.

Mr. BLACKMAR. He has given him some.

The COURT. Has he given him some?

Mr. DONALDSON. Yes, sir; he has given him two or three drinks.

Mr. MERRICK. I suppose whatever a doctor prescribes for the juror can be taken by him.

The COURT. Oh, undoubtedly. But attacks of this kind are apt to leave the mind in so shattered a condition as to create difficulty.

Dr. Z. T. SOWERS. He is all right now. If you wish it, you can have the jury come down now.

The COURT. Send for the jury again.

[At 11.03 a. m. the jury again came into the court-room. Their names were called by the clerk and they answered, all being present.]

Mr. CRANE (foreman of the jury). If the court please, one of the jurors desires to ask a question of the court. To the most of us it seems to be a question of fact, but we felt that he should speak for himself. It is Mr. Horigan.

The COURT. The court will judge whether it be a question of fact or

of law. If it is a question of fact the court will not answer it; but if it is one of law, the court will try to answer it. Mr. Horigan, will you state your difficulty?

Mr. HORIZAN. Your honor, I have one or two questions I want to ask. I want to know what date General Brady took the stumbling-block off the route from Tongue River to Fort Keogh?

The COURT. What is that?

Mr. HORIZAN. He stated on the stand that there was a stumbling-block in the way of making trips to pay the contractor. He said he expedited it, but there was a stumbling-block in the way. I want to know what date was that that he kicked the stumbling-block out of the way.

Another is, is it in this indictment where he made three trips additional where they had already expedited on another route?

The COURT. Those are questions of fact.

Mr. DAVIDGE. Questions of fact, your honor.

The COURT. There is no question of law involved in either of these inquiries of the juror. Gentlemen of the jury, now I shall take the liberty of saying a word to you. You have had a sick member of the jury with you, and a disagreeable occurrence happened this morning. He seems to be in a measure restored, and now I hope he will be able to perform his duties. I do not propose to discharge this jury very easily. It is the second time this case has been tried. I do not wish to put any undue stress upon your minds, but the court thinks that you ought to be able to agree upon a verdict of some kind. You may now retire.

Mr. CRANE. I would like to ask a question of the court. In case we should agree in regard to the guilt or innocence of any one of the parties, whether we can report it to the court?

The COURT. You must report your verdict as a whole.

Mr. CRANE. Some of the jury seem to want——

The COURT. [Interposing.] You have no right to say what some of the jury may have said.

Mr. CRANE. There is a doubt in their minds. My idea is that the first question to settle is whether there was a conspiracy. Some think——

The COURT. [Interposing.] Do not say what some think.

Mr. CRANE. We have not decided the question of conspiracy yet. Upon the question of the guilt or innocence——

The COURT. [Interposing.] These defendants must be convicted as they are indicted, one or more of them. The crime charged is conspiracy, followed by an overt act of one or more of them in pursuance of the conspiracy.

Mr. CRANE. Supposing we do not agree on conspiracy, can we vote in regard to the guilt or innocence of the parties?

The COURT. The court will not undertake to control you in the order in which you shall take the questions. Take the questions in any order you please, and agree upon any order you please. The court will not undertake to dictate to you how your discussions shall be conducted.

Mr. CRANE. Would it be proper for me to say whether we have agreed——

The COURT. [Interposing.] No, it would not be proper.

Mr. DAVIDGE. I understand that the only charge in this indictment is conspiracy. That is the offense charged.

Mr. MERRICK. As I understand, may it please your honor, in addition to that, it is the province of the jury to vote guilty or not guilty.

at any period of their investigations, when they please; and they understand from your charge all that is embraced in that.

The COURT. My instruction to the jury is that you can decide on what is involved in this indictment, as to which you are to render a verdict, in any order you please and at any time you please. But when you render your verdict, it ought to be a complete verdict; not a verdict as to part of the charge in the indictment, but a verdict upon the full charge as it is contained and set out in the indictment. There are a great many things in an indictment that are regarded as surplusage, which the prosecution is not bound to prove. That I told you in the charge. There are two substantial questions in the indictment: One is the conspiracy, and upon that question you have a right to say whether all, or, if not all, who, of the defendants were concerned with Rerdell in that conspiracy. You may even say that there was only one. You have full control of that subject.

Mr. INGERSOLL. Or whether there was a conspiracy.

The COURT. I am going on to say. That is, if you decide that there was a conspiracy, then you must determine who were engaged in it. But that will not end your consideration, in order to a verdict. You must find that the conspiracy was followed by some overt act in pursuance of the conspiracy done by one or more of them. If you think there was even one overt act committed by any one of the defendants engaged in that conspiracy, then it is your duty to render a verdict of guilty as to the party so found, and that verdict covers the whole indictment—covers the conspiracy and the overt act, too. You cannot say that you find the conspiracy and no overt act. You cannot say that you find an overt act and no conspiracy. The verdict cannot be in that shape. Your verdict, if a verdict of guilty, must be a general verdict in that way. If not guilty, it of course will cover the whole ground.

Mr. CRANE. I wish to state that it is very hot in the room where we are kept. During the night we had the door open between us and a communicating room when we slept, but that is now closed and locked against us.

Mr. MERRICK. Let it be opened.

Mr. CRANE. I would also ask if we cannot take a walk in the park during the day for a little while. Our room is oppressively hot; there is no air there.

The COURT. What room is it?

Mr. DONALDSON. It is the grand-jury room.

Mr. FASSETT (deputy marshal). With windows on this side and windows on the other. It is the coolest room in the building under our control.

Mr. INGERSOLL. On our part we are willing that anything should be done for their comfort.

Mr. MERRICK. I think the two rooms had better be thrown into one, and there is no reason why they should not take a walk in the park under the charge of the bailiffs. I think that would be a great accommodation to them.

Mr. DAVIDGE. We have no objection whatever.

Mr. CRANE. I do not wish it considered that I am finding fault with the accommodations; they are very fine, indeed.

The COURT. I do not know but that I shall make a change by and by in that respect.

Mr. MERRICK. I speak only for the present.

The COURT. I remember I tried a case here once in which, for the third

time, the jury failed to agree. They came into court and stated that they stood six to six, with no chance for an agreement. I instructed the marshal to administer the common law to them, and keep them without fire and lights or food until they rendered a verdict, and they came in with a verdict in half an hour. [Laughter.]

Mr. MERRICK. It would be an unusual punishment to keep them without fire.

The COURT. For the present, however, we will treat you well.

Mr. DAVIDGE. Let them have the fire for the present. [Laughter.]

The COURT. [To the jury.] You may retire again, gentlemen. The sick juror can have one or two drinks a day, and if any other juror wants medicine [laughter] he can have it. But there is to be no bottle for general circulation.

Mr. FASSETT. No, sir; I will attend to that.

The COURT. When the jury have made up their minds upon a verdict you can send word to me and I will come.

Mr. DAVIDGE. To what hour shall we take a recess?

The COURT. I do not know that it is worth while to name any hour.

Mr. DAVIDGE. Shall we meet at some time to-morrow morning?

The COURT. We will take a recess until to-morrow morning at 10 o'clock, with the understanding that, in the mean time, if the jury should agree upon a verdict, and send me word, I will be here.

Thereupon (at 11 o'clock and 38 minutes a. m.) the court took a recess until 10 o'clock to-morrow morning, with the understanding indicated above by the court.

AFTER RECESS.

(Ten o'clock a. m. Thursday, June 14, 1883.)

Present, counsel for the defendants.

The COURT. [To the crier.] You can ask that jury if they have any communication to make to the court.

Mr. DONALDSON. [At 10.06.] They say they have a communication to make, and that they will be down in a minute.

[The jury entered the court-room at 10.10 a. m. The clerk called the names of the jurors, and all answered as present.]

The COURT. Gentlemen of the jury, the court has sent to you for the purpose of inquiring whether you have any communication to make to the court this morning.

Mr. CRANE (foreman of the jury). We have. We have agreed upon a verdict.

The COURT. Are the jury all here?

Mr. DONALDSON. Yes, sir.

The CLERK. Gentlemen of the jury, how say you, are the defendants guilty or not guilty?

Mr. CRANE (foreman of the jury). Not guilty. [Great applause.]

Mr. DONALDSON. Silence. Order in court.

Mr. DAVIDGE. [To the clerk.] Record the verdict.

The CLERK. Gentlemen of the jury, hear your verdict as recorded: Your foreman saith that the defendants, John W. Dorsey, John R. Miner, Stephen W. Dorsey, Harvey M. Vaile, otherwise called H. M. Vaile, and Thomas J. Brady, are not guilty as indicted. So say you all?

[At this point Mr. Ker came into court.]

The COURT. Mr. Vernon, how are you this morning?

Mr. VERNON (a juror). All right, sir.

The COURT. [At 10.15 a. m.] I believe we have nothing further now for the jury to do during the term. The term is near its close. The court is about to discharge you finally. You have had a laborious task to perform in this case—a task, the weight of which probably but few juries have ever felt before. You have been more than six months engaged in the trial, during which period you have been obliged, in a great measure, to neglect your occupations. Although your verdict, of course, will create dissatisfaction with many, yet, having been selected according to the forms of law and sworn to perform your duty faithfully, the court will be bound to presume that you have done so. If you have done so, each one according to the dictates of his own conscience, that will be a satisfaction to you as long as you live. You are, therefore, discharged with the thanks of the court.

Thereupon (at 10 o'clock and 16 minutes a. m.) the proceedings of this court upon this case were adjourned *sine die*.

INDEX BY ROUTES.

Papers marked A pertain to route 34149, Kearney to Kent, Nebr.
B pertain to route 38135, Saint Charles to Greenhorn, Colo.
C pertain to route 38134, Pueblo to Rosita, Colo.
D pertain to route 41119, Toquerville to Adairville, Utah.
E pertain to route 38140, Trinidad, Colo., to Madison, N. Mex.
F pertain to route 38145, Garland to Parrott City, Colo.
G pertain to route 46247, Redding to Alturas, Cal.
H pertain to route 44160, Canyon City to Camp McDermitt, Oreg.
I pertain to route 44140, Eugene City to Bridge Creek, Oreg.
K pertain to route 40104, Mineral Park to Pioche, Ariz.
L pertain to route 44155, The Dalles to Baker City, Oreg.
M pertain to route 38152, Ouray to Los Pinos, Colo.
N pertain to route 38150, Saguache to Lake City, Colo.
O pertain to route 40113, Tres Alamos to Clifton, Ariz.
P pertain to route 46132, Julian to Colton, Cal.
Q pertain to route 38156, Silverton to Parrott City, Colo.
R pertain to route 35015, Vermillion to Sioux Falls, Dak.
S pertain to route 38113, White River to Rawlins, Colo.
T pertain to route 35051, Bismarck to Tongue River, Dak.
X pertain to general testimony.

(A.) *Route 34149. Kearney to Kent, Nebraska.*

Advertisement of November 1, 1877, 125 miles, one trip a week, schedule 60 hours, 525; of John W. Dorsey & Co., inviting bids (13 A), 611.

Affidavits of:

French, Chas. H., sworn to March 2, 1881, that on February 2, 1881, and since, the mail was carried to Cedarville regularly whenever the weather would permit without endangering the life of the mail carrier or safety of the mails; that to supply Cedarville in winter the carrier is compelled to travel 16 miles off the main road (114 A, defense), 3346.

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Of Mr. Ingersoll, 618-622;

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Grey, L. B., assistant postmaster Fitzalon, March 23, 1881, that there is no regular road from Fitzalon to Cedarville; that during that winter it was impossible to go to Cedarville except by way of Loup City (114 A, defense), 3347.

Grimes, R. M., postmaster, Kearney, Nebr., April 18, 1881, that the failures in first quarter 1881 were caused by storms and bridges washed away (115 A, defense), 3347.

Rossiter, Alice C., postmistress, Loup City, March 22, 1881, that the mail has been carried to Cedarville and return whenever the same could be done without endangering the safety of the mails and the life of the carrier (114 A, defense), 3346.

(A.) *Route 34149. Kearney to Kent, Nebraska—Continued.*

Contract of John M. Peck with the United States, dated March 15, 1878, executed by Peck, May 11, 1878, sureties D. W. C. Wheeler and S. N. Hoyt, witnessed by A. E. Boone and George P. Fall, certified by J. M. Edmunds, pay \$868, printed in full, 542-545.

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Refusing to admit parol evidence to prove contents of a lost letter, that proof of its loss is not sufficiently established, 821, 822.

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Refusing to admit petitions and papers offered by the defense, that they were filed in the department subsequent to the date of the order as set out in the indictment, and that no action was based upon them, 3257, 3258.

Admitting letters and petitions, asking for increase to six trips, and upon which no order was made, which application was refused by Brady to one of the contractors who was a member of the alleged conspiracy, on the ground that it may throw some light on the motions of the Second Assistant, 3264, 3265.

Drafts drawn by John M. Peck on the Auditor, November 1, 1878, in favor of H. M. Vaile, covering pay from 4th quarter, 1878, to the 4th quarter, 1879, inc., witnessed by M. C. Rerdell and Harvey G. Gray (47 A, 50 A, 54 A, 57 A, and 60 A), 709-712; April 1, 1879, in favor of H. M. Vaile, covering pay for the 1st, 2d, and 3d quarters, 1880, and the 3d and 4th quarters, 1881 (63 A, 66 A, 67 A, 79 A, and 80 A), witnessed by M. C. Rerdell and Harvey G. Gray, 712-715; April 1, 1879, in favor of John R. Miner, for one month's extra pay in the 3d quarter, 1881, witnessed by L. R. Bacon and Harvey G. Gray (76 A), 714.

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(A.) *Route 34149. Kearney to Kent, Nebraska—Continued.*

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Vandervoort, Paul, R. M. S., to E. K. Valentine, January 5, 1880, incloses petitions for increased mail facilities, filed April 8, 1880 (104 A, defense), 3265.

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(A.) *Route 34149. Kearney to Kent, Nebraska—Continued.*

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Addressed to Postmaster-General for increase to 6 trips, Kearney to Loup City (105 A, defense), 3266; for daily mail Kearney to Loup City, and tri-weekly, Loup City to Kent, filed July 2, 1880 (106 A, defense), 3267; for increase to three trips, "*Schedule 13 hours*," indorsed by Senator Saunders, printed in full (excluded as an overt act, 641-644), (2 A), 568; names on, omitted from the indictment, 575.

Productiveness and other circumstances, remarks of the court on the law authorizing the Postmaster-General to have a due regard for, 715, 716, 718, 719.

Receipt for warrants, signed John M. Peck (82 A); signed H. M. Vaile, contractor, by John R. Miner, attorney (83 A and 84 A), 723; signed John R. Miner, contractor, for self and H. M. Vaile (85 A, 86 A, and 87 A), 723, 724; signed John R. Miner, attorney for contractor (88 A), 724.

Revenues, certified transcript showing the (81 A), 720-722.

Reports of the Auditor showing the amount due for services on this route from the fourth quarter, 1878, to the fourth quarter, 1881 (45 A, 48 A, 52 A, 55 A, 58 A, 61 A, 64 A, 68 A, 70 A, 72 A, 74 A, 77 A, and 78 A), 708-715.

Subcontracts of:

Vaile, H. M., dated April 1, 1878, full pay, signed John M. Peck, by John R. Miner, witnessed by M. C. Rerdell, printed in full (6 A), 578-580.

French, C. H., dated June 5, 1878, signed J. M. Peck, by John W. Dorsey, pay \$700, with 65 per cent. for expedition, printed in full (12 A), 603-606.

Warrants signed by the Postmaster-General and the Sixth Auditor in favor of:

Creswell, J. A. J., October 20, 1879 (56 A), 710; April 15, 1880 (62 A), 712.

Lewis Johnson & Co., April 15, 1879 (49 A), 709.

Pearsall, Thos. C., cashier, Jan'y 22, 1880 (59 A), 711; July 21, 1880 (65 A), 712; October 16, 1880 (69 A), 713.

Roach, W. N., cashier, July 16, 1879 (53 A), 710.

Vaile, H. M., January 27, 1879 (46 A), 709; January 18, 1881 (71 A), 714; May 3, 1881 (73 A), 714; August 8, 1881 (75 A), 714.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route, 2684-2686, 2709.

Handwriting:

2 A. Petition (568), words "*Schedule, 13 hours*" written by Miner, 2684. The writing is a back-hand and a changed handwriting, unless witness took circumstances into consideration; could not say it was Miner's, 2709.

3 A. Oath of Peck (571), body was written by Miner; does not know the signature of Peck, 2684.

8 A. Letter of J. M. Peck (581), body was written by witness; thinks the signature of Peck was by S. W. Dorsey, 2685.

9 A. Letter of J. M. Peck (582), all written by Miner, 2685.

14 A. Letter of J. W. Dorsey (611), written by J. W. Dorsey, 2685.

15 A. Letter of J. W. Dorsey (611), all written by J. W. Dorsey, 2685.

16 A. Letter of J. W. Dorsey (612), all written by J. W. Dorsey, 2685.

17 A. Letter of J. M. Peck (612), signature and all written by Miner, 2685.

18 A. Letter of John W. Dorsey & Co. (612), all written by J. W. Dorsey, 2685.

19 A. Letter of J. M. Peck (612), all written by Miner, 2685, 2709.

20 A. Letter of John R. Miner, agent (612), all written by Miner, 2709.

21 A. Letter of J. M. Peck (613), written by Miner, 2685, 2709.

22 A. Letter of J. W. Dorsey & Co. (613), all written by Miner, 2685.

33 A. Letter of John R. Miner (667), written by Miner, 2685.

34 A. Letter of M. Peck (668), written by Miner, 2685.

36 A. Letter of Miner (669), written by Miner, 2685.

37 A. Letter of Miner (669), written by Miner, 2685.

98 A. Letter of H. M. Vaile (751), all written by Vaile, 2686.

Brady, Thomas J., one of the defendants; testimony of, relating to this route. Witness increased the service and reduced the time to 13 hours, because the

(A.) Route 34149. *Kearney to Kent, Nebraska*—Continued.

Witnesses—Continued.

Brady, Thomas J.—Continued.

petition asks for it, and Senator Saunders and Mr. Valentine recommended it, 3404; probably took the time, 13 hours, from Brewer's statement on the jacket, 3550; does not know how it happened that the only papers that spoke of expedition was the altered paper (2 A, 568), "schedule 13 hours," and the oath (3 A, 571), and offer of the contractors (9 A, 582), 3550; his attention was not attracted by the fact that the oath was made by J. M. Peck at Chico, N. Mex., February 1, 1879, and filed in the department April 3, 1879, at the same time, with the offer of the contractor, which was dated Washington, February 2, 1879, 3550; does not know that it occurred to him that he could have made it 6 trips a week at the old rate of speed, and it would have cost \$935.42 less than he paid for 2 trips and expedition; fast 3-trip service might be better than a slow service 6 times a week, 3404; or that it was brought to his attention that he gained nothing by expedition in the connections at either end of the route, 3404; or that he considered the fact that, excluding the terminal offices, the entire revenues of the route were but \$227.48, 3404; the revenues of offices like Kearney and Kent were a poor criterion of the value of the service, 3404; understood the figures on jacket (1 A, 566-567) to indicate the revenues, 3405; the personal importunity of Senator Saunders and Mr. Valentine had more to do with it than anything else, 3405; possibly he was not in an increasing mood the day when Senator Saunders sought an increase to 6 trips, 3406; witness made the order (10 A, 589) to embrace Fitzalon from July 1, 1878, and the order of September 24, 1878 (11 A, 589-590), to allow contractor \$112.24 for 15 miles increase from July 21, 1878, these are merely *pro forma* orders, the office having been added to the route, and it being discovered subsequently that the distance was increased 15 miles, the order made in September to antedate the pay to July 1 was a thing the contractor was entitled to, although the statute says "no compensation shall be paid for any additional regular service rendered before the issuance of such order"; that was the practice of the department, 3551; never wrote to any postmaster instructing him not to use the mail bills; matters in the inspection division were left almost entirely to Lake, who had a microscopic vision for making deductions and imposing fines, 3400.

Brewer, George J., testimony of, 555-564, 581, 582, 751, 752; identifies handwriting to the files, 555-559; delivered files to Mr. Woodward, 560; papers were sometimes added to a jacket after it had reached the table of the Second Assistant, 564; custom as to addressing communications to contractors and subcontractors, 581, 582; identifies letter as in the handwriting of Vaile, 751.

French, C. H., testimony of, 597-615, 646-658, 747, 748; as to his subcontract with John W. Dorsey, 597, 598, 602, 603; sketch map, 608; route traveled, 608; men and animals, 609-658; made the trip, Kearney to Loup City, in twelve hours, 608, 609; one trip, Kearney to Loup City, drove himself and used 3 horses, and a boy to go to Cedarville, 3 trips, used 3 more horses, 609; Fitzalon did not add to the distance, 609; received his pay from John M. Peck, through John R. Miner, 610, 691, 692; subcontract pay, 610, 689-691; identifies letters, 610, 658-661, 667, 668; supply of Cedarville, struck out, 613-615; words "schedule thirteen hours" not in petition when witness signed it, 651; gave petition to Nightingale, 652; was not inquired of by defendants as to the number of men and horses, 652; received no pay for expediting, 655; distances, 655, 656, 673, 674, 687, 690, 693; population, 656, 657; quantity of mail, 657, 658; passengers and express, 658; petition (2 A) was copied from one received from John R. Miner, 647, 648; supply of Cedarville and Fitzalon, 676-687; schedule time, 687; commenced to address his communications to Vaile, Miner & Co. about July, 1879, 689; petition (2 A), 691; conversation with John W. Dorsey as to the supply of Cedarville, 696, 697; identifies his indorsement on drafts, 747, 748.

Grimes, Ralph M., postmaster at Kearney, testimony of, 609-704, 739-741, 752-754, 808-812, 822, 823; mail was always carried from Kearney to Loup City in about twelve hours, 700; there was no change in the time after the increase to three trips, 700; distances, 700, 701; notice of the increase of service, 700, 701; character of the roads, 702, 703; distance circulars, 703; about one-sixth of the mail leaving Kearney office went over route 34149, 739; weight of the mail, 740; revenues defined, 740, 741; lost letter ordering discontinuance of mail bills, 752, 753; ceased to send mail bills to the department after receipt of letter, 754; searched the place where he usually kept his letters, 811; manner in which he filed his letters, 822, 823; evidence as to lost letter withdrawn from the jury by the court, 823.

(A.) Route 34149. Kearney to Kent, Nebraska—Continued.

Witnesses—Continued.

- Howard, H. N., clerk, Post-Office Department, testimony of, 806-808; searched the letter-books and could not find a press-copy of a letter said to have been addressed to R. M. Grimes, postmaster at Kearney, 807.
- Laird, Charles H., clerk, Post-Office Department, testimony of, 722, 723; produces receipts for warrants, 723.
- Miner, John R., one of the defendants; testimony of, relating to this route; witness and Vaile took this route in the division, 4207; (2 A), 568; the words "*Schedule thirteen hours*," are not in witness' handwriting; petition bears Senator Saunders' indorsement; witness never took a petition to a Senator or a Member in his life, 4275; witness was not the only one that had a key to box 714, 4275, 4276; testimony of Nightingale, 699; does not refresh his recollection, 4276; (3 A), oath of Peck, 571; is all in witness' handwriting, except the signatures, the body was written at one time and the words "two," "four," and "six," were apparently written at another; cannot say that he did not fill in the affidavit after it was sworn to, but does not believe he did, 4229, 4230.
- 9 A. Letter of Peck (582), is in witness' handwriting, 4231, 4276; does not know whether it inclosed petition (2 A), or how he hit upon a schedule of 13 hours, 4276, 4277.
- 34 A. Letter of Peck (668), is in witness' handwriting, 4278; his explanation of the letter, 4278, 4199, 4200.
- 35 A. Letter of Miner (668, 669), is in witness' handwriting, 4279.
- 39 A. Letter of Peck (695), signature and all is in witness' handwriting, 4224, 4225.
- 40 A. Letter of Peck (695), signature and all in witness' handwriting, 4225.
- 41 A. Letter of Peck (696), signature and all is in witness' handwriting, 4225.
- As to supply of Cedarville, 4200, 4201; subcontracts pay for expedition, 4205; first, learned during this trial that the mail bills were not put on this route, 4205.
- Nightingale, Thomas S., attorney-at-law, Loup City, Nebr., testimony of, 698, 699; wrote petition (2 A), except the words "*Schedule thirteen hours*," 698; after it was signed, sent the petition to John M. Peck, lock-box 714, Washington, D. C., 699; at that time the words "*Schedule thirteen hours*" were not in petition, 699.
- Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2320-2324, 2331, 2332, 2554-2556.
- Handwriting:
- 2 A. Petition (568), words "*schedule 13 hours*" was written by Miner, 2320; witness did not write it himself, 2552.
- 3 A. Oath of J. M. Peck (571), all except the signatures of Peck and Taylor by Miner, 2320.
- 6 A. Subcontract of Vaile (578-580), all written by Miner except signature of Vaile, which is genuine, 2320, 2560.
- 8 A. Letter of J. M. Peck (581), body was written by A. E. Boone and the signature of J. M. Peck by S. W. Dorsey, 2320, 2554.
- 9 A. Letter of J. M. Peck (582), signature and all by Miner, 2321, 2560.
- 12 A. Subcontract of French (603-606), all except the words R. M. Grimes was written by John W. Dorsey, 2321.
- 14 A. Letter of John W. Dorsey (611), signature and all by J. W. Dorsey, 2321.
- 15 A. Letter of John W. Dorsey (611), signature and all was written by J. W. Dorsey, 2321.
- 16 A. Letter of J. W. Dorsey (612), signature and all was written by J. W. Dorsey, 2321.
- 17 A. Letter of J. M. Peck (612), as written by John R. Miner upon U. S. Senate paper with the heading cut off, 2321.
- 18 A. Letter of J. W. Dorsey & Co. (612), written by J. W. Dorsey, 2321.
- 19 A. Letter of J. M. Peck (612), was all written by Miner, 2321, 2555.
- 20 A. Letter of John R. Miner, agent (612), was written by Miner, 2321.
- 21 A. Letter of J. M. Peck (613), was written by Miner, 2321, 2556.
- 22 A. Letter of J. W. Dorsey & Co. (613), was written by Miner, 2321.
- 23 A. Letter of John R. Miner, agent (662, 663), all the writing is by Miner, 2322.
- 24 A. Letter of John R. Miner (663), all the writing is by Miner, 2322.
- 33 A. Letter of John R. Miner (667), was written by Miner upon U. S. Senate paper with the heading cut off, 2324, 2331.
- 34 A. Letter of J. M. Peck (668), signature and all, was written by Miner on U. S. Senate paper, 2331.
- 38 A. Letter of J. R. Miner, agent (669, 670), all the MS. written by Miner, 2331.
- 39 A. Letter of J. M. Peck (695), all the MS., including signature of Peck, written by Miner, 2331, 2562.

(A.) *Route 34149. Kearney to Kent, Nebraska—Continued.*

Witnesses—Continued.

Rerdell, M. C.—Continued.

40 A. Letter of J. M. Peck (695), all the MS., including the signature of Peck, written by Miner, 2332, 2561.

41 A. Letter of J. M. Peck (696), all the MS., including the signature of Peck, written by Miner, 2332, 2562.

42 A. Letter of J. M. Peck (696), all the MS. and signature of Peck was written by Miner, 2332, 2562.

98 A. Letter of H. M. Vaile (751), signature and all, was written by Vaile, 2332.

Sleman, John B., Chief of the Pay Division, Sixth Auditor's Office, testimony of, 704-709, 715; method of paying mail contractors, 704, 705; produces reports, drafts, and warrants, 705; contractor's drafts, 708; notice of the filing of sub-contracts, 709.

Spangler, Walter, clerk inspection division, testimony of, for defense, 3339-3352; detail of business as to fines and deductions, 3339, 3340; record does not show that any mail bills were put upon this route; instructions were to put mail bills on all expedited routes where the schedules were over twenty-four hours; on this route there was a day-light schedule of thirteen hours, and the registers would show the time consumed; in case the contractor had gone direct from Kearney to Harp City, and had not supplied Cedarville in thirteen hours, witness would have made a deduction for the lost time, 3344; the letters of E. W. Gowan, P. M., Feb'y 2, 1881 (113 and 114 A, defense), was made the first knowledge the Department had the service was not performed according to contract, 3345; does not know that this information was communicated to Brady, 3352.

Vaile, Harvey M., one of the defendants, testimony of, relating to this route: Witness and Miner got this route in the division, 4020; had no knowledge and gave no instructions as to side supply of Cedarville, 4033; his first knowledge of the terms of the contract for expedition was when he got notice from the Department that it had been filed, 4033; first learned during this trial that there were no mail bills put on this route, 4033; has no knowledge how it happened, that having no communication with the Dorsey combination; that expedition was obtained on the 10th of July, 1879, upon an affidavit for expedition, made by that combination, 4069.

Woodward, P. Henry, post-office inspector, testimony of, 582-589; custody of the files, 582-589.

(R.) *Route 35015. Vermillion to Sioux Falls, Dak.*

Advertisement of November 1, 1877, 50 miles, once a week, 14 hours, 525.

Affidavits of:

Mangan, Jerome, postmaster at Brighton, Dak. Sworn to July 17, 1882, that after November 1, 1879, it was impracticable for subcontractor to deliver the mail on schedule time, owing to bad roads and stormy weather (80 R, defense), 3184.

Nichols, Adelbert P., carrier. Sworn to July 14, 1882, that he carried the mail from August, 1879, to the middle of February, 1880, and that it was impossible to make schedule time during the storms and bad roads (78 R, defense), 3183-3184.

Stephen, David, postmaster, Sunny Side, Dak. Sworn to July 17, 1882, that it was impracticable for subcontractor to deliver the mail on schedule time after November 1, 1879, owing to stormy weather and bad roads (79 R, defense), 3184.

Argument, opening of Mr. Bliss, referring specifically to this route, 242, 255, 261, 262, 269, 308, 334, 335; of W. W. Ker, for the prosecution, relating to this route, 4711-4718; of Jeremiah M. Wilson, for the defense, relating to this route, 5211-5213.

Contract of John W. Dorsey with the United States, dated March 15, 1878, \$398 per annum, sworn to before A. E. Boone, March 28, 1878, sureties, D. W. C. Wheeler and Sam'l N. Hoyt, witnessed by A. E. Boone and John R. Miner (1 R), 547, 1899.

Distance schedule (6 R), 1902.

Decision of court admitting secondary evidence to prove contents of lost letter, signed by Brady, 1938.

(R.) Route 35015. *Vermillion to Sioux Falls, Dak.*—Continued.

Drafts drawn by John W. Dorsey, contractor, on the Sixth Auditor, in favor of: Vaile, H. M., October 1, 1878, third quarter 1878 (17 R), 1947; witnessed by M. C. Rerdell and N. L. Griffin, October 1, 1878, first quarter 1879 (18 R), 1947; October 1, 1878, second quarter 1879 (19 R), 1947; July 30, 1879, third quarter 1879 (20 R), 1947; October 30, 1879, fourth quarter 1879 (21 R), 1947; April 1, 1879, first quarter 1880 (22 R), 1947; April 1, 1879, second quarter 1880 (23 R), 1947.

Exceptionstoring admitting: Orders of Brady, May 2, 1878 (3 R), June 10, 1878 (4 R), and of French, October 1, 1878 (5 R), 1902; oath of H. M. Vaile, subcontractor, sworn to May 14, 1879 (8 R), on account of its date, and that it is not proven, 1905; letter of A. Boynton, January 1, 1878 (13 R), on account of its date, 1906; petition of postmasters for extension of schedule (16 R), that it is filed after the order for expedition, 1907, 1908; to evidence of contract made with Williamson, as agent of Dorsey, in October, 1878, 1909; draft (17 R), dated October 1, 1878, on account of its date, 1947; to questions as to whether was time decreased, 1910; as to men and animals, except as to 3 trips a week, 1910; as to average mail, 1925; secondary evidence of contents of lost letter, signed by Brady, 1939; records entry of lost letter from Brady to Bennett, 1940.

Expedition, calculation for (not read, 12 R), 1906.

Fines and deductions, statement of, 726-727.

Indictment, setting out as overt acts, the filing of the oath of Vaile, as of May 23, 1879, and making and filing fraudulent petitions, as of July 10, 1879, and the order of Brady July 10, 1879, for increase and expedition, 1898.

Journal of the Postmaster General, extract from, showing entry of order, of July 10, 1879 (7 R, 1904), signed Thos. J. Brady, 4328, 4329.

Letters of:

Boynton, A., to J. P. Kidder, January 1, 1878; route is advertised as 50 miles, the distance is at least 75 miles; indorsed by J. P. Kidder (13 R), 1906.

Brady, Thos. J., to G. G. Bennett, December 15, 1879; *record entry* of "cannot extend the time, as it would change the terms of existing contract, and be an injustice to other bidders," 1939.

Mail bills showing departure of the mails from—

Sioux Falls, and arrival at Vermillion:

Fourth quarter 1879 (26 to 51½ R, defense), 3170-3177; (53 R, defense), 3177.

Vermillion, and arrival at Sioux Falls:

Fourth quarter 1879 (54 to 77 R, defense), 3177-3183.

Mail register showing arrivals and departures of the mail at—

Sioux Falls, December, 1879 (52 R, defense), 3177.

Oath of H. M. Vaile, *subcontractor*, sworn to May 14, 1879; original schedule, 3 trips, 3 men, and 3 animals; schedule 10 hours, 5 men, 10 animals (overt act averred as of May 23, 1879, 8 R), 1905.

Orders of:

Brady, May 2, 1878, from July 1, 1878, embrace Brighton (3 R), 1901; June 10, 1878, to change address to Lock Box 714 (4 R), 1901; March 31, 1879, filing subcontract of H. M. Vaile (14 R), 1906; December 23, 1878, from January 1, 1879, increase to two trips, allow \$408.90 (81 R, defense), 3305; to deduct \$82.30 for failures in fourth quarter 1879 (25 R, defense), 3170; March 16, 1880, from April 1, 1880, to commence at Worthing, curtailing distance 16 miles, reduce service to tri-weekly, deduct \$3,720.99, one month's extra pay (87 R, defense), 4032.

French, October 1, 1878, from July 1, 1878, allow \$10.90 for Brighton (5 R), 1901; July 10, 1879, upon jacket indorsed "Do this, Brady," from August 1, 1879, *increase to 6 trips, allow \$1,635.60; expedite to 10 hours, allow \$3,608.10* (overt act 7 R), 1904.

Payments, statement showing, to H. M. Vaile, assignee and subcontractor, 726-727.

Petitions (overt act, averred as of July 10, 1879): For daily service and schedule of 10 hours, recommended by G. G. Bennett (9 R), 1905; for daily service and schedule of 10 hours (10 R), 1905; similar petition (11 R), 1905-1906; of postmasters for extension of schedule to 16 hours, recommended by Granville G. Bennett, and indorsed, "Brewer, write Judge B. that cannot be done. Brady," filed December 15, 1879 (16 R), 1907; for increase to 3 trips, filed December 6, 1878 (82 R, defense), 3305. Signed by C. G. Shaw, postmaster, and C. C. Bridgman, assistant postmaster, Vermillion, for increase, and increase to 3 trips (84 R, defense), 3306; for increase to 3 trips (83, 85, and 86 R, defense), 3306; of postmasters for curtailment of service to Worthing, and reduction from daily to tri-weekly, March 5, 1880 (88 R, defense), 4032.

(R.) *Route 35015. Vermillion to Sioux Falls, Dak.*—Continued.

Proposal of John W. Dorsey, sworn to before A. E. Boone, January 19, 1878, witnessed by A. E. Boone and John R. Miner, sureties J. O. Evans and W. B. Moses (2 R), 553, 1-99.

Reports (not read), 1947-1948.

Revenues, certified transcript of, 2734-2737.

Subcontract of H. M. Vaile, dated April 1, 1878, full pay, signed John W. Dorsey, by John R. Miner (15 R), 1906-1907.

Warrants (not read), 1947-1948.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route.

Handwriting:

8 R. Oath of Vaile (1905) all written by Miner; except signature of Vaile, which is genuine, 2700.

10 R. Petition (1905) was written by Miner, 2700.

Brady, Thos. J., one of the defendants, testimony of, relating to this route.

Judge Kidder lived at Vermillion and was anxious for a daily mail, and as the contractors were losing money, to make it daily would make them lose more, so witness expedited the route to help the contractors a little, 3396; Bennett succeeded Kidder and wanted the same thing done some other place. He suggested that they cut down this route and witness refused, 3396. Identifies his indorsement "write Judge B. that it cannot be done" on petition (16 R. 1907) for extension of schedule; petition asked for two hours more running time than the original contract called for, that could not be done under the law, 3396; witness gave the order, but Brewer gave the reason, in the letter to Bennett (1939) declining to extend the schedule, that it would be an injustice to competing bidders, 3583; does not know that the distance was 75 miles, though advertised as only 50, or remember to have seen distance circular (6 R. 1902) stating the distance at 73 miles, or letter of Boynton (13 R. 1906) received January 14, 1878, stating the distance was 75 miles and that bidders would bid on the basis of 50 miles, this letter was sent to the Department after the advertisement was printed, 3555, 3556; it is the corresponding clerk's duty to arrange all matters of schedule, 3556; the order for expedition (7 R. 1904) on which the distance is stated as 75 miles, though advertised as 50, was made by French, but on jacket indorsed "Do this Brady," 3557.

Brewer, George J., corresponding clerk contract office, testimony of, 1879-1881, 1928-1933; identifies files, 1879-1880; notified Brady that the oath or the subcontractor instead of the contractor was filed, 1881; identifies copy of circular filled up by himself and signed Thos. J. Brady, 1928-1929; did not see Brady sign the circular, 1930; all circulars addressed to officials or covering an amount of money are signed; to the others a messenger attaches a fac-simile stamp, 1931; circulars addressed Delegate in Congress, under the practice of the office, were signed by Brady, 1933.

Leech, William A., subcontractor, testimony of, 1909-1917; made a contract with Williamson as agent, for Dorsey, in October, 1878; carried the mail to the middle of February, 1880, 1909; commenced carrying the mail one trip, 14-hour schedule, seventy-five miles, 1909; time was reduced to ten hours August 1, 1879, 1910; there were ten offices on the route, and a detention of 7 minutes to each office, 1910; 1 trip, 14-hour schedule, used a driver and 4 horses, 6 trips, 2 carriers and 15 horses, 1910; 3 trips, 14-hour schedule, 1 driver and 8 horses would be necessary, 1910, 1914; 3 trips a week, on a 10-hour schedule, 1 driver and 10 horses would be necessary, 1910, 1914, 1915; Brighton was always on the route, 1910; location of Kidder post-office was changed so as to make the distance 5 miles shorter, 1910; population of Sioux Falls, 3,000, Vermillion, 1,500 to 2,000, 1910; distance circular (6 R. 1902) submitted to jury by defense, 1912; Brighton, 1912-1913; mail connections, 1913-1914; men and animals, 1914, 1916; received his pay from Dorsey, corresponded with Miner, 1917.

Millie, Alexander, mail-carrier, testimony of, 1917-1924; carried the mail from Kidder to Sioux Falls, about 35 miles, for Leech, 1917; carried the mail 2 trips, afterwards 6 trips, 1917; 2 trips used 1 carrier and 1 horse for half the route, 1918; 6 trips drove himself and used 6 horses, 1918; men and animals, 1920-1921, 1923-1924; carried passengers, 1918; mail consisted sometimes of a postal card, and sometimes from 3 to 5 letters and papers, 1918; quantity of mail, 1921; mail arrived in Sioux Falls at 5 p. m.; left Sioux Falls for north and west at 7 a. m.; going east on railroad at 1 p. m., 1919.

Miner, John R., one of the defendants, testimony of, relating to this route.

(R.) *Route 35015. Vermillion to Sioux Falls, Dak—Continued.*

Witnesses—Continued.

Witness and Vaile took this route in the division, 4207.

Nichols, Adelbert P., mail-carrier, testimony of, 1924–1928; carried the mail from Vermillion to Kidder, about 35 miles, from August 1, 1879, until the middle of February, 1880, 6 trips, 1924; there were 8 post-offices, including Vermillion and Kidder, 1924; mail from Vermillion would average about 10 or 13 pounds, 1925; from Kidder the mail was much lighter, 1925; mail arrived at Vermillion at 5 p. m., 1925; mail left Vermillion going east 9.30 a. m.; going west at 4 p. m.; carried passengers, 1925; when he drove single, he used 4 horses; double, he used 8 horses; drove himself, 1926; largest mail was from 15 to 20 pounds, smallest, a postal card, 1926; men and animals, 1926–1928.

Prior, John H., clerk contract office, testimony of, 1899–1901, 1933–1936; produces book containing memorandum of circular to G. G. Bennett, 1899; identifies paper as a copy of the entry in the book, 1900; signature was written, 1901; manuscript of circulars is recorded in book, 1933; practice of the office as to circulars, 1934–1936.

Rerdell, M. C., one of the defendants, testimony of, relating to this route.

Handwriting:

2 R. Proposal of Dorsey (553, 1899); body was written by Miner; amount "398" filled in by witness; signature, J. W. Dorsey, genuine, 2349.

8 R. Oath of Vaile (1905); all except the signatures written by Miner; genuine signature of Vaile, 2349.

10 R. Petition (1905); body was written by Miner, 2349.

15 R. Subcontract of Vaile (1906–1907); all written by Miner, except signature of Vaile, which is genuine, 2349.

Shaw, Calvin G., postmaster Vermillion; testimony of, 1928, 1936–1942; sent petition for extension of schedule to G. G. Bennett, Delegate; received a reply through Mr. Bennett, signed Thos. J. Brady; reply was lost, 1928; by the flood in April, 1881, 1936–1937; reply stated that "request of petitioners could not be granted, for the reason that it would do injustice to competing bidders," 1939; received lost letter in response to petition sent to Judge Bennett, 1941; got up petition (16 R, 1907) of his own volition, 1942; did not administer an oath to Vaile as subcontractor, 1942.

Sleman, John B., Chief Pay Division, testimony of, 1903; produces reports, drafts, and warrants, 1903.

Snyder, Frank M., mail-carrier; testimony of, 1946; carried the mail from Vermillion to Worthing, 55 miles, in 8 hours; 3 trips, used 1 driver and 3 horses, 1946; time was extended to 12 hours July 1, 1881 (stricken out), 1946.

Vaile, Harvey M., one of the defendants; testimony of, relating to this route. Witness and Miner got this route in the division, 4020; made the affidavit (8 R. 1905), 4030; had never been on this route, 4067; did not know how many men and animals were in fact being used, 4068; conversation with Brewer as to making an affidavit as subcontractor, 4030; had no conversation with Brady upon that subject, 4030; made the affidavit upon the advertised distance of 50 miles, 4030, 4031, 4068; the route being 73 miles could not be properly run in ten hours, 4071; the reason that he did not get an affidavit from John W. Dorsey, 4069; had nothing to do with procuring petitions for increase of service and expedition to ten hours, or with the disallowance of petition of postmasters for extension of schedule to 16 hours, 4031; identifies his signature to subcontract (15R. 1906, 1907), 4070.

(T.) *Route 35051. Bismarck to Tongue River, Dakota.*

Advertisement of November 1, 1877, 250 miles, once a week, 84 hours, 525.

Affidavits of:

Boone, A. E., sworn to June 25, 1878, that no carriers would venture on the route unless protected by a large military escort; the route is wholly unnecessary, as there are no offices between Bismarck and Tongue River, both of which terminal points have ample mail facilities (7 T), 2138.

Burns, W. A., sworn to February 24, 1879, as to delay in making a trip in January, 1879 (68 T, defense), 2870.

Donahoe, W., sworn to May 8, 1879, as to cause of failures in first quarter, 1879 (67 T, defense), 2870.

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Affidavits of—Continued.

Downs, E. J., sworn to May 6, 1879, as to cause of failures in first quarter, 1879 (66 T, defense), 2869, 2870.

Crump, H. T., agent, sworn to March 27, 1880, as to failures (105 T, defense), 2890.

Johnson, W. A., carrier, sworn to March 27, 1880, relative to failures (106 T, defense), 2890.

Ketcham, Alvah, sworn to April 24, 1879, as to cause of failures in first quarter, 1879 (65 T, defense), 2869; sworn to March 27, 1880, as to failures (107 T, defense), 2890.

Savage, C. W., sworn to April 7, 1880, as to impossibility of making schedule time during the past winter (104 T, defense), 2889.

Argument, opening, of Mr. Bliss, relating specifically to this route, 246-247, 249, 255-256, 267, 272, 331, 334; of W. W. Ker, for the prosecution, relating to this route, 4718, 4741; of Jeremiah M. Wilson, for the defense, relating to this route, 5213-5228.

Calculations of failures: (112 T, defense), 2892; (139 T, defense), 2907; (148 T, defense), 2914-2915; (169 T, defense), 2919-2920; (204 T, defense), 2929.

Contract of John R. Miner with the United States, dated March 15, 1878, \$2,350 per annum, executed by Miner March 23, 1878, sureties D. W. C. Wheeler and S. N. Hoyt, witnessed by A. E. Boone and J. J. Barnard (1 T), 548, 2136.

Distance Circular, received January 6, 1879, states distance, Bismarck to Tongue River as 310 miles (211 T, defense), 3303.

Drafts drawn by John R. Miner, contractor, on the Sixth Auditor, in favor of:

Vaile, H. M., February 3, 1879, first quarter 1879, for \$8,750 (54 T), 2650; witnessed by M. C. Rerdell and J. M. Edmunds, October 1, 1878, second quarter 1879 (55 T), 2650; July 30, 1879, third quarter 1879 (56 T), 2650; October 30, 1879, fourth quarter 1879 (57 T), 2651; no date, first quarter 1880 (58 T), 2651; April 1, 1879, second quarter 1880 (59 T), 2651; no date, third quarter 1880 (59 T(?)), 2651.

Exceptions to ruling admitting—

Contract of Miner (1 T), dated March 15, 1878, on account of its date, 2136; proposal (2 T), dated January 19, 1878, that it is immaterial and on account of its date, 2137; order of Brady, October 4, 1878 (10 T), on account of its date, 2139; letter of Miner, October 4, 1878 (11 T), on account of its date, 2139; oath of Miner (12 T), signature is not proven, 2140; refusing to strike out testimony of Fennell as to what Rerdell said about petition for fictitious post-office, 2156, 2170-2171; remarks of the court, 2181; conversation of J. W. Dorsey in July, 1878, on account of the date, 2656; statement of witness (McLellan) as to what Dorsey said about the Second Assistant Postmaster-General, 2657; excluding question as to whether there were any overpayments to the witness at the last trial, and whether an employé of the government did not arrange to get the witnesses extra pay for a consideration, 2663-2664; admitting question as to what then occurred between the witness and Mr. Ker, 2665; to conversation of witness (Cable) with John W. Dorsey, 2666; excluding offer to prove what Miner had told witness that Vaile had said, 2683; excluding question asked witness (Maginnis) in relation to the establishment of military telegraph line, 3245; question as to whether service could have been performed on this route on the original contract time for the original contract price of \$2,350, 4061.

Fines and deductions, statement of, 727.

Indictment setting out as overt acts the making and filing of fraudulent petitions as of August 2, 1879, and the order of Brady of August 2, 1879, to increase three trips, 2136.

Jackets:

Inclosing letters and petitions and stating cost of increase and expedition, and that, "*contractor furnishes sworn statement that for services three times a week on present schedule, 11 men, 12 animals will be required, but 37 men and 73 animals will be required on 65-hour schedule*" (27 T), 2145; inclosing letters asking for six trips (31 T), 2147-2148.

Relating to failures in first quarter, 1879, indorsed by S. M. Lake, that the contractor has been paid the full rate for trips performed, including expedition (78 T, defense), 2874.

Relating to deductions and remissions in first quarter, 1880 (118 T, defense), 2898-2899.

Journal of the Postmaster-General, extract from, showing entry of order of August 21, 1879 (39 T, 2151), signed James N. Tyner, 4323.

Letters of:

Barrett, N. C., carrier, to Brady, January 23, 1880, relative to failures in fourth

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Letters of—Continued.

- quarter, 1879 (110 T, defense), 2891-2-92; April 30, 1880, relative to failures in first quarter, 1880 (136 T, defense), 2911; August 1, 1880, relative to failures in second quarter, 1880 (141 T, defense), 2913.
- Bean, Ed. S., to J. E. White, Superintendent Railway Mail Service, August 9, 1879, that the mails delivered were soaking wet, having been drenched in the Powder River (87 T, defense), 2880.
- Billings, Frederick, president Northern Pacific Railroad Company, to Brady, New York, July 31, 1879, urgently asking for daily service, Sundays excepted, indorsed "Brems, increase Bismarck to Tongue River, as requested within, to six times a week, Brady"; "make the order to commence as quickly as the contractor can put on the increased service—B." (32 T), 2148.
- Bingham, H. H., to Brady, July 11, 1879, stating the increased service seems to be very much needed; hopes he can determine the question favorably before July 1 (34 T), 2148, 2149.
- Boone, A. E., to Brady, June 25, 1878, inclosing affidavit as to the impracticability of the route (6 T), 2138.
- Burns, D. T., carrier, to Brady, June 1, 1879, failures in first quarter, 1879 (70 T, defense), 2871; January 29, 1880, failures in fourth quarter, 1879, (109 T, defense), 2891; August 2, 1880, delays in second quarter, 1880, not the fault of contractors (145 T, defense), 2910.
- Charles, John H., to Kidder, July 30, 1878; present service is entirely inadequate; asks increase to three trips on a schedule of 65 hours; indorsed by J. P. Kidder, earnestly requesting increase asked for (22 T), 2143.
- Corey, Emer M., to Key, July 20, 1878; asks consideration of increase to three trips on a schedule of 65 hours (19 T), 2142.
- Crosby, H. T., to the Postmaster-General, July 6, 1880, inclosing copy of report from Major Guido Ilges (120 T, defense), 2899.
- Dorsey, S. W., to General Rosser, United States Senate Chamber, April 20, 1878, asking him to address a letter to Second Assistant giving the distance from Bismarck to Tongue River (3 T), 2137.
- Flannery, George P., to Brady, July 20, 1878; suggests increase to three trips, and reduction of time to 65 hours; it will result in great benefit to worthy pioneers (18 T), 2142.
- Fleicher, Thos., carrier, to Brady, April 30, 1880, failures in first quarter, 1880 (135 T, defense), 2910-2911; Aug. 1, 1880, delays in second quarter, 1880, not the fault of contractors (146 T, defense), 2910.
- Hunt, R. M., carrier, to Brady, April 27, 1879, failures in first quarter, 1879 (72 T, defense), 2871; January 20, 1880, failures in fourth quarter, 1879, not the fault of contractors (111 T, defense), 2892; July 22, 1880, delays in second quarter, 1880, were not in consequence of any neglect of contractors (147 T, defense), 2910.
- Ilges, Guido, to Lieutenant Rice, June 10, 1880; reports of Indian depredations are greatly exaggerated; has ordered a detail to Little Missouri Station to guard the mails; has also stationed soldiers at Lake Station and O'Fallon Station; referred, through Ruggles, Terry, Sheridan, and Drum, to the Postmaster-General (119 T, defense), 2895-2897.
- Ketcham, John, carrier, to Brady, April 27, 1879, failures in first quarter, 1879 (74 T, defense), 2872; January 23, 1880, failures in fourth quarter, 1879, not the result of negligence of the contractors (113 T, defense), 2893; July 25, 1880, delays in second quarter, 1880, not the fault of contractors (142 T, defense), 2909.
- Kidder, J. P., to Key, H. R., March 1, 1878; large settlements in the Yellowstone as well as the military are justly entitled to daily mail; indorsed and recommended by Martin Maginnis (35 T), 2150.
- Loundsberry, C. A., postmaster, Bismarck, to Brady, July 19, 1878; when the route is established time should be reduced to at least 65 hours; the service proposed will cost less than the War Department paid last year for carriers from Tongue River to telegraphic points (17 T), 2141-2142. To Superintendent Railway Mail Service, Chicago, October 18, 1878; all mail from points east of the Mississippi for Tongue River and the Yellowstone should be sent by Bismarck by so doing 300 miles of staging, 500 miles of railroad, and much time will be saved (26 T), 2145. To Brady, no date; referring to schedule prepared by department, states that Sunday instead of Monday should be fixed as the date of departure; that the mail arrives from the east at 7 a. m. Sunday, but none on Monday (49 T), 2154. To Brady, January 1, 1879, reports that tri-weekly service on a 65-hour schedule was commenced on that day (210 T, defense), 3302; March 15, 1879, as to cause of delays and failures in first quarter, 1879 (73 T, defense), 2872; August 23, 1879, as to wet and dam-

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Letters of—Continued.

Loundsberry, C. A.—Continued.

aged mails in third quarter, 1879 (82 T, defense), 2877; April 1, 1880, every effort was made to carry the mail regularly during the last winter; it was simply impossible to put the mails through on time (133 T, defense), 2897-2898; May 30, 1880, the Indians attacked Beaver Station and killed 2 men and 6 head of stock (121 T, defense), 2899.

McCrary, G. W., Secretary of War, to Postmaster-General, December 12, 1878, inclosing copy of the letter of General Miles, and stating that the General of the Army recommends tri-weekly mail (25 T), 2146; duplicate of (28 T, 33 T), 2148.

Maginnis, Martin, Delegate, to Second Assistant, July 23, 1878; once-a-week service on a long schedule will not be of much use; tri-weekly service on a 65-hour schedule should be put on at once (14 T), 2141.

Miles, General Nelson A., to Postmaster-General, July 28, 1878; recommends increase to three or six trips; aside from the military necessities the settlements are increasing rapidly; much mail matter is now carried over the Union Pacific by Bozeman; the whole Territory will be benefited by the more direct and short route to Bismarck; indorsed by James E. White, Superintendent R. M. S. (25 T), 2144. Copy of letter to Postmaster-General, December 4, 1878, requesting increase to tri-weekly or daily mail; that the military post at Forts Keogh and Custer, garrisoned by about 1,500 troops, and at least 1,000 settlers in the Yellowstone, are dependent principally upon this route; indorsed and recommended by General Alfred H. Terry; referred through Wm. D. Whipple and E. D. Townsend (30 T), 2146-2147.

Miner, John R., B., to Brady asking discontinuance of the route, and stating that there are no offices between Bismarck and Tongue River, which latter office is supplied from Fort Buford; that the distance is 350 instead of 250 miles, as advertised; that the country is occupied by hostile Indians, and that no mail can be carried, except with a large military escort; indorsed by Brady, June 25, 1878, "Judge Kidder presents this with the statement that he has reason to believe that the facts set forth are correct" (5 T), 2137, 2138; October 4, 1878, will carry the mail two additional trips on a schedule of 65 hours for \$32,650 (11 T), 2139; and Vaile to Brady, February 3, 1879, refiling subcontract (47 T), 2153; January 29, 1879, requesting withdrawal of subcontract (41 T), 2152.

Munsie, Newman, carrier, to Brady, April 30, 1880, as to cause of failure first quarter, 1880 (137 T, defense), 2911; August 2, 1880, as to failures in second quarter, 1880 (144 T, defense), 2914.

O'Toole, W. D. (postmaster Fort Keogh), to Brady, August 23, 1879, relative to damaged mails third quarter, 1879 (83 T, defense), 2877-2878.

Raymond, J. W., to Key, July 18, 1878, stating request for three trips is a just one and for the public welfare, recommended by J. P. Kidder (13 T), 2140.

Riley, William, carrier, to Brady, May 1, 1879, failures in first quarter 1879 (71 T, defense), 2871; January 29, 1880, failures in fourth quarter 1879 not the result of negligence on the part of contractors (114 T, defense), 2893.

Rosser, Thos. S., to Brady, April 21, 1878, in compliance with a request of Senator Dorsey, states the distance from Bismarck to Tongue River as 303 miles; by railroad line, 289 miles (4 T), 2135.

Savage, C. W., postmaster, Miles City, December 1, 1878, reports the order of P. M. General complied with; that the mails are received regularly (212 T, defense), 3367.

Vaile, H. M., and Miner, to Brady, January 29, 1879, requesting withdrawal of subcontract (41 T), 2152; February 3, 1879, refiling subcontract (47 T), 2153.

Williamson, L. P., to John R. Miner, September 16, 1879, relative to the mails wet in the Powder River (90 T, defense), 2882; to Brady, Bismarck, D. T., April 12, 1881; we are doing all that is possible to keep the mails on time; Missouri River is broken up, and ferry-boat sunk; roads for 150 miles of there are almost impassable; refers to postmaster at Miles City for confirmation. Indorsed: "General Brady says, take no further action at present. April 18. Brewer." Submitted to the Postmaster-General by Mr. French (209 T, defense), 3302.

Wright, C. B., president Northern Pacific Railroad Company, to Key, July 15, 1878, calls attention to the rapid and extensive settlement of the country, and the inadequate mail facilities, and asks increase to three trips on a schedule of 65 hours (20 T), 2142-2143; to Brady, July 15, 1878, language identical with 20 T (21 T), 2143.

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Mail bills showing departure of each mail from—

Bismarck and their arrival at Miles City for fourth quarter 1880 (171 to 178 T, defense), 2921-2922; (182 to 203 T, defense), 2924-2929.

Miles City and their arrival at Bismarck for second quarter 1880 (150 to 168, T, defense), 2915-2919.

Fort Keogh and their arrival at Bismarck for third quarter 1879 (97 to 101 T, defense), 2886-2887.

Mail registers showing the arrivals and departures of the mail at—

Bismarck for January, 1879 (69 T, defense) 2870; February, 1879 (80 T, defense), 2875-2876; March, 1879 (79 T, defense), 2875; May, 1879 (88 T, defense), 2881; June, 1879 (86 T, defense), 2879-2880; July, 1879 (96 T, defense), 2885-2886; August, 1879 (92 T, defense), 2883; September, 1879 (91 T, defense), 2882-2883; December, 1879 (103 T, defense), 2888; January, 1880 (127 T, defense), 2902-2903; February, 1880 (128 T, defense), 2903-2904; March, 1880 (129 T, defense), 2904-2905; April, 1880 (138 T, defense), 2912; May, 1880 (123 T, defense), 2899-2900; June, 1880 (124 T, defense), 2900-2901; December, 1880 (181 T, defense), 2924.

Fort Keogh, for January, 1879 (76 T, defense), 2873; February, 1879 (75 T, defense), 2872-2873; March, 1879 (77 T, defense), 2874; April, 1879 (85 T, defense), 2879; June, 1879 (84 T, defense), 2878; July, 1879 (95 T, defense), 2885; August, 1879 (94 T, defense), 2884; September, 1879 (93 T, defense), 2884; October, 1879 (116 T, defense), 2894; December, 1879 (115 T, defense), 2893-2894; January 1880 (130 T, defense), 2905-2906; February, 1880 (131 T, defense), 2906; April, 1880 (139 T, defense), 2912; May, 1880 (140 T, defense), 2913.

Miles City, for May, 1880 (106 T, defense), 2902; June, 1880 (105 T, defense) 2901; November, 1880 (179 T, defense), 2922-2923; December, 1880 (180 T, defense), 2923.

Memoranda:

Indorsement of Lake to Brady, March 9, 1881, stating full remission has already been made for failures to make schedule time; that the deduction still standing is for failure of trips, which he apprehends it is not his purpose to disturb (108 T, defense), 2891; of the evidence, as to failures in second quarter 1880, that an inspector be sent over the route (143 T, defense), 2914; of Lake addressed to Brady, March 9, 1881, remission in full for loss of schedule time has been made, the balance still standing is for failure of trips (122 T, defense), 2898.

Memorandum of General Nelson A. Miles that he intended to call at Post-Office Department and urge increase on this route (29 T), 2146.

Newspaper slip containing an article under the caption, "The Struggles and Sacrifices of Eastern Montana; urgent need of an increase of mail service," 2149-2150; headed Telegrams to the Star: "Great flood in Dakota—Ice piled 40 feet high at Bismarck—Trees 3 feet through cut down by ice flood—Mandan 10 feet under water," Bismarck, Dak., April 5. * * * (208 T, defense), 3301.

Oaths:

Of John R. Miner, contractor, sworn to September 30, 1878, original schedule, 3 trips, 12 men and 13 animals; schedule of 65 hours, 150 men and 150 animals (12 T), 2140; jacket (27 T) states that "*contractor furnishes sworn statement that for services three times a week on present schedule, 11 men, 12 animals will be required; but 37 men and 73 animals will be required on 65 hour schedule,*" 2145.

Orders of:

Brady, October 1, 1878, filing subcontract of H. M. Vaile (8 T), 2138; October 4, 1878, *increase to three trips, allow \$4,700, expedite to 65 hours, allow \$27,950, less than pro rata* (10 T), 2139; January 29, 1879, to withdraw subcontract January 1, 1879, "*special T. J. B.*" (40 T), 2152; February 3, 1879, rescinding order of January 29, withdrawing subcontract marked "*special T. J. B.*" (46 T), 2153; February 12, 1879, to change schedule (42 T), 2152; September 30, 1879, to change schedule (44 T), 2152-2153; deducting \$2,515.95 for failures in first quarter, 1879, and imposing a fine of \$100 for wet mails (64 T, defense), 2857-2858; January 24, 1880, deducting \$4,503.89 for failures in fourth quarter, 1879; July 13, 1880, remitting \$2,267.49 (102 T, defense), 2887; to deduct \$5,797.55 for failures in second quarter, 1880 (134 T, defense), 2908; to deduct \$588.23, second quarter, 1880 (149 T, defense), 2909; to deduct \$1,916.26 for failures in fourth quarter, 1880 (170 T, defense), 2920.

French, August 2, 1879, in accordance with instructions of Brady indorsed on letter of Billings (32 T) from August 11, 1879, *increase three trips, allow \$35,000 additional* (39 T, overt act), 2151; to deduct \$111.82 for failure to arrive in second quarter, 1879 (81 T, defense), 2876-2877; to deduct \$253.70 for delays and damaged mails in third quarter, 1879 (89 T, defense), 2881; to deduct \$13,328.56 for failures in first quarter, 1880; order of Brady, July 13, 1880, to remit \$11,036.25 of deductions (117 T, defense), 2895.

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Payments, statement showing, to H. M. Vaile, Lewis Johnson & Co., W. N. Roach, J. A. J. Creswell, Thos. C. Pearsall, assignees; John R. Miner, contractor, and H. M. Vaile, subcontractor.

Petitions: (overt act, averred as of August 2, 1879,) from Bismarck, July 22, 1878, for increase to three trips and 65 hour schedule (15 T), 2141; from Miles City, for three trips and 65 hour schedule (16 T), 2141; from citizens of Montana, urging increase to three trips and schedule of 65 hours (23 T), 2144; similar petition (24 T), 2144, stating that once-a-week service is entirely inadequate, and asking for a daily mail, indorsed and recommended by Nelson A. Miles, July 31, 1878 (36 T), 2150; from Minneapolis, December 23, 1878, mail facilities are entirely inadequate, asking a daily line and reduction of time to 65 hours, filed April 10, 1879 (37 T), 2151; from Saint Paul, language of which is identical with 37 T (38 T), 2151; from Miles City for the establishment of mail route due westerly from Bismarck instead of via Buford, as at present, filed February 2, 1878 (205 T, defense), 3300.

Proposal of John R. Miner, dated January 19, 1878, sworn to before Albert E. Boone; sureties, J. T. Chidester and John D. Adams; witnessed by A. E. Boone and M. C. Rerdell (2 T), 2136.

Remissions, statement of, 727.

Reports of the Auditor, certifying balances due on this route, 2650-2651.

Revenues, certified transcript of, 2733.

Schedules of arrivals and departures, dated May 6, 1879, signed by John R. Miner, contractor, indorsed "General Brady says order this" (43 T), 2152; recommended by the postmasters at Bismarck and Fort Keogh and the contractor, annexed to a circular dated August 2, 1879 (45 T), 2153.

Subcontract of H. M. Vaile dated July 1, 1878, full pay (9 T), 2138-2139.

Telegrams of:

C. A. Loundsbury to Brady, January 5, 1880, regarding Keogh service *whole* (what 2200) shall be regarded failure, impossible to perform in winter on present schedule, could probably secure 6 days' service, received December 6, 1880 (48 T), 2153-2154.

From Brady to postmaster, December 4, 1881, report by telegram the extent and cause of delayed mails on Bismarck and Miles City route (50 T, defense), 2198; no date; in case of absolute failure employ temporary service at not to exceed \$6,900 per annum (51 T, defense), 2200.

Williamson, L. P., to Miner, April 5, 1881: Dispatch from Fort Keogh not correct; river is full of floating ice; ferry-boats all washed away and sunk (207 T, defense), 3301.

Whistler, commanding, to P. M. Gen'l James, Fort Keogh, March 27, 188-, reports gross irregularity of mail service for the past four months; we have not received an average of two mails a week; military necessity requires that the contract for six times a week should be properly fulfilled. Indorsed: March 28, 1881. "Brewer: Telegraph contractor that this service must be put in first-class order immediately, or he will be declared a failing contractor. Brady." (206 T, defense), 3301.

Warrants, in favor of Vaile and Miner, those for first, second, and third quarters, 1881, being signed by Thomas L. James, Postmaster-General, 2650-2651.

Witnesses:

Barnes, Wilbur A., mail carrier, testimony of, 2171-2173; carried the mail from January 1 to April, 1879; there were then 18 serviceable horses on the route, 2171; made three round trips, took from 7 to 9 days each way, afterwards drove from Powder Horn to Miles City, 2171; there were 8 carriers when he was driving; twice he overtook the other carriers, 2172; mail to Miles City would weigh from 50 to 250 pounds, to Bismarck it was very light, 2172.

Boone, A. E., mail contractor, testimony of, relating to this route, 2172.

3 T. Letter of S. W. Dorsey (2137) is in the handwriting of S. W. Dorsey, 2702.

11 T. Letter of John R. Miner (2139) is in the handwriting of Miner, 2702.

12 T. Oath of Miner (2140), all except the signature of Kellogg, is in the handwriting of Miner, 2702.

24 T. Petition (2144) was written by Rerdell, 2702.

33 T. Letter of G. G. Bennett (not in the record), body was written by Miner, 2702.

35 T. Letter of J. P. Kidder (2150), body written by Miner, signature of Kidder is genuine, 2702.

38 T. Petition (2151), all except "St. Paul, Minn.," "and principal business men," was written by Rerdell, 2702.

43 T. Schedule of arrivals and departures (2152) was filled in by Miner, 2702.

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Witnesses—Continued.

Brady, Thomas J., one of the defendants, testimony of, relating to this route; thinks this route was made a post-route in the winter of 1876-7; does not know how it came to be advertised at once a week; his attention was first called to it some time in 1878 by General Miles, who wanted a more frequent mail service directly to the mouth of the Tongue River; as it was, the mail had to go around by Ogden, Helena, and Bozeman, 3397; they determined to increase it, but how to do it at the ridiculous figure it had been taken by the contractor was a stumbling block, 3397; besides, the schedule was too slow; believed the service was needed and increased it; even then it was not a very expensive service; a good service, running night and day, was worth from \$25 to \$35 a mile; this service cost \$37.63 per mile, 3397; does not know whether by expedition it could have been transformed into a profitable contract, 3451; they preferred to help the contractors rather than crush them, 3452; it tended to make a more efficient service to make it three trips, and much more efficient to make it fast service; that could not be done with any regard to the rights and safety of the contractors at the price they had originally bid, 3452; it was bid off at \$2,350; the distance was misstated, and to require the contractors to perform three-times-a-week service at that figure would have been ruinous to them, and the only way to do was to increase and expedite it and pay the contractor something near what it would actually cost him, 3452, 3453; if the contract was a losing one, for one trip, at \$2,350, the question whether it became a gaining one by multiplying that sum by three and making three trips is one for the contractor; witness would not want to undertake it at that price, 3453; if the allowance for expedition is to be gauged by the number of men and horses used on the one service and the number of men and horses that would be used on the other service, the question as to how he would in that way convert a losing service at one trip and slow time into a profitable service at three trips and fast time if he did not make an allowance in excess of the amount authorized under the statute is a matter the contractor could tell much more about—in some way he came to the conclusion they benefited the contractors more or less in that way, 3453; thinks he examined the affidavit (12 P. T., 2140), but did not enter into any calculation as to the speed required of each horse; examined simply as to the cost of service under the expedited pay per mile, 3440; when Miner swore that it would take 150 men to make the expedited time, witness assumed it was correct, 3430; it was a brand new route; they had to do everything—buy and store everything for the coming winter, and build their stations; all that is included in the law; there was no absurd results in the affidavits, 3430; as the route was a new one, running through the bad lands of Dakota, which were infested by Indians, 150 men did not seem an unnecessary number; but while they accepted the affidavit, they did not make the expedition upon that basis, 3442; pro rata would have been some \$77,000, 3443; thinks he stated to the contractor emphatically that it could not be expedited upon any such basis, 3443; the oath and the proposition seem to have been filed on the same day, 3443; that shows how they expedited business, 3443; but if the jacket was made on October 4, and the order not until December, they did not get along as rapidly as he thought, 3443; it would seem that the oath was filed at one time and the proposition at a later time during the day, 3444; does not remember the statement that it would take 12 men on existing schedule and 150 men on a schedule of 65 hours attracted any attention, 3448; order (10 T, 2139) and the oath (12 T, 2140) are the papers that show that the order was less than pro rata, 3469; the oath referred to on jacket (27 T, 2145) upon which the pro rata for expedition would have been \$26,884 instead of \$27,950, as allowed, was never considered or acted upon, 3470; there being on file one affidavit of Miner specifying the existing number was 12 men and 13 animals, and that the number needed was 150 men and 150 animals, and another affidavit specified that the existing number was 11 men and 12 animals, and the number needed was but 37 men and 73 animals, witness cannot say why the later affidavit was not acted upon, 3471; he made the order to expedite to 65 hours (10 T, 2139), first adding to the \$2,350, \$35,000, and then adding 3 trips more, making a total of \$70,000, for the purpose of getting good service, 3453; does not remember that the contractor sought to be relieved of the contract, 3540, 3453-3554; identifies his indorsement on letter of Miner "B" (5 T, 2137-2138), asking for the discontinuance of the route to the effect that it was filed by Judge Kidder, who stated that he had reason to believe that the facts set forth were correct, 3453-3454; does not remember why he did not make a temporary con-

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Witnesses—Continued

Brady, Thomas J.—Continued.

tract and advertise in the miscellaneous letting, thus throwing the matter open to public bidding, instead of making the order for increase and expedition; probably could not have gotten anybody to take the temporary contract for 6 months for such a route, 3454; he could not have allowed the service to have gone along on the existing contract, and then have advertised in the miscellaneous advertisement and have done what he wanted to do, 3454; it was the policy of the Department at that time to do things in that way, and not to abolish a route simply for the purpose of getting temporary service on it, 3540; the miscellaneous letting would have taken place in the fall of 1878, and it being a new route established over a bad country the price would have been probably far in excess of what it was under expedition, and scarce anybody would have undertaken to put service on at the commencement of the winter, 3454; he frequently made temporary contracts pending readvertisement; on routes as long as this one here they had a contractor bound for the service, and if they had thrown it open to public bidding they would have run the risk of having it taken too low, 3540; there was a greater risk of having it done on this route than the others, as it was a new route, and probably the most difficult one in the country; it was no newer than the Rock Creek and Fort Custer, but more difficult, 3540; does not remember that in many cases he made contracts for temporary service in the fall of 1878 upon routes as long as the Bismarck and Fort Keogh; or that he made a temporary contract from Watertown to Big Stone City, Dakota, 490 miles, or from Bijou Hills to Camp Robinson, 300 miles long; possibly he made one with Meserole in the fall of 1878 from Ouray to Salinas, 328 miles long, 3542; does not remember that he made a similar contract with A. H. Brown on the same route, except putting the distance at 347 miles, 3542; or that he put an advertisement of the Rock Creek and Fort Custer route, 340 miles long, into the miscellaneous letting of 1878, 3541; several important routes were not let in February, 1878, but were readvertised for the purpose of getting 3 additional trips for 3d and 4th class matter; thinks the Redding and Roseburg was one, 3541; and the route from Franklin to Helena, 495 miles, 7 trips, was another, 3542; the bond required on the Bismarck and Fort Keogh route was \$2,500, and there was no change in the bond when the service was run up to \$70,000; that was the only security, but they always have the power of recoupment, 3582; where there is a failure on an expedited or increased route it would probably be relet at the original trips and speed, in that case the bond would be good, 3582; the advertisement of this route contained a notice to contractors that they must inform themselves of the length of the route, 3456; and they would not, as a general rule, be entitled to additional pay for any increase over the advertised distance; the distance was properly stated in order to make schedule time, 3456; it would be right to extend the schedule time fixed in the contract, where it is clearly a misstatement of distance, and where the schedule has been based on the misstated distance, 3457; that would be permissible under the contract, and a just thing to do, 3457; if the distance proved shorter than advertised, they would not shorten the time without an additional allowance to the contractor, 3457.

Brewer, George J., corresponding clerk, testimony of, 2679-2680, 2082-2083; identifies files, 2083-2085; identifies jacket (27 T, 2145), 2679; when he made up the jacket he had the sworn statement referred to on the brief, 2680; "3 a. w." stands for three times a week.

Cable, Isaac, teamster, testimony of, 2663-2672; helped John W. Dorsey in building the ranches; when they were at Beaver Creek, the latter part of July, 1878, heard a conversation between him and Pennell; the men had made a kick for their pay, 2666; Dorsey said that they did not expect to make any money out of the contract at figures that they had it at that time; that they took these contracts low to keep out small bids, knowing that there would be an increase of service, 2666; that they would get the increase with the influence of his brother, Senator Dorsey; that there was a ring formed in Washington, and that if it was increased, as it was expected, their pay would be \$150,000 at the end of the year, 2666-2667; witness had a conversation with J. W. Dorsey in August; Dorsey asked witness if he thought the men would sign a petition for a post-office on the west side of the Little Missouri, in order to make the road longer; at that time there was nobody living there, 2667; cross-examined, 2667-2672.

(T.) *Route 35015. Bismarck to Tongue River, Dak.—Continued.*

Witnesses—Continued.

Cole, John W., mail-carrier, testimony of, 2182-2188; kept Coal Bank Station about a month and a half, afterwards drove between Pennell and Powder River, 63 miles, 2182; and between Powder River and Keogh, about 40 miles, 2182-2183; commenced six trips' service August 16, 1879, 2183; between Pennell and Powder River, three trips, there were 8 horses and 2 carriers, between Powder River and Fort Keogh, six trips, there were 8 horses and 1 extra and 2 drivers, 2183; the Buford and the Bismarck mail went over the same route between Powder River and Keogh, both mails had the same carrier, 2183; failed to take the mail into Miles City some 6 or 8 times during the winter, they were ordered to wait at Powder River 12 hours, and if no mail came to run in, 2184; once, when he had two mails, left one at Miles City and took the other in, 2184; men and animals, 2185-2187.

Dorsey, John W., one of the defendants, testimony of, relating to this route: Arrangements for starting the service, building ranches and stocking this route, 4088-4089; this interview with General Miles at Fort Keogh, 4091-4092; denies conversation with Cole McLellan (2656-2658), 4093-4094, 4145-4146, and with Isaac Cable (2666), 4095, 4144-4145; testimony of Pennell (2157) as to conversation with witness is substantially true, 4096, 4147-4148; testimony of Loundsberry (2681) as to witness's statement in regard to side post with certain qualifications is substantially true, 4106, 4148-4149, identifies his letter to S. W. Dorsey (26X, 2239), 4131; his explanation of letter, 4131-4133; identifies signature to letter of Rerdell (27X, 2239); his explanation of letter, 4146-4147.

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route: Remembers changing the amount to be bid in the bidding book on this route, 3875; knew that the Northern Pacific Railroad was about being constructed and the line would be increased, 3876; it was an easy country to run the mail through, except the bad lands, a little strip on the Little Missouri, 3876; there were no people there except at the terminal points, 3876; anybody who knew the country at that time knew that the route was bound to be increased, 3921; thinks C. B. Wright told him in the winter of 1878 that they were preparing to go ahead with the railroad, 3921; asked Rerdell to use his vacation in July, 1878, and go out and help J. W. Dorsey on this route; at that time J. W. Dorsey was in Minnesota, Peck was in New Mexico, Miner was in Denver, and Boone was here, 3920; furnished him with passes, letters of introduction, and put about \$3,000 at his control, 3920, 3922; but does not recollect the instructions that he gave him, 3922; or that he told him the route was to be increased and expedited, 3922; or whether he gave him any instructions as to building ranches and getting up petitions, 3920, 3922; does not know whether J. W. Dorsey & Co. had an account at the German American National Bank; witness took Rerdell to that bank and told them he was authorized to draw this money by signing J. W. Dorsey & Co.'s name; believes that Rerdell left his signature there, 3923; witness furnished the money and authorized himself to permit Rerdell to sign their name on their bank account, 3923; Rerdell might have to use the money before he saw J. W. Dorsey; thinks there was some talk about getting grain, 3924; did not tell Rerdell to have a post-office established out there, 3924; does not know that Miner or Boone asked to be relieved of the contract on the ground that it was not needed, 3921.

Lambert, Howard T., mail-carrier, testimony of, 2173-2182; carried the mail from January 3 to May 20, 1879, made two round trips, took from 8 to 10 days each way, 2173-2174; mail towards Bismarck weighed from 30 to 40 pounds, the other way he had two sacks, 2174; there were 22 serviceable horses, one pair of mules, and 2 or 3 cripples on the route, and 8 drivers, 2174; afterwards there was a pair of horses and from 22 to 23 mules added, 2174; there were no intermediate post-offices, 2174; afterwards drove from Pennell to Powder River, 63 miles, there were 8 horses and 1 other driver on that portion of the route, 2175; John W. Dorsey told witness in September, 1878, that he expected to have the route expedited, 2175, 2178-2179; in January, 1879, Dorsey told witness that his brother would have everything on there and make a good road of it, 2175, 2179-2181; Fort Buford mail ran over the same route from Powder River to Fort Keogh, witness carried both mails, 2176; once he overtook another carrier and carried both mails into Bismarck, 2176; men and animals, 2177.

Loundsberry, C. A., postmaster, Bismarck, Dak., testimony of, 2188-2202, 2681-2683; has been postmaster since April, 1876; the mail left Bismarck on the 1st, 7th, 14th, 21st, and 28th of July, 1878, and arrived on the 19th, 22d, and 26th of

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Witnesses—Continued.

Lounsberry, C. A.—Continued.

July, 2188; in the winter of 1879-'80 from 1 to 7 mails were received at one time, 2188; has seen the mail taken from the post-office at 7 or 8 a. m., in the bank building as late as 10 or 11 a. m., 2189; before this route was established all mails for Montana were sent by Omaha, 2191; Indian troubles, 2193-2194; witness recommended increase and expedition, but found subsequently that it was absolutely impossible to carry the mail on a schedule of 65 hours, 2194-2195; once about three weeks mails came in on the railroad, delayed on account of storms, 2195-2196; at first two sacks covered all the mail, afterwards it increased very rapidly, 2196-2197; bad lands, 2197-2198; identifies telegram (50 T, defense, 2198), 2198; in telegram (48 T, 2153-2154) the word "whole" should be "what," 2200; in pursuance of telegram (51 T, 2200) witness was unable to secure temporary service, 2202; since he was on the stand John W. Dorsey told witness that he was glad he was not examined as to the post-office on the Little Missouri, and that that was the only wrong he had asked anyone to do in connection with the whole business, 2681-2682; in December, 1878, John W. Dorsey presented to witness a petition for a post-office on the Little Missouri; witness refused to certify to it, as there was no settlement there and no necessity for a post-office, 2681.

Maginnis Martin, Delegate, Montana, testimony of, for the defense; has been a Delegate in Congress from Montana for six consecutive terms, 3240; witness interested himself in the establishment of this route, 3240; and afterwards in having it increased and expedited, there were memorials of the legislature and petitions of the board of trade, and petition from General Miles with General Sherman's indorsement, 3242; witness went with General Miles to the Second Assistant Postmaster-General; witness stated to Brady that this route would reduce the distance the mail had to travel from fifteen hundred or two thousand miles to two hundred and fifty or three hundred miles and supply Fort Keogh, Miles City, and all that valley, 3242; the Salisburys controlled all the express business in Montana, and witness wanted to break down the monopoly, 3243; wrote letter (14 T, 2141), 3243; identifies his indorsement on letter of Kidder (35 T, 2150), 3243; 35 T, is not in Judge Kidder's handwriting, 3249; recognizes names signed to petitions (16 T, 2141, 23 T, 2144, and 24 T, 2144), 3243, 3246; does not know the handwriting to 24 T, 3249; there were a daily mail and telegraph to Bismarck, 3247; identifies railroad map, 3247; development of the country, 3247, 3248.

McLellan, Coll, station keeper, testimony of, 2655-2665; helped to build the ranches, afterwards kept station at O'Fallon's Creek for five or six months, 2656; kept four horses at his station; at times there would be from two to four drivers there, 2656; in the fall of 1878 the mail was carried once a week, 2656; they started out with thirteen horses to carry the mail, afterwards bought more, 2656; John W. Dorsey told witness in July or August, 1878, that in about three months he expected a tri-weekly service and three months after that a daily service, 2656; that they expected to lose money on the weekly service but when it was increased and expedited they expected to realize \$150,000, 2657; they expected to get the increase through the influence of his brother, Senator Dorsey, who was chairman of the Post-Office Committee, 2657; that they had organized a ring in Washington, and witness understood that they had an understanding with the Second Assistant Postmaster-General, 2658; cross-examined as to his conversation with Dorsey, 2657-2662; first told Siebold, post-office inspector, of this conversation, 2664.

Miles, General Nelson A., testimony of, for the defense, 2833-2845; had his military headquarters at Miles City, Montana, from 1876 to 1880; troops numbered from 600 to 1,500 men; mail from the east came by the Union Pacific R. R. to Ogden, thence through western Montana, 2834; mail from Washington City took from twenty to thirty days, 2834; the route from Saint Paul to the Tongue River was about 700, and from Saint Paul to Ogden 1,500 miles; military headquarters of the department were at Saint Paul, 2835; witness sent a military escort with Dorsey in July, 1878, 2835; Indian troubles, 2836; settlement of the country, 2837; urged the establishment of the route in person and by letter, 2837-2839; importance of the mail for the military, 2839; identifies map, 2839; thinks he recommended daily mail in his interview with the Second Assistant Postmaster-General, 2841, and with the Postmaster-General, 2842; identifies indorsement on petition (36 T, 2150), and on letter of Secretary of War (29 T, 2146), and his signature to letter (25 T, 2144), 2842; identifies copy of his letter (30 T, 2146-2147), 2847; special couriers, 2843; telegraphic and railroad communication, 2843; mails captured by Indians, 2844; letter (25 T, 2144) may have been given to Dorsey, 2845.

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Witnesses—Continued.

Miner, John R., one of the defendants; testimony of, relating to this route; witness and Vaile took this route in the division, 4207; witness was the contractor; this was a Dakota route and had been turned over to J. W. Dorsey and Boone in the summer of 1878, 4256-4257; as to contract between J. W. Dorsey and Boone, 4290; witness gave drafts in blank on this route, but the drafts were cut out by the sub-contracts and never paid, 4257-4258; has no knowledge of the \$3,000 advanced by S. W. Dorsey to Rerdell, 4260.

12 (C?) T. Oath of Miner (2140); witness made the affidavit in good faith, 4192, 4289; his explanation of it, 4193, 4196-4198, 4265-4267; does not remember whether he testified before the Congressional committee to the extracts read to him relating to the oath, 4279-4281; witness had nothing to do with getting the expedition on this route; according to his best judgment there was a loss of \$40,000 or \$50,000 on this route, 4191, 4271; cost of the ranches and running the route, 4267-4269; books were kept on the route, 4269; when coaches were put on, 4269-4270; sale of stock, 4270; fines and remissions, 4271-4272, 4291-4292; Reedrill's testimony (2215); as to the reduced amounts in the bidding box is correct as to this route, 4176.

Pennell Joseph, Miles City, Mont., testimony of, 2154-2171; met John W. Dorsey in June and Rerdell in July, 1878; had charge of building the ranches; helped stock the route and start the mail, 2154; built 12 ranches, from 15 to 20 miles apart, 2154; there were 3 others built, making 15 in all, 2155; only every other ranch was used at first, 2155; there were no inhabitants between Lincoln, 4 miles out of Bismarck, and the Powder River, 2155; Rerdell told witness in Bismarck, that after they got west of the Little Missouri he would send out a petition for a post-office, 50 or 60 miles north of the main line, to be signed by the men, 2156; that the man who had the station nearest the place could be postmaster, 2156; when the mail was once a week there was about 25 head of stock and from 4 to 5 carriers on the route, 2156; J. W. Dorsey said they would need all the ranches on the increased service, and it would be cheaper to build them at once; they cost about \$6,000, 2157; stock cost from \$75 to \$90 a head, 2157; Rerdell and the witness figured on the stock required for 3 trips on a shorter schedule; witness figures were 40 head of stock and 7 or 8 drivers; Rerdell's were about double, 2157; J. W. Dorsey wanted witness to take a half interest as witness had some stock, Dorsey to furnish the money and witness to build the ranches and take care of stock, 2157-2158; that they would have an increase to 3 trips on a shorter schedule inside of six months; that they would be allowed at least \$25,000 for three trips, that there would be another increase to six trips within a year, and that he had a brother in Washington who had the influence to help him through, 2158; when the mail was once a week it averaged one small sack, 2159; stations, 2159, 2160, 2162; settlement of the country, 2160; employment by the government, 2161; conversation with J. W. Dorsey, 2161-2166, 2169, 2170; men and animals, 2162-2163; Indian troubles, 2163; passengers and express, 2163; route by which the mails went to Keogh before this road was built, 2167.

Rerdell, M. C., one of the defendants, testimony of, 2218-2222, 2361, 2362; witness went West July 11, 1878, to assist in putting on service on this route, 2218; Senator Dorsey gave witness \$1,500, and went with him to the German-American Bank where he placed \$3,000 to the credit of John W. Dorsey & Co., and caused witness to sign the name of John W. Dorsey & Co. on the signature-book, 2218; never had any authority to sign the name of J. W. Dorsey & Co. except to draw the money out of the bank which was given him by S. W. Dorsey, 2221, 2408; met J. W. Dorsey in Saint Paul and went with him to Bismarck, where, with the assistance of Dorsey and Pennell, he bought the grain, materials to build the stations, cooking utensils, and provisions, 2219; paid for them through the house of J. W. Raymond & Co., drawing on the German-American Bank and signing the name of John W. Dorsey & Co., 2219, 2220; after witness' return from the West negotiated two or three notes signed John W. Dorsey & Co. and indorsed by S. W. Dorsey, the amounts were not in the notes, 2218; used all of the money given him by S. W. Dorsey, in building stations, buying grain, and paying freight bills for the Tongue River route, except a few hundred dollars turned over to Miner and Vaile in the fall; used about \$8,000 for this purpose, 2219; S. W. Dorsey furnished witness with the blanks, gave him a draft of what he wanted, and instructed him to arrange for a post-office off the line of the route, so as to increase the distance about 60 miles, and told him to get the men employed on the line to sign an application, 2219; witness filled up an application and gave it to Pennell to

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Witnesses—Continued.

Rerdell, M. C.—Continued.

carry out and have the men sign it, he also selected the name for the post-office, and marked it out on the map, 2220; S. W. Dorsey's instructions were to build the stations about 15 or 16 miles apart, that the service would be increased, and until then they could use every other or every third station, 2221; he directed witness to get up a petition for a reduced schedule and an increased number of trips, and gave him letters of introduction to Governor Ramsey, General Wright, Senator Windom, General Rosser, and Captain Raymond; witness presented all the letters, except those to Senator Windom and General Rosser, 2221; witness shipped the grain to Miles City via Fort Buford, distributed some at the mouth of the river where they were going to establish a post-office, 2220; at Miles City he got up petition for increased service, and at Fort Keogh presented the letter of introduction to General Miles and got him to write a letter, 2220; left John W. Dorsey at Miles City and arrived home on August 8, did not see John W. Dorsey again until January or February, 1879, 2222.

Handwriting:

- 2 T. Proposal of Miner (2136), was written by Miner, except the amount, which was filled in by Rerdell, 2362.
 - 3 T. Letter of S. W. Dorsey (2137), was written and signed by Dorsey, 2361.
 - 5 T. Letter of John R. Miner, B (2137), was written and signed by A. E. Boone, 2361.
 - 6 T. Letter of A. E. Boone (2138), was written by W. F. Kellogg, who was a clerk in the Post-Office Department. Signature of Boone is genuine, 2361.
 - 9 T. Subcontract of Vaile (2138-2139), was all written by Miner, except signature of Vaile, which was genuine, 2361.
 - 11 T. Letter of John R. Miner (2139), was written by Miner, 2361.
 - 12 T. Oath of Miner (2140), was all written by Miner, except signature of Kellogg, 2361.
 - 20 T and 21 T. Letters of C. B. Wright were obtained by Rerdell upon a letter of introduction written by S. W. Dorsey, 2361-2362.
 - 24 T. Petition (2144), was written by Rerdell, at Miles City, in July, 1878, 2362.
 - 25 T. Letter of General Nelson A. Miles (2144), was obtained by Rerdell from Miles, at Fort Keogh, 2362.
 - 33 T. Letter of G. G. Bennett (not in the record), all except signature was written by Miner, 2362.
 - 35 T. Letter of J. P. Kidder (2150), all except signature was written by Miner, 2362.
 - 38 T. Petition (2151) was mostly written by Rerdell, 2362.
 - 43 T. Schedule of arrivals and departures (2152), all except pencil writing and figures were written by Miner, 2362.
 - 45 T. Letter of Miner and Vaile (2153), all written by Miner, except the signature of Vaile, which is genuine, 2362.
- Sherman, William T., General, testimony of, for defense; after General Custer was killed, in 1876, they established a post at Keogh, costing over \$120,000; in 1881 the Fifth Infantry garrisoned Keogh, the Eleventh Infantry Fort Custer, and the Seventh Cavalry Fort Lincoln, about twelve miles below Bismarck; witness surely indorsed every paper and wrote every letter that he had a chance to do urging the Post-Office Department to increase the mail facilities between Bismarck and Fort Keogh, 3607; how the establishment of this route with daily service and stations from seventeen to twenty miles apart assisted the military, 3608; cross-examined, 3610.
- Sleman, John B., chief pay division, testimony of, 2082; produces reports, drafts, and warrants, 2082.
- Sweeney, George M., chief inspection division, contract office, testimony of, for defense, 2857-2858; explains jacket relating to deductions and remissions (64 T), 2857-2858.
- Swift, Wilbur H., mail carrier, testimony of, 2653-2655; worked on the route from May 8, 1879, to December 1, 1880, kept Spring Ranch Station about 8 days, then went over the route to Pennell, afterwards drove between Pennell Station and Powder River, 2653; when the mail was three trips a week, between Bismarck and Muddy, there was 1 driver and 6 horses, Muddy to Green River, 2 drivers and 8 horses, Green River to Beaver, 1 driver and 6 horses, Beaver to Pennell, 1 driver and 6 horses, Pennell to Powder River, 2 drivers and 8 horses, 2653-2654; six trips from Powder River to Miles City, there was 2 drivers and 8 horses, 2654; November, 1879, the mail averaged 200 to 250 lbs. going west,

(T.) *Route 35051. Bismarck to Tongue River, Dak.*—Continued.

Witnesses—Continued.

Swift, Wilbur H.—Continued.

was lighter going east, before that it would average over 100 lbs., 2654; once when he had 2 mails, left one with the station-keeper at Powder River, that was the order, 2654; also carried the Fort Buford mail from Powder River to Miles City, 40 miles, 2655.

Vail, Harvey M., one of the defendants, testimony of, relating to this route: witness and Miner got this route in the division, 4020; thinks they spent \$50,000 over and above what they received on this route, 4037; includes in his expenses the cost of the ranches, mounds, of making a road and bridges, mail carriers, stock-keepers, and guards for stations and the cost of keeping the men and animals, 4062; does not know how many men and animals they had or what they paid each man, or how much they received or paid out upon the route, did not keep any books, they may have had upon the road an account with the men, the Government and the bank kept their books, 4063; the route was increased from \$2,350 up to \$70,000, but does not recollect when, 4063; notwithstanding this increase they were out some \$50,000 or more, there were quarters when the expenses were from \$18,000 to \$20,000 and the pay not over \$5,000—\$13,000 deductions, 4064; the contract gave them the absolute right on an order for expedition to throw it up, he could not say that they would lose until he had experimented under the expedition, if it was a losing contract before expedition, and the expedition was made according to law, it did not and could not become a profitable one, 4064; could not have performed the service on this route once a week for \$2,350, 4062; thinks that for three-times-a-week service 150 men were necessary, not actual carriers, but men engaged in cutting hay, ranch-tenders, guards, &c., does not think he ever had that number employed there, 4070; does not recall anything about the subcontracts on this route, referred to in the agreement (85 X, defense, 4013-4014), as having been made to protect the company, 4056; did not communicate with John W. Dorsey as to his duties upon this route until after witness came here in October, the first thing he did was to stop building the stations, 4056.

(S.) *Route 38113. White River, Colorado, to Rawlins, Wyo.*

Advertisement of November 1, 1877, 180 miles, once a week, 108 hours, 522.

Affidavits of:

Coffey, Michael, Government wagon-master, sworn to February 7, 1880; wagon train was from December 20, 1879, to February 6, 1880, in making the round trip from Rawlins to White River; states the difficulties of the mail carriers in making trips (77 S, defense), 3141-3142.

Lithgou, William, sworn to January 17, 1880, carried the mail regularly from the 6th to the end of September, 1879, except once, when the mail was 3 hours late; September 29 the Utes killed the postmaster at White River, and run the postmaster at Windsor out of the county; believes the records at White River were destroyed by Indians, and those at Windsor were shipped to Dixon (54 S, defense), 3132.

Robb, Alexander, sworn to February 21, 1880, delivered the mail on February 7, 1880, to postmaster at White River, who detained him 4 hours for convenience of military officers (69 S, defense), 3139.

Argument, opening, of Mr. Bliss, referring specifically to this route, 242, 246, 252, 269, 272, 279, 337-340, on the admission of conversation of Rerdell with the witness (Rankin) as to what was said about ex-Senator Dorsey and Brady in the absence of those gentlemen.

of W. W. Ker, for the prosecution relating to this route, 4697-4711.

of Mr. Merrick, 2043-2044, 2046-2047.

of Mr. Ingersoll, 2044.

of Mr. Chandler, 2044-2051.

of Jeremiah M. Wilson, for the defense, relating to this route, 5200-5211.

Calculation relating to failures (129 and 130 S, defense), 3157.

Contract of John W. Dorsey with the United States, dated March 15, 1878, \$1,700 per annum. Sureties, D. W. C. Wheeler and S. N. Hoyt; witnessed by A. E. Boone and John R. Miner; sworn to by Dorsey before A. E. Boone, March 28, 1878 (1 S), 1952.

(S.) Route 38113. *White River, Colo., to Rawlins, Wyo.*—Continued.

Decisions of the court:

That there is sufficient evidence before the court to submit the question of conspiracy to the jury for them to pass upon as a fact, 2052-2053.

That the propriety of an order for expedition is an important question, and that evidence is admissible to show that no public advantage was gained by it 2065.

Drafts drawn by John W. Dorsey, contractor on the Sixth Auditor in favor of—

Bosler, J. W., July 10, 1880, third quarter 1880 (50 S), 2085;

Dorsey, S. W., May 5, 1879, second quarter 1879 (48 S), 2085; no date, fourth quarter 1879 (49 S), 2085;

Vaile, H. M., witnessed by J. W. Raymond and C. A. Loundsberry, October 1, 1878, third quarter 1878 (46 S), 2085; October 1, 1878, fourth quarter 1878 (47 S), 2085.

Exceptions to rulings admitting:

Subcontract of J. A. Wright (6 S), that the subcontractor of S. W. Dorsey is the only one averred in the indictment, 1953; conversation of witness (Perkins) with Rerdell, *et al.*, 1968: questions read from the record of previous trial, that they are leading, 1983; as to whether witness circulated a petition, 2007; to remarks of the court as to the effect of the evidence upon his mind, 2053; question as to the time the mail arrived at Rawlins, 2059; evidence as to the arrivals and departures of the mail, 2065; to witness (Rerdell) stating what representations he made with reference to the probabilities of getting increase and expedition, 2227; to question as to whether Vaile said anything in his conversation about Brady, 2228-2229; to statement that witness (James) had told French to revoke the order, 2037; to question as to whether witness had given an order to revoke the order for increase on this route, that the order itself is the best evidence, that it purports to be an order of French, and is not complained of in the indictment, 2038; to question as to whether the order given to French was ever carried out by Brady, 2038.

Expedition, calculation for (not read 31 S), 1963.

Fines and deductions, statement of, 728.

Indictment setting out as overt acts, the filing of the subcontract of S. W. Dorsey as of November 11, 1879, and the order of Brady of March 8, 1881, to increase to seven trips, 1951-1952.

Jacket dated January 22, 1879, to stop all payments to subcontract (9 S), 1955.

Journal of the Postmaster-General, extract from, showing entry of order of March 8, 1881 (32 S, 1963), signed Thos. L. James, 4323.

Letters of—

Adams, J. B., G. C. Smith, J. G. Rankin, M. E. Hokes, J. C. Frenck, and Lawrance Hayes to Key, January 20, 1879, urging increase of service, indorsed by John W. Hoyt, governor of Wyoming (29 S), 1962-1963.

Brady to postmaster at White River, March 4, 1880: both mail bills should be signed and such facts noted as are necessary (101 S, defense); 3150; to postmaster at Meeker, January 6, 1881; no register has been received for October, 1880 (160 S, defense), 3167.

Dorsey, John W., to Brady, May 5, 1879, requesting change of address to care M. C. Rerdell, box 706 (4 S), 1952. April 14, 1879, inclosing proposition to carry the mail on an expedited schedule (23 S), 1960. April 26, 1879, reduction of time to 50 hours; will make the service expensive and difficult; has not put the number of men and animals necessary as high as he ought to (30 S), 1963. By M. C. Rerdell to C. F. Perkins, United States Senate Chamber, March 7, 1879, inclosing statement to be made to the department in order to get increase of service, "*Please sign it just as it is, and acknowledge it before a notary public or county clerk*" (36 S), 1991. And S. W. Dorsey to Brady, October 19, 1880, requesting withdrawal of subcontract (18 S), 1956-1957. And M. C. Rerdell to Brady February 6, 1879, requesting withdrawal of subcontract (14 S), 1956. To Brady, February 26, 1880, inclosing two letters of Messrs. Foote and Dalton, carriers, and affidavit of Alexander Robb; has positive evidence of the prompt arrival and departure of the mail at the very time the postmaster reports no mail (68 S, defense), 3139; August 16, 1880, asking remission of deductions for first quarter, 1880; incloses letter of postmaster at Baggs, affidavit of Michael Coffey and statements of Captain Clifford and Lieutenant McCauley (78 S, defense), 3142.

Foote and Dalton to Rerdell, February 16, 1880, asking if the "postmaster at White River has any right to hold the mail, in order that parties may answer letters" (70 S, defense), 3139; February 21, 1880, states the postmaster at White River assumes the authority to discharge their carriers and hold over the mail (71 S, defense) 3140.

(S.) *Route 38113. White River, Colo., to Rawlins, Wyo.*—Continued.

Letters of—Continued.

- France, James, postmaster, Rawlins, to Brady, December 7, 1880: owing to the late hour of the arrival of the mail it will be impossible to deliver it at the hour asked for (in the letter 38 S), and suggesting that the time of departure be fixed at 7.30 a. m. (39 S), 2068–2069; September 1, 1879; Palmer applied this p. m. for the mail, after it had been delivered to special carrier (53 S, defense), 3132.
- Hazen, George S., and P. H. Wayrich, postmasters, asking that the time of departure of the mails from Rawlins and White River be changed to 5 a. m. (38 S), 2068.
- Hazen to Brady, February 1, 1881, inclosing copy of register of arrivals and departures for October (160 S, defense), 3167.
- Hughes, S. H., postmaster, Dixon, to Brady, September 15, 1879; carriers from White River and Rawlins do not connect, and demand the sack without waiting for the through mail; asks instructions (57 S, defense), 3133.
- Hugus, W. B., postmaster at White River, to Eugene Taylor, February 9, 1880, no officer or citizen here has ever taken back anything they subscribed to in your petition; they are more incensed than ever at the miserable management of the mail since you quit carrying it. The quartermaster puts on a weekly buck board to-day, and a weekly carrier line on Wednesday (81 S, defense), 3143; to Brady, February 21, 1880, refers to 2 mail bills inclosed, and states that both mails were received in the same pouch; sometimes 3 mails from Rawlins are held at Snake River and forwarded in one pouch; asks if he should sign both bills (101 S, defense), 3150; March 6, 1880, acknowledges letter of February 26; the mails from there to Snake River have not been on time; the mail received that day is the only one delivered in nine days, and was 32 hours behind; the military here have a courier line to Snake River 3 times a week; Alexander Robb, a drunken driver, who makes the affidavit (83 S, defense), 3144, 3145.
- James, Thomas L., to Brady, April 9, 1881; referring to conversation respecting expedition of route 31509, and other routes, and directing Brady not to issue the final orders until he has further examined them, 3382.
- Lithgon, W., to Steele, September 28, 1879; was late one trip caused by the carrier getting lost; the other failures were caused by the other carriers being late; soldiers going in and the Indians preparing to fight (55 S, defense), 3132.
- Meeker, N. C., Indian Agent, to Key, August 17, 1879; calls attention to the irregular and unsatisfactory mail service (56 S, defense), 3133.
- Pater, John F., postmaster at Baggs, to Rerdell, February 4, 1880; states the mail was too heavy to carry on snow shoes, and could not have been carried in 45 hours, had not the road been repeatedly broken by government trains; has given entire attention to getting the mail through as fast as possible (79 S, defense), 3142.
- Perkin, C. F., to Rerdell, May 21, 1878: to run in 45 hours it will take double the stock; if he runs in that way expect to get \$10,200 (37 S, defense), 1999.
- Post, W. H., postmaster, White River, to Second Assistant; no date; almost impossible for carriers to get through on schedule time; suggests that the schedule, which is five days, be increased to six during the winter (35 S), 1964.
- Rerdell, M. C., to Eugene Taylor, February 8, 1881, *copy of letter*, asking him to get up petitions for six or seven times a week, and stating he can get the increase; this must be done so he can get them by March 1, 1874, 2077; March, 1881, acknowledging receipt of petitions, and stating that department has ordered an increase to 7 trips; that Judge Lilley says 6 miles additional will be allowed for Dixon, and that Taylor's pay will be \$23,333.33 (41 S), 2072.
- Steele, John W., to Rerdell, January 3, 1880, relative to difficulties in getting the mail carried. Foote and Dalton have the line from Rawlins to Snake River, running all right; they have 10 men and 24 horses; has ordered them to push the mail regardless of cost, but no one can make it in 45 hours as long as the snow is in present condition; cannot let the contract again this winter for less than \$20,000 (82 S, defense), 3143–3144. To Lieutenant Scott, January 15, 1880, asking condition of roads, whether the mail is running with regularity; indorsed by Lieutenant Scott; the carrier line was discontinued January 7, 1880, since when he has been transmitting quartermaster business through the mail; roads are very, very bad, on account of deep snow; under the circumstances the mail is running with commendable regularity and expedition (80 S, defense), 3143. To Captain Clifford, January 16, 1880, asking condition of roads between Rawlins and White River, indorsed by W. Clifford, captain of

(S.) *Route 38113. White River, Colo., to Rawlins, Dak.*—Continued.

Letters of—Continued.

Steele, John W.—Continued.

Infantry, January 16, 1880: The road between Rawlins and White River is impassable for wagons; the writer left Rawlins with twenty-four men December 20, 1879, and the same train reached Snake River, sixty-five miles, in twenty-two days; cost of wheeling is 25 per cent. in excess of work on runners (76 S, defense), 3141. To Lieutenant McCauley, February 5, 1880, asks information as to the difficulties encountered in maintaining the courier line, indorsed Fort Steele, February 11, 1880: "While fast time may be often maintained, it is constantly impossible for the whole route, owing to the condition of the road and blinding snow storms" (84 S, defense), 3145, 3146.

Wright, John A., by G. W. Lancaster, attorney, concurred in by John W. Dorsey *M* to Brady, December 3, 1878, requesting withdrawal of subcontract (10 S), 1955.

Mail bills showing departure of each mail from:

Meeker and arrivals at Rawlins first quarter, 1881 (161 to 184 S, defense), 3167-3168.

Rawlins and arrival at Meeker fourth quarter, 1880 (157 S, defense), 3165; first quarter, 1881 (165 to 167 S, defense), 3168-3169, and arrival at White River first quarter, 1880 (92 to 124 S, defense), 3148-3155; second quarter, 1880 (136 to 145 S, defense), 3160-3162.

White River and arrival at Rawlins, first quarter, 1880 (85 to 91 S, defense), 3146-3147; (125 to 128 S, defense), 3155-3156; (72 to 75 S, defense), 3140-3141; second quarter, 1880 (146 to 155 S, defense), 3162-3165.

Mail registers showing the arrivals and departures of the mails at:

Meeker, October, 1881 (?) (160 S, defense), 3167; December, 1880 (158 S, defense), 3166.

Rawlins, August, 1879 (59 and 60 S, defense), 3134; September, 1879 (58 S, defense), 3133; January, 1880 (64 S, defense), 3137; February, 1880 (65 S, defense), 3137; March, 1880 (63 S, defense), 3136; April, 1880 (133 S, defense), 3159; May, 1880 (132 S, defense), 3158.

White River, August, 1879 (61 S, defense), 3135; January, 1880 (66 S, defense), 3138; February, 1880 (67 S, defense), 3138-3139; April, 1880 (135 S, defense), 1360; May, 1880 (134 S, defense), 1359-1360.

Oaths of—

Dorsey, John W., contractor, sworn to April 26, 1879; original schedule, three trips, 4 men, and 12 animals schedule; 45 *hours*, three trips, 11 men, and 32 animals, filed April 26, 1879 (25 S), 1961.

Perkins, Chas. F., *subcontractor*, sworn to March 26, 1879; once a week, 3 men and 6 animals, to carry the same mail; schedule, 84 *hours*, 8 men, and 24 animals, filed April 16, 1879 (24 S), 1960-1961.

Orders of:

Brady, June 18, 1878, to change address, lock-box 714 (21 S), 1957; October 1, 1878, filing subcontract of J. A. Wright (5 S), 1953-1954; December 28, 1878, filing subcontract of M. C. Rerdell (7 S), 1954; February 7, 1879, to stop payments to subcontractor (13 S), 1955-1956; same date, filing subcontract of C. F. Perkins (11 S), 1955; May 1, 1879, from May 12, 1879, *increase two trips, allow \$3,400, expedite to 45 hours, allow \$8,600.25* (words forty-five written over

Brady, June 18, 1878—Continued.

an erasure, 22 S), 1957-1958; May 9, 1879, to change address, care M. C. Rerdell, box 706 (3 S), 1952; October 20, 1880, to stop payments to subcontractor (17 S), 1956; same date, filing subcontract of Eugene Taylor (19 S), 1957; March 8, 1881, from April 1, 1881, *increase to seven trips, allow contractor \$18,275 additional, subcontractor \$13,333.33 additional* (overt act 32 S), 1963; to deduct \$2,189 for fourth quarter 1880 (156 S, defense), 3165; to deduct \$609.70 for failures in second quarter 1880 (131 S, defense), 3158; to deduct \$1,098.35 for failures in first quarter 1880 (62 S, defense), 3135; to deduct \$109.45 for failures in third quarter 1879 (52 S, defense), 3131; August 19, 1880, to remit \$43.78 of deductions for failures in third quarter 1879 (52 S, defense), 3131; August 19, 1880 to remit \$463.54 of deductions for failures in first quarter 1880 (62 S, defense), 3135.

French, July 2, 1879, to change schedule (45 S, defense), 2084; November 11, 1879, filing subcontract of S. W. Dorsey (15 S), 1956; to deduct \$772.82 for failures in second quarter 1879 (51 S, defense), 3131; to deduct \$58.97 for failures in first quarter 1881 (159 S, defense), 3166.

Payments, statement showing, to S. W. Dorsey, Middleton & Co., and J. W. Bosler, assignees, and C. F. Perkins, Eugene Taylor, and A. H. Brown, subcontractors, 728.

(S.) *Route 38113. White River, Colo., to Rawlins, Wyo.*—Continued.

Petitions:

From citizens of Colorado and Wyoming, January —, 1879, for three trips and reduction of time to 84 *hours*, filed April 16, 1879 (26 S), 1961; dated at Rawlins, Wyoming, January —, 1879, for three trips and reduction of time to 84 *hours*, concurred in and recommended by J. B. Chaffee, W. W. Corlett, H. M. Teller, and T. M. Patterson, filed April 16, 1879 (27 S), 1961–1962; for increase to three trips and reduction of time to 84 *hours*, filed April 16, 1879 (28 S), 1962; citizens and residents at and near Baggs Crossing and Dixon, for increase to seven trips, reduction of time to 36 *hours*, approved and recommended by W. T. Sherman, General (33 S), 1964; citizens and residents of Rawlins and other points, for seven trips, and reduction of time to 36 *hours* (34 S), 1964.

Proposal of John W. Dorsey, sworn to before A. E. Boone, January 14, 1878; sureties, John O. Evans and L. S. Filbert; witnessed by A. E. Boone and John R. Miner (2 S), 553, 1952.

Reports of the auditor certifying balances due on this route (not read), 2085.

Revenues, certified transcript of, 2728–2739.

Schedules for the arrivals and departures of the mail recommended by postmasters at Rawlins and Meeker, December 23, 1880, (40 S), 2069–2070; recommended by postmasters at Rawlins and White River, and by John W. Dorsey, contractor, dated June 26, 1879, (45 S, defense), 2084.

Subcontracts of—

Dorsey, S. W., dated April 1, 1879, full pay (16 S), 1956.

Foote and Dalton, dated December 27, 1879 three trips, \$10,000 per annum, signed John W. Dorsey, by M. C. Rerdell, att'y, (42 S), 2078.

Perkins, Chas. F., dated January 16, 1879, one trip, \$2,500, two trips, \$4,000, three trips, \$5,100 per annum; signed John W. Dorsey, by M. C. Rerdell, att'y, (12 S), 1955.

Rerdell, M. C., dated December 26, 1878, full pay, signed J. W. Dorsey, by John R. Miner, att'y, and M. C. Rerdell (8 S), 1954.

Taylor, Eugene, dated October 15, 1880, three trips \$10,000, six trips \$20,000 per annum, signed John W. Dorsey, by M. C. Rerdell, att'y (20 S), 1957.

Wright, John A., dated May 1, 1878, one trip \$1,500, two trips \$2,850, three trips \$4,065, six trips \$8317, with 25 per cent. of expedition (6 S), 1954.

Warrants (not read), 2085.

Witnesses:

Adams, John G., county clerk, testimony of, 2006–2008; received a letter from Eugene Taylor in February, 1881, purporting to be signed by M. C. Rerdell; destroyed the letter; it directed Taylor to have petitions circulated, and personal letters written to the Postmaster-General, asking increase of service, and that the papers be sent in before March 1, 2006; witness circulated a petition which the officers refused to sign, 2007; had a conversation with Rerdell about April 1, 1879; Rerdell handed him a draft of a letter he had written, and asked witness if he would copy it and send it to the department; witness refused; afterwards, Rerdell came in with Rankin and Hayes, who asked him to write the letter, and he did so, 2007. Identifies (29 S, 1962–1963), as the letter written at the time; the letter was a copy of the one drafted by Rerdell, 2008.

Brady, Thomas J., one of the defendants, testimony of, relating to this route; the reason why he did not increase this route to 6 trips, instead of adding 2 trips and expediting the time to 45 hours and saving the Government \$3,406.25, was that they wanted 3 trips a week and expedition, and that Mr. Teller, Senator Chaffee, and others recommended it; 3 trips upon a 45-hour schedule would be a far better service than 6 trips on a very long schedule, 3406–3407; he took the 45-hour schedule in order to make it about 4 miles an hour; did not follow either the petitions or recommendations of Representatives and Senators; did as he pleased about it as he had a right to do under the law, 3407; before he made the order for expedition does not remember to have seen letter from the postmaster at White River, (35 S, 1964), recommending a schedule of 6 days in winter and 5 days in summer, 3407–3408; it would have had little weight, 3409; when a letter or petition spoke of days he interpreted it as a day of 12 hours, 3408; does not remember any recommendation for less than 80 hours, that would have been no expedition, 3409; knew when he made the expedition for 45 hours that there was no continuation of the service beyond White River; it was gotten up principally for that Indian post, 3411; did not know that by the expedited schedule the mail arrived at Rawlins two hours after the mail east and west had left, 3411; it was the corresponding clerk's duty to fix the schedule upon the recommendation of the postmasters at the

(S.) Route 38113. *White River, Colo., to Rawlins, Wyo.*—Continued.

Witnesses—Continued.

Brady, Thomas J.—Continued.

terminal offices and the contractors if they can agree, 3411-3412; the orders are then signed by the Second Assistant, pro forma; cannot say whether the affidavit of Perkins, subcontractor (24 S, 1960-1961), was the one upon which he made the order of May 1, 1879 (22 S, 1957-1958), for expedition; jacket simply says, "subcontractor makes statement"; does not know that the subcontractor's affidavit is on a schedule of 84 hours, 3438; identifies communication sent to the investigating committee, on page 512 of the book headed "Post-Office Deficiencies, Star Service," inclosing affidavit of Perkins (24 S, 1960-1961), 3542-3543. Referring to the testimony of Thomas L. James in regard to a conversation had with witness about March 8 or 9, 1881, witness had a conversation with regard to the general policy of the department, called out by a letter from James, in which, probably, the conversation occurred referred to in his testimony, 3381-3382. Produces letter from James, dated April 9, 1881, respecting the expedition of route 31509, 3382; from receipt of this letter witness had a conversation with James in which witness sneeringly referred to a sudden conversion to economical ideas, 3382; possibly he may have had a conversation in relation to the Rawlins and White River route; witness remembers distinctly telling James that if these orders were to be revoked he wanted it in writing, 3384.

Boone, A. E., mail contractor, testimony of, relating to this route, 2700-2702.

4 S. Letter of John W. Dorsey (1952) was all written by Rerdell, 2700.

6 S. Subcontract of John A. Wright (1954), signature of J. W. Dorsey genuine, 2701.

10 S. Letter of John A. Wright and J. W. Dorsey, M. (1955), signature of J. W. Dorsey written by Miner, 2701.

14 S. Letter of J. W. Dorsey and M. C. Rerdell (1956) all written by Miner, except the signature of Rerdell, which is genuine, 2701.

16 S. Subcontract of S. W. Dorsey (1956), signatures of S. W. and J. W. Dorsey are genuine, 2701.

24 S. Oath of Perkins (1960-1961), body written by Rerdell, 2701.

25 S. Oath of J. W. Dorsey (1961), body written by Kellogg, except the figures "38113" and the words "three," "four," and "twelve;" figures "45," the word "three," and figures "11" and "32," which he thinks were filled in by S. W. Dorsey. The signature is that of J. W. Dorsey, 2701.

26 S, 27 S, and 28 S. Petitions (1961-1962), written by Rerdell, 2702.

30 S. Letter of J. W. Dorsey (1963), signature and all written by S. W. Dorsey, 2702.

Dalton, George B., subcontractor, testimony of, 2077-2081. Witness carried the mail from January 6 to June 30, 1880, under a contract made with J. W. Steele, as the agent of J. W. Dorsey, 2077, 2078. Identifies subcontract (42 S), 2078; carried the mail 3 trips, schedule 45 hours, used 9 carriers and 20 horses, 2078; carried passengers and express, 2078; average mail was from 2 to 5 sacks, 2078; Baggs was the only intermediate post-office, 2078; left Rawlins at 9 a. m., and arrived at White River from 11 p. m. to 6 a. m., left White River at 9 a. m. and arrived at Rawlins from 6 p. m. to 9 p. m., 2078-2079. There were 5 or 6 companies at Snake River after the Ute outbreak, 2079. Did not file his subcontract, 2079. Men and animals, 2080.

Davis, John C., agent for stage line; testimony of, 1989-1990. Received and opened a letter addressed to Taylor, received about the middle of February, 1881, and purporting to be signed by M. C. Rerdell, gave the letter to Taylor, 1989; witness and Taylor circulated a petition, 1989.

Dorsey, John W., one of the defendants, testimony of, relating to this route 25 S. (1961); oath of John W. Dorsey; it is witness' signature; the reason witness made an affidavit on April 26, 1879, after the division was, that when he sold out he agreed to sign all necessary papers, 4123-4124; had never been on the route and did not know the number of men and animals necessary, but relied upon another man, 4124; cannot say whether the affidavit was in blank when he swore to it, 4125-4126.

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route. Does not recollect the order of May 1, 1879, by which this route was run up from \$1,700 originally, to \$12,006.25, but recollects that there was an increase, 3939.

France D. Walker, clerk post-office Rawlins, testimony of, 2058-2069. Before expedition the mail arrived at Rawlins at 6 p. m., after the time was reduced to 45 hours it arrived at 6 a. m., 2059. Mail left for the east at 4 a. m. and for the west at 12 o'clock midnight, 2059. Postmasters fixed the schedule, 2066. In May, June and July, 1879, from 15 to 20 letters a day were sent from Raw-

(S.) *Route 38113. White River, Colo., to Rawlins, Wyo.*—Continued.

Witnesses—Continued.

France D. Walker—Continued.

lins over this route, 2065; mail left Rawlins on 108-hour schedule for White River at 6 a. m., after expedition it left at 9 a. m., 2067; identifies letter (38 S and 39 S), 2068; and (40 S), 2069.

James, Thomas L., ex-Postmaster-General, testimony of, relating to this route, 2035–2042. In the second week in March witness discovered there had been an increase on the Rawlins to White River route, and sent for Brady, who was out; French, the chief clerk, came in, 2035. The next day Brady came in, and, referring to the conversation witness had had with French in regard to increase on this route, said, "Then economy is to be the policy of your administration?" Witness answered "Yes," 2035, 2037. Witness told French to revoke the order of March 8, 1881, for increase, 2037–2038; Brady left the office in April, and it was some time in September that witness discovered the order had not been revoked, 2038; witness did not tell General Brady to revoke the order because he supposed it had been done, 2040; witness signed journal showing the order had been issued on that day, 2042; considered the journal only a record of the order, 2042.

Miner, John R., one of the defendants, testimony of, relating to this route. They gave Rerdell this route and did not consider it in the division with Dorsey, 4179, 4214–4215. Referring to testimony of Rerdell (2226), witness, or Vaile, with his knowledge, did not direct Rerdell to make any representations as to increase or expedition, or with regard to getting up petitions, 4180, and (on 2227) witness made the subcontract with Rerdell for the entire route, 4181; and (on 2526) some arrangements may have been made in regard to giving Rerdell \$2,000 on this route, 4181; and (on 2228) it is possible Rerdell may have applied to witness for form of affidavit, but did not instruct Rerdell to send an affidavit to Perkins, 4182. Vaile never made any such statement in witness' presence in regard to Brady's taking the oath of the subcontractor, 4182.

14 S. Letter of J. W. Dorsey and M. C. Rerdell (1956). Witness signed J. W. Dorsey's name, and had a power of attorney to do so. Rerdell did not have any interest of record after February 6, 1879, 4214.

Olcott, John H., clerk contract office, testimony of, for the defense, 2829. The papers called for not in his possession, 2829.

Perkins, Charles F., subcontractor, testimony of, 1990, 2005, 2071–2072; made subcontract (12 S) with M. C. Rerdell in person, as agent for Dorsey, 2001; about January 17, 1879, 1990; identifies letter (36 S) and paper (24 S) as received from Rerdell in the same envelope, 1990, 1991; oath was sworn to in blank as to men and animals and returned to Rerdell; had a conversation with Rerdell at the time he made the contract, witness did not want to take the contract at the price they were getting from the government, and Rerdell agreed to pay him \$2,500 for three trips, 1992; Rerdell said they would get up petitions for three trips; Rerdell wrote out petition (26 S) and witness circulated it; witness wanted three trips because he was an interested party, 1993, 1996; one trip, 108-hour schedule, used 2 men and 6 horses in summer, and from 8 to 10 horses in winter, 1993–1994; three trips, 84-hour schedule, 8 men and 20 horses, 1994; three trips, 45-hour schedule, 10 men and from 20 to 30 horses; seven trips, 45-hour schedule, from 22 to 23 men and from 50 to 60 horses, 1994; carried the mail under a temporary contract, 1990, 1993, 1995; men and animals, 1998–2005; identifies letter (37 S), 1998; order for reduction of time was issued May 12, 1879, there was nothing but an Indian Agency at White Pine at that time, 2001; Ute outbreak was last of September, 1879, 2004; there were twenty-two or twenty-three companies at the time of the Ute war, 2001; military mail, 2001, 2002; mail was increased to seven trips, in April, 1881, the troops had all left there except seven or eight companies, 2004; mails are twice as heavy now as when he carried three trips, 2005; identifies letter (41 S), 2071.

Rankin, James G., sheriff, testimony of, 2008, 2009, 2042, 2043, 2054–2058; Rerdell told witness that he wanted to get a letter from the county officers, the governor, and the Delegate for increase of service, 2009, 2054; identifies his signature to (29 S, 1962, 1963), 2054, 2055; Rerdell said that through the influence of Senator Dorsey and Brady that the service would be put on at once, 2054; mail did not run for about two weeks at the time of the Ute outbreak, 2055; witness wanted three trips, but did not know anything about expedition, 2056; before the soldiers came a daily mail would average about 20 letters, 2055; saw John Dorsey at Rawlins about July 1; went to Omaha with him, 2057; Dorsey said he expected to have extra service, and through the influence of his brother could get it done pretty soon, 2057; signed one petition, 2058.

(S.) *Route 38113. White River, Colo., to Rawlins, Wyo.*—Continued.

Witnesses—Continued.

Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2225–2231, 2274, 2349–2351, 2526–2531, 2568; Vaile told witness they would give him a part of the increases on this route, 2225; witness went to Rawlins January 4, 1879, at the instance of Miner and Vaile, for the purpose of putting on service, 2226; hired a man and horses from Rankin, 2226; sent for Perkins and made a contract with him, 2226; at that time witness had a subcontract on file in his own name, 2227; told Perkins service would be increased right away; Vaile and Miner both told witness it would be, and to make subcontracts with that in view, 2227; met Rankin and Adams at Rawlins, and does not doubt he met Smith, 2227; wrote out three or four petitions for three trips and expedition to 84 hours; put one in the post-office, gave one to a man named Friend, and one to Perkins, 2226; returned to Washington about February 3 or 4, 2227; had a conversation with Vaile March 7, 1879, as to how they could get an affidavit in lieu of John W. Dorsey's; S. W. Dorsey was out with Miner and Vaile at that time, and had directed John W. not to make any more affidavits or furnish any papers to Miner and Vaile, 2229; Vaile said, "I think I can get General Brady to accept one from the subcontractor"; a day or two afterwards Vaile said General Brady had agreed to accept one from the subcontractor; Vaile then instructed witness to write Perkins to send his affidavit, the form being furnished witness at the time; thinks Miner wrote it; kept the form, 2229–2230, 2526; affidavit came back in blank, 2230; turned it over to Vaile and Miner when it was returned, 2527; afterwards found it in the office of S. W. Dorsey, 2527; witness filled in the number of men and animals, and filed it under the direction of S. W. Dorsey, who suggested the numbers to be written in, 2230–2231, 2528–2529; Vaile and Miner agreed to give witness \$2,000 per annum after this route should have been increased and expedited; it was after this agreement he sent Perkins the blank affidavit, 2526; John W. Dorsey left Washington in March; Peck was not here, 2231; witness wrote a letter to Eugene Taylor in 1881, 2273; requested him to send in petitions by March 1 in conformity with instructions received from Bosler; struck out, 2274.

Handwriting:

- 2 S. Proposal of J. W. Dorsey (1952) was partly written by Miner and partly by A. E. Boone; amount was filled in by Rerdell; signature of John W. Dorsey is genuine, 2351.
- 4 S. Letter of John W. Dorsey (1952) signature and all was written by Rerdell, 2349. In the regular order of business, 2560.
- 6 S. Subcontract of John A. Wright (1954), the signature of J. W. Dorsey is genuine, 2349.
- 8 S. Subcontract of M. C. Rerdell (1954) was all written by Miner, except signature of Rerdell, 2349.
- 10 S. Letter of John A. Wright and John W. Dorsey, M. (1955), body of letter and signature of Dorsey written by Miner, 2349.
- 14 S. Letter of John W. Dorsey and Rerdell (1956), body of letter and signature of Dorsey written by Miner; genuine signature of Rerdell, 2349.
- 16 S. Subcontract of S. W. Dorsey (1956), all except the signature was written by Rerdell; signatures of John W. and S. W. Dorsey are genuine, 2349.
- 23 S. Letter of John W. Dorsey (1960), signature and all written by Rerdell, 2350.
- 24 S. Oath of Chas. F. Perkins (1960–1961), body of oath was written by Rerdell and sent to Perkins, who swore to it in blank; when it was returned Rerdell filled in the words, "one," "three," "six," "eight," and "twenty-four" by direction of S. W. Dorsey, 2350.
- 25 S. Oath of John W. Dorsey (1961), body of oath was written by W. F. Kellogg; signature of John W. Dorsey is genuine; the words "three," "four," "twelve," and "three," and the figures "45," "11," and "32" were written by S. W. Dorsey, 2350.
- 26 S, 27 S, and 28 S. Petitions (1961) were written by Rerdell, 2350.
- 30 S. Letter of J. W. Dorsey (1963), signature and all written by S. W. Dorsey.
- 33 S. Petition (1964) was received by Rerdell from Eugene Taylor. John W. Steele, who was in the employ of S. W. Dorsey, took it to Army headquarters and procured the indorsement, 2350.
- 34 S. Petition (1964) was received by Rerdell in the mail, 2350.
- 36 S. Letter of J. W. Dorsey by M. C. Rerdell (1991); all written by Rerdell upon United States Senate paper procured at the office of S. W. Dorsey, 1211 I street, 2350–2351.
- 41 S. Letter of M. C. Rerdell (2072); all written by Rerdell, 2351.

(S.) *Route 38113. White River, Colo., to Rawlins, Wyo.*—Continued.

Witnesses—Continued.

- 45 S. (Defense) schedule of arrivals and departures (2084); the signature of John W. Dorsey was written by Rerdell, 2351.
- Sherman, Wm. T., General, testimony of, for defense, 3806; identifies his indorsement on petition (33 S,), 3606; the facts that led him to make the recommendation, 3606; cross-examined, 3610.
- Sieman, John B., chief pay division, testimony of, 2082; produces reports, drafts and warrants, 2082.
- Smith, George C., attorney-at-law, Rawlins, testimony of, 1965-1989; identifies his signature as notary public and that of Charles F. Perkins to oath (24 S, 1930-1961); the number of men and horses was not filled in when sworn to, 1965; considered he had a right to attach his name and seal to the blank oath, 1980; directed Perkins's attention to the blanks in oath, and advised him not to sign it; Perkins said he had a letter directing him how to fix it, 1982; identifies letter shown him at the time affidavit was executed, 1982; had a conversation with Rerdell early in 1879, Adams, Rankin, Rerdell and himself were present, 1967; letter (29 S, 1962-1963); was written at the time, 1967; contents were true, 1971; Rerdell said they would have the service increased, but wanted something to file, 1968; S. W. Dorsey was one of them, and that they had influence with the department, 1968; identifies petitions (27 S, 1961-1962, and 28 S, 1962), which were started at the same time the letter was written, 1969; considered the increased service asked for was needed, 1971; as to what he swore at the last trial, 1972-1975, 1983-1984; identifies his signature to (34 S., 1964); wrote the petition, 1975; petition is true, 1975-1976; first told Mr. Ker of his conversation with Rerdell, 1977; as to what he stated to Mr. Ker, 1977-1980-1984-1986; Eugene Taylor showed witness a letter about the middle of February, 1881, purporting to come from M. C. Rerdell, 1969; petitions, 1988.
- Sweeney, George M., chief inspection division, testimony of, 1944-1946; identifies files, 1944-1946.
- Taylor, Eugene, subcontractor, testimony of, 2072-2077; performed temporary service in August and November, 1878, 2073; carried the mail in connection with Perkins from January until August, 1879, 2073; commenced to carry three trips, 84 hours' schedule, May 19, 1879, 2073; time was reduced to 45 hours latter part of June, 1879, 2074; in 1878 the average mail to White River was from 20 to 30 pounds, the other way only a few pounds, 2074; one trip, 108 hours' schedule, used 3 men and 10 horses, three trips' schedule, 108 hours, would require about 7 men and from 20 to 25 animals, 2074; three trips, 45 hours, would take 17 men and 60 horses, less would do in summer, 2074; received a letter from Rerdell in February, 1881, requesting him to get up petitions and send them in before March 1; to get the officers at White River to write personal letters and that daily service would be put on, 2074-2075; identifies petitions (33 S and 34 S, 1964); circulated the latter petition himself, 2076; in 1878 there were 10 or 12 white people at White River, it became a military post about November, 1879, 2076; letter read to him contains about the substance of the one received by him from Rerdell, 2077.
- Teller, Henry M., Secretary of the Interior, testimony of, for the defense, 2825; has never been over this route; there are no mining interests there; in January, 1879, the population was limited, 2825.
- Turner, Wm. H., testimony of, for defense; referring to order (22 S, 1957-1958), witness made the brief; the petition asked for 80 hours or a little over 2 miles an hour; Brady directed witness to make a fast schedule, and it was cut down to 45 hours; instead of making a new case witness erased the eighty and inserted forty-five hours, 3355; has no personal knowledge of any alteration in any petition or affidavit, 3355.
- Vaile, Harvey M., one of the defendants, testimony of, relating to this route: does not recollect conversation with Rerdell (2225) in regard to giving him part of the increase on this route, 4021; referring to testimony of Rerdell (2226) that he left here January 4, 1879, and went to Rawlins to put service on this route, Rerdell did not go there at the instance of witness, Miner gave Rerdell a subcontract for the entire pay, 4022; the testimony of Rerdell that he was to have \$2,000 a year on this route after it was increased and expedited to 150 per cent. was not witness' understanding, he understood he was to have the entire route, 4022; at the time of the division in March, 1879, this route was not taken into consideration, 4023; paid Perkins \$200 for first quarter, 1879, has no recollection of the conversation testified to by Rerdell (2228) that Brady had agreed to accept the oath of the subcontractor, 4023-4025; or that Miner furnished Rerdell with a pencil form of affidavit in witness' presence, 4024; never gave Rerdell instructions (2530) to send an affidavit in blank to Perkins, 4024-4025; or to get up petitions on this route, 4025, 4030.

(C.) *Route 38134. Pueblo to Rosita, Colo.*

Advertisement of November 1, 1877, 49 miles, one trip, 15 hours, 522.

Argument, opening of Mr. Bliss, referring specifically to this route, 249, 242-244, 255, 259, 268, 271, 283, 323-324.

of W. W. Ker, for the prosecution, relating to this route, 4571-4580.

of Jeremiah M. Wilson, for the defense, relating to this route, 5138-5150.

Contract of John R. Miner with the United States, dated March 15, 1878, \$388 per annum; sureties, D. W. C. Wheeler and S. N. Hoyt, witnessed by J. W. Dorsey and A. A. Freidrich, 549.

Decisions of the court:

refusing the request of the foreman, that the jury be furnished with a copy of the printed record of the proceedings, 891-892.

referring to a jacket in which papers referred to were not produced, states it will presume that the papers inclosed justified the order, 919.

that any evidence tending to show impropriety on the part of the Second Assistant Postmaster-General would tend to maintain the issue on the part of the Government, 925.

that the jury are to draw the line between justifiable extravagance and fraud on the part of a public officer, 925.

Drafts drawn by John R. Miner, contractor, on the Sixth Auditor in favor of—

Bosler, J. W., witnessed by M. C. Rerdell and J. M. Edmunds, April 8, 1879, second quarter 1880 (37 C), 939; April 7, 1879, third quarter 1880 (40 C), 939; October 13, 1879, first quarter 1881 (43 C), 939; no date, second quarter 1881 (46 C), 940; no date, third quarter 1881 (49 C), 940; July 14, 1879, fourth quarter 1880 (51 C), 940.

Dorsey, S. W., witnessed by M. C. Rerdell and J. M. Edmunds, May 19, 1879, second quarter 1879 (25 C), 937; witnessed by Edmunds, July 7, 1879, third quarter 1879 (28 C), 937; witnessed by W. F. Kellogg and Edmunds, October 7, 1879, fourth quarter 1879 (31 C), 938; witnessed by H. L. Irvine and J. M. Edmunds, no date, first quarter 1880 (34 C), 938.

Vaile, H. M., witnessed by W. J. Brown and Thomas L. Tullock, October 1, 1878, third quarter 1878 (17 C), 935; October 1, 1878, fourth quarter 1878 (20 C), 936; witnessed by M. C. Rerdell and Edmunds, October, 1, 1878, first quarter 1879 (23 C), 939.

Exceptions to rulings admitting letter of N. M. Megrue (1 C), that it is prior to the date of the conspiracy in the indictment, and that it is not an official communication, 865; to the oaths of John W. Dorsey (4 C and 5 C), 866, 867; letter of Miner, Peck & Co., (14 C), 885; to reports, drafts, and warrants, 903; to ruling refusing to allow the defense to cross-examine witness (Walters) on a matter alleged to be pertinent to the examination in chief, 904; to language of the court, 926, 927; to Auditor's reports, 935; to question as to the number of men and animals, 863.

Jacket, no date, inclosing a letter of the postmaster at Greenwood, Colo., suggesting discontinuance of service (7 C), 868.

Journal of the Postmaster-General, extract from showing entry of order of July 8, 1879 (2 C, 866), signed D. M. Key, 4323.

Letters of:

Belford, James B., to Brady, May 5, 1879, inclosing petitions and letters of Governor Pitkin and Judges Thatcher and Stone, cordially joining in urging 7 times a week with fast service (67 C, defense), 3227.

Bowen, Judge Thos. M., to Brady, April 26, 1879, asking increase to 7 trips and quicker speed (59 C, defense), 3126-3127.

Brooke, W. W., to Key, Silver Cliff, Colo., June 10, 1879; their mail comes by way of Canyon City, reaching them 12 hours later than if sent by Pueblo; asks that the weekly line be made daily; advertisement of stage lines attached (69 C, defense), 3228-3229.

Chaffee, J. B., to Brady, New York, April 22, 1879, asks that the mail from Pueblo to Rosita be made 7 times a week with quick time (68 C, defense), 3228.

Chilcott, G. M., to Brady, April 30, 1879, asking daily service between Pueblo and Rosita (65 C, defense), 3226-3227.

Dorsey, John W., subcontractor, May 5, 1879, inclosing proposition for an expedited schedule (3 C), 866; no date, requesting withdrawal of oath (6 C), 865.

Hyde, W. H., to D. M. Key, April 28, 1879, requesting daily mail (11 C), 870.

Megrue, N. M., contractor on route 38132, to Brady, August 30, 1878, refers to a petition for a daily mail on route 38134, and says it is not to accommodate the people, but for the increased pay, all mail for Rosita goes by Cañon City (1 C), 865.

(C.) *Route 38134. Pueblo to Rosita, Colo.*—Continued.

Letters of—Continued.

Miner, Peck & Co., to Frank A. Tuttle, August 19, 1878, "*We make no boast of being solid with anybody, but can get what is reasonable*" (14 C), 885; September 3, 1878, chance for increase not promising, as Greenwood is the only office supplied and Rosita has mail 6 times a week by route 38132 (15 C), 886.

Monroe, A. Q., postmaster, Greenwood, to Tyner, March 17, 1879, suggesting discontinuance of route (8 C), 869.

Pitkin, Frederick W., governor, to Key, April 25, 1879, urges increase in mail service, from Pueblo to Rosita to 7 times a week, with fast time; indorsed "referred to Postmaster-General; James B. Belford" (66 C, defense), 3227.

Thatcher, Henry C., and Wilbur F. Stone, judges, to Brady, April 26, 1879; the mail from Pueblo to Rosita ought to run daily and the time should be reduced; that part of their State is now attracting thousands of people; indorsed "referred to Postmaster-General; J. B. Belford" (64 C, defense), 3226.

Walters, J. W., postmaster, Greenwood, to the First Assistant Postmaster-General, May 8, 1880, both himself and postmasters at Rosita and Pueblo "consider it auseless and expensive route" (9 C), 869.

Oaths of John W. Dorsey, subcontractor, sworn to April 21, 1879, present schedule 3 men and 12 animals, schedule of ten hours, seven trips, 7 men and 38 animals (4 C), 866, 867; second oath, sworn to April 21, 1879, present schedule, 7 trips, 2 men and 6 animals, schedule of ten hours, 6 men and 18 animals (5 C, overt act), 867.

Orders of:

Brady, July 8, 1879, increase to 6 trips from July 14, 1879, allow \$2,328, expedite to ten hours, allow \$5,432 (2 C), 866.

French, October 17, 1879, to change schedule (10 C), 869; October 22, 1879, filing subcontract of Eli Hansom (12 C), 870, 871.

Payments, tabulated statement showing, to Eli Hansom, subcontractor, H. M. Vaile, S. W. Dorsey, and J. W. Bosler, assignees, 728, 729.

Petitions:

For daily line with a fast schedule, indorsed by J. B. Belford that the request is reasonable and necessary; concurred in by H. M. Teller (60 C, defense), 3128; from citizens of Pueblo, asking 7-times-a-week service to Silver Cliff and Rosita, with a fast schedule, indorsed by J. B. Belford that the service asked for is absolutely necessary; concurred in by H. M. Teller (61 C, defense), 3128-3129; from citizens Pueblo, for a daily line to Rosita, and increased speed; should be carried in half the time now occupied; indorsed by J. B. Belford, with request that the service be put on; concurred in by H. M. Teller; newspaper slip attached entitled "Post-Office Troubles" (62 C, defense), 3129-3130; for daily line and fast time to Rosita, indorsed by J. B. Belford, with the hope that the service will be increased; concurred in by H. M. Teller (63 C, defense), 3130; from Rosita, for increase to a daily service on a shorter schedule, indorsed by James A. Gooch, postmaster at Rosita, that he believes an increase of service would be quite beneficial to citizens of county and others on route (70 C, defense), 3229.

Receipts for warrants signed by:

Vaile, H. M., by John R. Miner, January 25, 1879 (55 C), 940; November 17, 1878 (53 C), 940. Vaile, H. M., by John R. Miner, attorney, May 10, 1879 (54 C), 940.

Bosler, J. W., March 3, 1880 (56 C), 940, 941; October 26, 1880 (57 C), 941; November 26, 1880 (58 C), 941.

Revenues, certified transcript of, excluded, 941.

Reports of the Auditor certifying the amounts due and to whom payable, third quarter 1878 (16 C), 934, 935; fourth quarter 1878 (19 C), 936; first quarter 1879 (22 C), 937; second quarter 1879 (24 C), 937; third quarter 1879 (27 C), 937; fourth quarter 1879 (30 C), 938; first quarter 1880 (35 C), 938; second quarter 1880 (36 C), 938; third quarter 1880, in favor of John R. Miner, care of M. C. Rerdell (39 C), 939; first quarter 1881 (42 C), 939; second quarter 1881 (45 C), 939; third quarter 1881 (48 C), 940; fourth quarter 1880 (50 C), 940.

Subcontracts of:

Hansom, Eli, dated October 4, 1879, seven trips, \$3,100, signed John R. Miner, by M. C. Rerdell, filed October 22, 1879 (13 C), 871.

Warrants signed by the Postmaster-General and the Sixth Auditor in favor of:

Bosler, J. W., March 1, 1880 (32 C), 938; March 15, 1880 (35 C), 938; August 18, 1880 (38 C), 939; October 26, 1880 (41 C), 939; April 23, 1881 (44 C), 939; August 1, 1881 (47 C), 940; February 8, 1881 (52 C), 940.

Keyser, Benjamin U., November 13, 1878 (18 C), 936.

Middleton & Co., July 25, 1879 (26 C), 937; October 27, 1879 (26 C), 937, 938.

Vaile, H. M., January 25, 1879 (21 C), 936, 937.

(C.) *Route 38134. Pueblo to Rosita, Colo.*—Continued.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route, 2687.

Handwriting:

3 C. Letter of John W. Dorsey (866), signature and all written by Rerdell, 2687.

4 C. Oath of John W. Dorsey (867), body written by W. F. Kellogg, except the figures "38134," and the words "three," "twelve," "ten," "seven," and "thirty eight," and "subcontractor," written by M. C. Rerdell; signature of Dorsey genuine; does not know signature of notary public, 2687.

5 C. Second oath of John W. Dorsey (867), written by Rerdell, except the signature of Dorsey, which is genuine, figures "21," the word "April," and signature of the clerk, 2687.

14 C. Letter of Miner, Peck & Co. (886), written by Miner, 2687.

53 C. Receipt for warrant (940), signature of Vail genuine, 2687.

Bowen, Thomas M., U. S. Senator, Colorado, testimony of, for the defense; development of Colorado since 1878, 3125-3126. Wrote letter (59 C), 3126-3127.

Brady, Thomas J., one of the defendants, testimony of, relating to this route; July 8, 1879, witness made the order (2 C, 866) to increase to 6 trips and allow \$2,328 and expedite to 10 hours, and allow \$5,432; does not recollect that the letter of the postmaster at Greenwood (8 C, 869), suggesting discontinuance of the route was brought to his attention; identifies indorsement "Do this, Brady," on jacket (7 C, 868), reciting the language of letter (8 C, 869), made up for the discontinuance of the route, 3586; of the two affidavits sworn to by John W. Dorsey on April 21, 1879 (4 C and 5 C, 866-867), one filed on May 6 and the other on May 8, 1879, witness cannot say without the papers which one was used in making the order for expedition, 3432; does not remember that one states that two men and six animals and the other that three men and twelve animals were then in use; that was a small thing; thinks that the proportion comes out just the same whichever one is taken, 3432; identifies oath of J. W. Dorsey (5 C, 867), route 38134, 3543; presumes that he did not take the affidavit of any person not a contractor or subcontractor as the basis of expedition, 3432; does not remember that he took any means to ascertain whether J. W. Dorsey was subcontractor on this route, 3433.

Dorsey, John W., one of the defendants, testimony of, relating to this route; 4 C and 5 C, oaths of J. W. Dorsey (866-867), witness made both affidavits; knows he did not know anything about the number of men and animals necessary; witness was a subcontractor on that route, but his subcontract was not filed, 4133-4135; does not know that he never signed any subcontract on this route, 4135; or that S. W. Dorsey was subcontractor from April 1, 1879, 4136; recollects that one affidavit came in the early morning mail at 3 o'clock; witness acknowledged it and mailed it; in the afternoon another one came saying there was an error in the first, and witness acknowledged that and mailed it, 4138-4139; both letters indorsing the affidavits were from Rerdell, 4139-4140.

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route, being asked to state the facts in regard to this route, witness said, "if I had a map showing the location of Pueblo," when the court suggested that he could not see the map, 3799; Pueblo is at the junction of the Atchison, Topeka and Santa Fé, and Denver and Rio Grande Railroads, and is the chief commercial town in Colorado, outside of Denver, 3799; Pueblo, Canyon City, and Rosita made something of a triangle; all trains arrived at Pueblo from the north, south, and east, at half-past one p. m., the stages left for Rosita at three p. m. and arrived there the next morning, 3799; in 1879 that country was prosperous, Rosita was growing rapidly, Silver Cliff was a town of 4,000 or 5,000 people, and the whole mountains were alive with miners, 3805. Referring to affidavit of J. W. Dorsey (4 C, 866, 867), sworn to April 21, 1879, J. W. Dorsey had no interest in this route at that time, 3943; witness has no recollection of filling up the affidavit, 3943-3944; there was a subcontract in J. W. Dorsey's name, but it was not filed, 3944; perhaps witness had a subcontract himself; thinks Miner was contractor, 3944; it was a great surprise to witness, when these proceedings began, to find an affidavit signed by J. W. Dorsey; thinks Rerdell told him he was subcontractor, 3944; does not remember the order of July 8, 1879, for increase and expedition running up to about \$7,000; knows that it was increased some time during the summer to about \$8,000 for seven times a week service, 3939.

Gooch, James A., postmaster, Rosita, testimony of, 894-902; in 1878 and 1879 the principal mail from Pueblo came by Canyon City over route 38132, 895; from Rosita to Silver Cliff it was 8 miles, Rosita to Canyon City was 30 miles

(C.) *Route 38134. Pueblo to Rosita, Colo.*—Continued.

Witnesses—Continued.

Gooch, James A.—Continued.

895; Silver Cliff got its mail from Canyon City. Mail leaving Pueblo in the morning, arrived at Rosita on this route, from 6 to 8 p. m.; mail leaving Pueblo at 2 p. m. arrived at Rosita by the Canyon City route at from 3 to 4 p. m. the next day, 895; growth of Silver Cliff and Rosita, 896-900; mail received at Rosita over this route would weigh from 3 to 5 pounds, in which there were from 3 to 5 letters, 902; arrival and departure of the mail, 901.

Hull, Alvah A., subcontractor, testimony of, 871-881; carried the mail for Eli Hanson from February, 1880, to July 31, 1881, 7 trips a week on 10-hour schedule, distance 50 miles, 872; used 6-horse coaches and carried passengers and express, 872; to carry the mail alone 7 times a week and 10-hour schedule would take 5 men and 12 horses, 873, 879; 1 time a week, 15-hour schedule, would take 2 men, 4 horses, 873, 875; witness carried the mail on horseback 7 times a week about 6 weeks, 874; Greenwood was the only intermediate office except Silver Park, which was discontinued; witness received \$2,600 per annum, 873, 879; men and animals, 875, 879; roads, 879-881; did not file his subcontract, 881.

Laird, Charles H., clerk finance office, testimony of, 902; produces receipts for warrants, 902.

Mark, Cyrus, assistant postmaster, Pueblo, testimony of, 924-933; in 1878, letters for Rosita were sent by the Canyon City route; after route 38134 was 7 times a week letters for Rosita mailed before 1 p. m. were sent by Canyon City; those mailed after 1 p. m. were sent by route 38134 next morning; when this route was once a week mailed about 25 letters; when it was 7 times a week mailed from 1 to 10, 928; mail sent to Rosita sent by route 38134 averaged 2 or 3 letters; sometimes only a mail-bill was sent; most of the Rosita mail was sent by the other route, 928; Pueblo was supplied by 5 other routes, 929; population of Pueblo, 929; quantity of mail, 930-933; did not report to General Brady number of letters going over this route, 930; witness made up the schedule time, 933-934; mail from Rosita over route 38134 arrived about 6 or 7 p. m., 933.

Miner, John R., one of the defendants; testimony of, relating to this route; 25 C, 28 C, 31 C, 37 C, 40 C, 43 C, 51 C, contractors' drafts, were signed by witness prior to May 5, 1879, and the dates filled in afterwards, 4211.

34 C and 46 C, contractors' drafts, the dates of which were blank, were signed by witness prior to May 5, 1879, 5211. Does not know whether he testified before the Congressional committee to the extracts read to him, 4242.

Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2232; went west on April 17 or 18, 1879, 2232; made a subcontract, 2232.

Handwriting:

3 C. Letter of John W. Dorsey (866), signature and all written by witness, who had authority to sign, 2333.

4 C. Oath of John W. Dorsey (866), body written by W. F. Kellogg, the number of the route and of men and animals by witness; signature of Dorsey genuine, 2333, 2334.

5 C. Second oath of John W. Dorsey (867), all except the signatures of Dorsey and Wainwright and the date sworn to was written by witness; signature of Dorsey genuine, 2334.

14 C and 15 C. Letters of Miner, Peck & Co. (885, 886), signatures and all were written by Miner, 2334.

53 C. Receipt for warrant (940), signature of Vaile genuine, 2334.

Sleman, John B., chief pay division, testimony of, 855, 903-904.

Produces reports, drafts, and warrant, 903, 855.

Sweeney, George M., chief inspection division, testimony of, 863-865.

Identifies files, 863-865.

Tuttle, Frank A., subcontractor, testimony of, 881-890; carried the mail for Miner, Peck & Co. from July to October, 1878, 3 times a week in about 12 hours, contract only called for one trip in 15 hours, 882; also carried passengers and express; to carry the mail once a week on a schedule of 15 hours would require 2 men, of whom 1 would be a stock-tender, and 3 horses, 883; 7 times a week and 10 hours would require 10 men and about 14 horses; of the men 2 would be carriers and the others stock-tenders, 883; length of route 50 miles, 883; from Pueblo the mail would weigh from 2 to 10 pounds, the most of which would be left at Greenwood, 883; took very little mail from Rosita, 884; identifies letters to Miner, Peck & Co. (14 C), 884, and (15 C), 885; refused to carry the mail until his pay was deposited in the bank, as he knew his pay was nearly double of that of the contractor, 886;

(C.) *Route 38134. Pueblo to Rosita, Colo.—Continued.*

Witnesses—Continued.

Tuttle, Frank A.—Continued.

road, 886; did not file his subcontract, 887; men and animals, 887; route by Canyon City, 888; thinks he bid \$1,100 on this route, 889; Silver Cliff grew up like a mushroom, 890; received \$700 per annum, contractor only got \$388 per annum, 885.

Walters, J. W., postmaster, Greenwood, testimony of, 904-910, 919-921; was postmaster from February to November, 1880, 904-905; Greenwood was supplied 3 times a week by route from Florence; Florence was on the railroad from Pueblo, 10 miles from Greenwood, 904; most of the mail came by the Florence route, 904; mail received from Pueblo over route 38134 would weigh from 10 to 15 pounds, in which there would be 4 or 5 letters, 904; in the mail from Rosita there would be 1 or 2 letters, 904; letter (9 C, 869), 904-910, 919-921; he moved the site of the office $1\frac{1}{2}$ miles, 906, 908-909; carrier failed to deliver the mail for 3 or 4 weeks, 910; location of Greenwood, 906-907.

(B.) *Route 38135. Saint Charles to Greenhorn, Colo.*

Advertisement of November 1, 1877, 35 miles, 2 trips, 12 hours, 522.

Accounts of the postmaster at Agate, fourth quarter 1880, showing no business done (26 B and 27 B), 796-799.

Argument, opening, of Mr. Bliss, referring specifically to this route, 250, 251, 255, 268, 269, 283, 310-312; of W. W. Ker, for the prosecution, relating to this route, 4561-4571; of Jeremiah M. Wilson, for defense, relating to this route, 5129-5137.

On the question of the admission of a letter of William Ingersoll, P. M. Pueblo, dated December 15, 1877, advising the department of an error in the length of the route as advertised, of Mr. Ker, 762, 763; Mr. Henkle, 763, 764; Mr. Ingersoll, 763, 767; Mr. Merrick, 765-767.

Contract of John R. Miner with the United States, dated March 15, 1878, \$548 per annum, sureties, D. W. C. Wheeler and S. N. Hoyt, witnessed by J. W. Dorsey and A. A. Freidrich, 549, 758.

Decisions of the court:

That in an indictment to commit a fraud against the United States it is not necessary to specify the particulars, as all frauds against the United States are criminal, 777.

That proof of overt acts will not be admitted behind the period of limitations, but acts, although in one view overt acts, may be admitted to prove a combination, 775.

An overt act may have been committed after a paper was filed, 781.

That it is necessary for one or more overt acts to be proved, 777.

Drafts drawn by John R. Miner, contractor, on the Sixth Auditor, in favor of—

The German-American National Bank, witnessed by F. H. Falk and John M. Roach, third quarter 1878 (41 B), 853, 854.

H. M. Vaille, witnessed by M. C. Rerdell and J. M. Edmunds, October 14, 1878; fourth quarter 1878 (44 B), 856; October 1, 1878, first quarter 1879 (46 B), 856.

S. W. Dorsey, witnessed by M. C. Rerdell and J. M. Edmunds, May 19, 1879, second quarter 1879 (49 B), 856; July 7, 1879, third quarter, 1879 (52 B), 857; witnessed by W. F. Kellogg and Edmunds, October 7, 1879, fourth quarter 1879 (55 B), 857; witnessed by H. L. Irvine and Edmunds, no date, first quarter 1880 (58 B), 857.

J. W. Bosler witnessed by H. L. Irvine and J. M. Edmunds, no date, second quarter 1880 (61 B), 857, 858, witnessed by M. C. Rerdell and J. M. Edmunds, April 7, 1879, third quarter 1880 (64 B), 858, July 1, 1879, fourth quarter 1880 (67 B), 858, October 4, 1879, first quarter 1881 (70 B), 858; no date, second quarter 1881 (73 B), 859; no date, third quarter 1881 (75 B), 863.

Exceptions to rulings admitting contract and proposal on account of their date and that they are not the papers alleged in the indictment, 757; to the oath on the ground that it is not proven, 779, 781; to letter of John R. Miner (6 B) on the ground that it is not proven and bears date outside of the statute of limitations, 779; to the accounts of the postmaster at Agate (26 B and 27 B) on the ground that they were addressed to the Sixth Auditor, 795; to ruling refusing to strike out the accounts of the postmaster at Agate, that they bear date subsequent to the discontinuance of the office, 799; to papers (29 B, 30 B, and 31 B) showing the amount paid for temporary service between Saint Charles and

(B.) *Route 38135. Saint Charles to Greenhorn, Colo.*—Continued.

Exceptions to ruling, &c.—Continued.

Pueblo, as the law fixes the amount to be paid contractor in the case of extension of service, 805; to order of Brady (34 B) to stop payments to subcontractor, 824; to questions whether there was any difference in the time of the arrival and departure of the mails after expedition was ordered, that the registers are the best evidence, 829; whether petition (12 B) is in the same condition as when witness signed it, as there is no criticism of that paper in the indictment, 830; as to what witness received for carrying the mail, as his subcontract was not filed, 835; to the admission of the certified transcript of the revenues, 850; of the reports, drafts and warrants, because they are the acts of other officers than Brady, 862.

Fines and deductions, statement of, 729.

Journal of the Postmaster-General, extract from, showing entry of order of June 26, 1879 (4 B, 778); signed D. M. Key, 4323.

Letters of:

Ames, E. M., to Brady, July 12, 1878, is carrying the mail from Saint Charles to Pueblo for \$275 per annum (31 B), 805; November 19, 1878, requesting withdrawal of subcontract (35 B), 824.

Brady, Thomas J., to postmaster at Pueblo, report if order to supply Agate is complied with (24 B), 791.

Chaffee, J. B., to D. M. Key, New York, April 23, 1879 (stamped as received April 22, 1879), recommending daily mail (14 B), 784.

Chilcott, J. G., to H. M. Teller, May 6, 1879, daily mail (14 B), 787.

Fairhurst, James, postmaster, Saint Charles, July 12, 1878, to Brady, has made a temporary contract to carry the mail from Saint Charles to Pueblo for \$275 per annum (29 B), 805; July 11, 1878, service was commenced from Saint Charles to Greenhorn, July 2, 1878 (30 B), 805; August 15, 1878, Pueblo should be the head of the route (3 B), 772, 773.

Hunt, W. L., Supt. R. M. S., to Wm. B. Thompson, July 10, 1880, recommending change of schedule, referred to Brady by N. G. Summerfield, acting General Supt. R. M. S., July 14, 1880 (78 B, defense), 3288.

Ingersoll, William, postmaster, Pueblo, to the Second Assistant, December 15, 1877, noting an error in the distance of the route as advertised, 762; excluded, 769; July 18, 1878, mail should be carried from Pueblo, indorsed by Charles Adams, special agent, that the contractor should be compelled to carry the mail to Pueblo without additional pay (2 B), 772; December 2, 1880, carrier will not stop at Agate unless pay is increased (25 B), 791.

Miner, John R., to Brady, April 16, 1879, inclosing proposition to carry the mail on an expedited schedule (6 B), 779; May 5, 1879, asking change of address to care of M. C. Rerdell, box 706 (16 B), 788; May 8, 1879, inclosing petition (9 B), 784, 785.

Piper, J. S., postmaster, Agate, to Brady, September 30, 1880, cannot supply the office for two-thirds of his compensation as postmaster (21 B) 789, 790; October 13, 1880, Agate can be supplied by adding three miles to the distance (22 B), 790.

Oath of John R. Miner, contractor, sworn to April 17, 1879, present schedule, three trips, one man, and one animal; schedule of seven hours, three trips, two men, and four animals (5 B), (overt act, averred as of June 26, 1879), 778.

Orders of:

French, August 30, 1878, to embrace Pueblo and allow \$328.80 per annum additional (1 B), 771; November 11, 1879, filing subcontract of S. W. Dorsey (17 B), 788; July 21, 1879, to change schedule (77 B, defense), 3287-3288.

Brady, October 1, 1878, to stop payments to subcontractor (34 B), 824; same date, filing subcontract of E. M. Ames (32 B), 805, 806; May 9, 1879, to change address care of M. C. Rerdell, box 706 (15 B), 787, 788; June 26, 1879, increase one trip from July 14, 1879, allow \$438.80, expedite to seven hours, allow \$2,630.40 (overt act) (4 B), 778; July 23, 1880, to change schedule (19 B), 789; November 10, 1880, to embrace Agate from December 1, 1880, allow \$369.90, (overt act) (20 B), 789; December 7, 1880, to stop payments to contractor and subcontractor (28 B), 800; December 14, 1880, omit Agate from January 1, 1881, one month extra pay, (overt act) (23 B), 790, 791.

Petitions: (Overt act, averred as of June 26, 1879.)

From Greenhorn, Colo., for increase to 3 trips "*and faster time*," indorsed by James B. Belford, H. M. Teller, and N. P. Hill, filed April 17, 1879 (7 B), 783; for 6 trips and a schedule of 8 hours, filed May 8, 1879 (10 B), 785; from Muddy Creek, for 6 trips "*and a faster schedule*," filed May 8, 1879 (11 B), 785; for 6 trips "*on quicker time*," filed May 8, 1879 (12 B), 786; for a daily mail, filed May 8, 1879 (13 B), 786.

(B.) *Route 38135. Saint Charles to Greenhorn, Colo.*—Continued.

Payments, tabulated statement showing, to E. M. Ames, subcontractor, and H. M. Vaile, S. W. Dorsey, and J. W. Bosler, assignees, 729.

Proposal of John R. Miner, sworn to before A. E. Boone, January 19, 1878, sureties John O. Evans, J. H. Watts, 550-552.

Remissions, statement of, 729.

Reports, Auditor's, of balances due and to whom payable for services on this route third quarter 1878 (39 B), 853, 855; fourth quarter 1878 (42 B), 855, 856; first quarter 1879 (45 B), 856; second quarter 1879 (47 B), 856; third quarter 1879 (50 B), 856; fourth quarter 1879 (53 B), 857; first quarter 1880 (56 B), 857; second quarter 1880 (59 B), 857; third quarter 1880, payable to Bosler, assignee, and to John R. Miner, care of M. C. Rerdell, present (62 B), 858; fourth quarter 1880 (65 B), 858; first quarter 1881 (69 B), 858; second quarter 1881 (71 B), 859; third quarter 1881 (74 B), 859-863.

Revenues, certified transcript of (36 B), 850, 851.

Schedule of departures and arrivals, July 9, 1879, recommended by postmasters and contractors (76 B, defense), 3287.

Subcontracts of:

Ames, E. M., with John R. Miner, dated May 1, 1878, provision relative to expedition stricken out (33 B), 806.

Dorsey, S. W., dated April 1, 1879, full pay, witnessed by M. C. Rerdell, overt act, (18 B), 789.

Warrants signed by the Postmaster-General and the Sixth Auditor in favor of—

Ames, E. M., subcontractor, dated November 1, 1878 (40 B), 855.

Bosler, J. W., assignee, February 28, 1880 (54 B), 857; May 15, 1880 (57 B), 857; August 18, 1880 (60 B), 857; October 26, 1880 (63 B), 858; February 8, 1881 (66 B), 858; April 23, 1881 (69 B), 858; August 1, 1881 (72 B), 859.

Vaile, H. M., January 25, 1879 (43 B), 856.

Middleton & Co., assignee, July 25, 1879 (48 B), 856.

Miner, John R., care of M. C. Rerdell, present, indorsed by John R. Miner and S. W. Dorsey (63 B), 858.

Witnesses:

Belford, James B., M. C., Colorado, testimony of, for the defense, 2782.

Identifies his signature to petition (7 B, 783), 2782.

Boone, Albert E., mail-contractor, testimony of, 2686.

Handwriting:

5 B. Oath of Miner (778), all but the signature of W. F. Kellogg was written by Miner, 2686.

6 B. Letter of Miner (779), signature and all written by Rerdell, 2686.

8 B. Letter of Chaffee (784), does not know the handwriting, 2686.

18 B. Subcontract of S. W. Dorsey (789), all written by Miner, except the signatures of Rerdell and Dorsey, which are genuine, 2686.

33 B. Subcontract of Ames (806), both signatures and all by Miner, 2686.

35 B. Letter of Ames (824), signature and all by Miner, 2686.

"Proposal" partly by Miner and partly by Boone, amount filled in by Rerdell; signatures of the bondsmen genuine, 2686.

Brady, Thomas J., one of the defendants, testimony of, relating to this route. Does not remember why he added one trip and reduced the time, and paid \$2,301.60 more than it would have cost for 6 trips, original schedule, unless it was for the reason stated upon the jacket (4 B, 778), or how they arrived at a 7 hours' schedule if they asked for 8; witness may have concluded that he preferred 7, which would make it a little more than 4 miles an hour, 3412; or that his attention was called to the fact that the route should have been advertised as from Pueblo, 3413; believes there was no post-office at Saint Charles, and it was necessary to extend the route to Pueblo, 3413. Where a mistake of that kind occurs, if they are railroad points, the error could be corrected by shifting the terminus to some other railroad point, 3413; or they could have readvertised the route, or discontinued it, and made a temporary contract for 6 months, 3414; does not remember what action he took upon letter of William Ingersoll (2 B, 772); could not compel the contractor to carry the mail from Pueblo to Greenhorn, under a contract from Saint Charles, 3414. Order (1 B, 771) to change the terminus to Pueblo and allow \$328.80 was a proper one under the law, 3414, 3415; does not remember to have seen the statement of the special agent of the department that it ought not to have been done, 3457. Although the distance traveled was no further than the advertised distance, it having been advertised from point to point, contractor was entitled to the addition, 3415, 3457; does not know that department was notified of a temporary contract to carry the mail from Saint Charles to Pueblo, and was allowed for the extended distance. 3415; made the order

(B.) *Route 38135. Saint Charles to Greenhorn, Colo.*—Continued.

Witnesses—Continued.

Brady, Thomas J.—Continued.

(20 B, 789) to embrace Agate and the order (23 B, 790, 791) to omit Agate with one month's extra pay, 3553, 3554. The jacket shows why he was allowed one month's extra pay, when the files of the department show there had never been a day's service in carrying the mail to Agate; the fact that the distance was 8 miles, while they ordered the contractor to do it at 3 miles, would justify his non-performance of the service, 3554.

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route; the testimony of Rerdell (2272) that he wrote the words "and fast time" in petition (7 B, 783), by direction of witness, is false; did not direct Rerdell to write the words "on quicker time" in petition (12 B, 786), 3787; or direct him to write the words "on faster schedule" in petition (11 B, 785), it is absurd to suppose he did, 3787; referring to order of June 26, running this route up from \$548 to \$3,069, remembers there was an increase made, but cannot give the date; thinks the amount stated is about right, 3939-3940.

Farish, William B., subcontractor, testimony of, 834-836; carried the mail about 3 months, commencing August 20, 1881, made the trip Pueblo to Greenhorn in from 6 to 10 hours, ordinarily in 8 hours; 3 trips; used 2 horses, and drove himself, 835; received \$840 per annum, 835; mail to Greenhorn averaged from 10 to 40 pounds; the other way, from 2 to 8 pounds, 835; roads, 836.

Higgason, William H., subcontractor, testimony of, 839-840; carried the mail 3 trips on 7-hour schedule, 839; drove himself and used 2 horses; was paid \$840, 839; has made the trip in 5 hours, 840.

McDaniel, J. H., subcontractor, testimony of, 837-839; received \$840 for carrying the mail 3 trips, 7-hour schedule, 837; used 1 man and 2 horses, 837; did not file his subcontract, 838; could not supply Agate for the compensation, 838; received no pay for Agate, 838-839; it was 3 miles off the route, 839.

Mark, Cyrus, assistant postmaster Pueblo, testimony of, 847-849; mail left Pueblo for the East at 1 p. m. and arrived at 2 p. m., mail on the Greenhorn route arrived from 2 to 7 p. m.; after expedition it seldom arrived in time to make connection, 848-849; before expedition mail on this route arrived from 1 to 7 p. m., 849; made monthly reports to department, which were correct, 849.

Miner, John R., one of the defendants, testimony of, relating to this route.

5 B. Oath of Miner (778); all in witness' handwriting, except the signature of notary; has the appearance of not all having been written at the same time, 4236; made the affidavit at request of Rerdell; had no interest in the route at the time; the partition was not completed at that time, 4184, 4237, 4242-4243; believes the estimate of men and animals was fair and just, 4187.

6 B and 9 B. Letters of Miner (779, 784-785) were not signed by witness, 4209.

33 B. Subcontract of Ames (806).

35 B. Letter of Ames (824); signature and all are in witness' handwriting; Ames was his nephew, and witness was authorized to sign his name, 4187.

49 B and 62 B, contractors' drafts were signed by witness prior to May 5, 1879, and the dates put in afterwards, 4211.

55 B, 61 B, and 64 B, contractors' drafts, the dates in which are now blank, were signed by witness prior to May 5, 1879, 4211.

Piper, Jahzeel S., postmaster Agate, testimony of, 841-847; was postmaster 13 months; Agate was about $1\frac{1}{2}$ miles off the route, and, by the traveled road, would add about 3 miles to the distance, 841; no mail was ever delivered there; identifies quarterly accounts, 842; received no pay as postmaster, 842; carrier came there once, 845; reported delinquency December 31, 1881, 846; good road to Agate, 847; distances, 844-847.

Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2332, 2333, 2543-2545, 2572-2573; went West again April 17 or 18, 1879, 2232; made a subcontract on route 38135, 2233.

Handwriting:

"Proposal 1" partly written by Miner and partly written by Boone; amount filled in by Rerdell, 2332.

5 B. Oath of Miner (778) was all written by Miner except signature of W. F. Kellogg, 2332, 2572.

6 B. Letter of Miner (779), signature and all by witness. Mr. Dorsey directed witness to see Miner and get an affidavit, and the letter was written in anticipation of procuring the affidavit, 2572.

7. B. Petition (783), words "and faster time" written by Rerdell, by instruction of S. W. Dorsey, 2272, 2333; received the petition about May 5 or 6, 1879,

(B.) *Route 38135. Saint Charles to Greenhorn, Colo.*—Continued.

Witnesses—Continued.

Rerdell, M. C.—Continued.

2542; had a conversation with S. W. Dorsey at his office, 1121 I street, about May 5 or 6, 1879; Dorsey told witness to take the petition and put in a clause for expedition, 2543.

8 B. Letter of Chaffee (784), all except signature written by John A. Sibbald, 2333, 2556-2557.

9 B. Letter of Miner (784-785), signature and all by Rerdell, 2333.

11 B. Petition (785), "*and a faster schedule*," by Rerdell under instructions of S. W. Dorsey, 2273, 2333, 2543. Petition asks for reduction of time to eight hours; that was in the petition; when witness wrote "*on a faster schedule*," Dorsey told witness to put in a clause for expedition, 2544.

12 B. Petition (785), "*on quicker time*," by Rerdell, under instruction of S. W. Dorsey, 2273, 2333, 2544; Dorsey told witness to put in a clause for expedition; witness changed the words without reading the petition, 2545.

18 B. Subcontract of S. W. Dorsey (789), signatures of S. W. Dorsey and John R. Miner, and Rerdell as a witness, are genuine, 2333.

33 B. Subcontract of Ames (806), signatures of Ames and Miner both written by Miner, 2333, 2573; Ames was a boy and a relation of Miner's, 2574.

35 B. Letter of Ames (824), signature and all written by Miner, 2333.

Sears, George, postmaster, Greenhorn, testimony of, 826-834; distances, 827; Muddy Creek and Saint Charles the only intermediate post-offices, 827; time made in 1878 was in about eight hours, mail arrived by this route from Pueblo from 1 to 5 p. m., 827; carrier left Greenhorn for Pueblo at 7 a. m., 828; mail received at Greenhorn would weigh from 40 to 50 pounds, mail leaving Greenhorn from 8 to 10 lbs., 828; Greenhorn supplied by one other route, 828; there was one house at Muddy Creek, 829; identifies signatures of 7 B (783), 829, and 12 B (785), 830; words "*on quicker time*" not in petition when witness signed it, 830-831; after expedition mail arrived about the same, but with more regularity, 834; mail carrier drove himself and used two horses, 827.

Sleman, John B., Chief Pay Division, testimony of, 853, 871; produces reports, drafts, and warrants, 853, 871.

Sweeney, George M., Chief Inspection Division, testimony of, 755-757; identifies files, 855-857.

Teller, Henry M., Secretary of the Interior, testimony of, for the defense, 2823; identifies indorsement on petition (7 D ? B, 783); has no doubt the statement in petition is true, 2823.

Withers, Harry C., subcontractor, testimony of, 825-826, 837; used 1 man and 2 horses for 3 trips, 7-hour schedule, 825-826; distances, 826; Muddy Creek and Saint Charles the only intermediate offices, 826; subcontract pay \$1,000, 826; did not file his subcontract, 837.

(E.) *Route 38140. Trinidad, Colorado, to Madison, New Mexico.*

Advertisement of November 1, 1877, 45 miles, once a week, 13 hours, 522.

Argument, opening, of Mr. Bliss, referring specifically to this route: 242, 257, 259, 262, 280, 321-323; of W. W. Ker, for the prosecution, relating to this route, 4673-4680; of Jeremiah M. Wilson, for the defense, relative to this route, 5192-5194.

Contract of John R. Miner with the United States, dated March 15, 1878, \$338 per annum; sureties, D. W. C. Wheeler and S. N. Hoyt, witnessed by J. W. Dorsey and A. A. Freidrich, oath of Miner acknowledged by A. E. Boone (1 E), 546, 1026.

Decision of the court that what is paid to a subsubcontractor is *res inter alios acta*, and that that kind of testimony should be stricken out of routes 38140 and 38135, 1038.

Distance circulars of September 26 and October 23, 1878 (11 E), 1032.

Drafts drawn by John R. Miner, contractor, on the Sixth Auditor in favor of—

Bosler, J. W., witnessed by H. L. Irvine and J. M. Edmunds, no date, second quarter 1880 (42 E), 1059; witnessed by M. C. Rerdell and Edmunds, April 7, 1879, third quarter 1880 (45 E), 1060; July 14, 1849, fourth quarter 1880 (48 E), 1060; October 4, 1879, first quarter 1881 (51 E), 1060; no date, second quarter 1881 (54 E), 1061; no date, third quarter 1881 (56 E), 1061.

Dorsey, S. W., witnessed by M. C. Rerdell and J. M. Edmunds, May 19, 1879, second quarter 1879 (30 E), 1058; July 7, 1879, third quarter 1879 (33 E),

(E.) *Route 38140. Trinidad, Colo., to Madison, N. Mex.*—Continued.

Drafts drawn by John R. Miner—Continued.

Dorsey, S. W.—Continued.

1058; witnessed by W. F. Kellogg and Edmunds, October 7, 1879, fourth quarter 1879 (36 E), 1058; witnessed by H. L. Irvine and J. M. Edmunds, no date, first quarter 1880 (39 E), 1059.

Vaile, H. M., witnessed by W. J. Brown and Thomas L. Tullock, October 1, 1878, fourth quarter 1878 (21 E), 1057; October 1, 1878, fourth quarter 1878 (24 E), 1057; witnessed by M. C. Rerdell and J. M. Edmunds, October 1, 1878, first quarter 1879 (27 E), 1057.

Exceptions to rulings, admitting:

Contract of John R. Miner (1 E), 1026; to refusal to allow the defense to prove a government map, 1028; admission of the order of French (10 E), 1031; to questions as to what witness (De Busk, a subcontractor) paid for having the mail carried, 1037; question stricken out, 1038; as to when Raton was taken off the route, 1062; as to whether witness (De Busk) received any paper purporting to be signed by John R. Miner, 1067; to letters of M. C. Rerdell (59 E and 60 E), 1066.

Expedition, calculation for (9 E), 1031.

Fines and deductions, statement of, 730.

Journal of the Postmaster-General, extract from, showing entry of order of May 9, 1879 (4 E), 1028, 1029; signed D. M. Key, 4326.

Letters of:

Belford, James B., to Brady, April 28, 1879, asking for improved service both as to trips and speed (7 E), 1030, 1031.

Chaffee, J. B., to D. M. Key, New York, April 21, 1879, asking for three trips, and to have the trip made in one day (8 E), 1031.

De Busk, S. W., postmaster at Raton, to the Postmaster-General, September 18, 1878, stating that they have received their mail from Trinidad, 22 miles distant, for the last two years, and asking for service twice a week to Raton, indorsed by H. M. Teller (2 E), 1027.

Dorsey, John W. (Miner was contractor), to Brady, April 28, 1879, inclosing proposition for expedition, and stating that the mails are very heavy passing over this route (5 E), 1029.

Dorsey, S. W., and John R. Miner to Brady, December 6, 1880, asking withdrawal of subcontract of S. W. Dorsey (17 E), 1029.

Jaffa Brothers to Postmaster-General, April 21, 1879, asking him to grant petition for 3 times a week service, filed May 3, 1879 (66 E, defense), 3252.

Miner, John R., to William Bergner, February 8, 1881, inclosing draft for pay at the rate of \$1,550 per annum (not marked), 1054, 1055; July 30, 1881, inclosing draft (not marked), 1056.

Miner, John R., to Brady, May 10, 1879, filing petition for increase of service (63 E, defense), 3251.

Moore and Bennett, and Thomas C. Stevens, to Brady, April 14, 1879, requests increase of 3 trips, filed April 19, 1879 (70 E, defense), 3253; to Belford, April 14, 1879, hopes that Belford and Senator Teller will see the Postmaster-General and recommend the increase to 3 trips (72 E, defense), 3254.

Post, E. J., to Postmaster-General, April 12, 1879, asking increase to 3 trips, filed April 19, 1879 (75 E, defense), 3255.

Rerdell, M. C., to S. W. De Busk, April 3, 1880; to whom shall he send pay for quarter just ended (59 E), 1066; October 21, 1880, will make payments to William Bergner (60 E), 1066.

Rifenburg, W. G., to Brady, May 5, 1879, has forwarded petition for increase of service through S. W. Dorsey, the public demand the increase, filed May 10, 1879 (65 E, defense), 3251.

Sturges, Henry, to J. B. Belford, April 21, 1879, people are demanding tri-weekly mail line, service should be increased and fast time ordered, filed April 26, 1879 (67 E, defense), 3252; to Key, April 21, 1879, states petitions have been forwarded for three trips and quick time, hopes department will grant them, filed April 28, 1879 (68 E, defense), 3252.

Swallow, Geo. R., Cashier, to J. B. Belford, April 14, 1879, asking increase to 3 trips with a faster schedule, indorsed and recommended by N. P. Hill, U. S. S., filed April 19, 1879 (73 E, defense), 3254; to Key, April 14, 1879, requesting increase to 3 trips with a faster schedule, filed April 21, 1879 (74 E, defense), 3254.

Newspaper slip referring to petition for increase of service (69 E, defense), 3253.

Oath of John W. Dorsey, subcontractor, sworn to April 26, 1879, original schedule, three trips, 1 man, 4 animals; schedule of twelve hours, three trips, 3 men, 11 animals (overt act averred in the indictment as filed May 23, 1879) (6 E), 1029.

(E.) *Route 38140. Trinidad, Colo., to Madison, N. Mex.*—Continued.

Orders of:

Brady, June 6, 1878, to embrace Raton from July 1, 1878, without change of pay (3 E), 1028; January 6, 1879, to change schedule (13 E), 1033; May 9, 1879, expedite schedule to 12 hours, allow \$2,758.05 from May 19, 1879, overt act averred in the indictment as of May 23, 1879 (4 E), (1028, 1029; December 7, 1880, to stop payments to subcontractor (16 E), 1034.

April 22, 1879, to increase 2 trips from May, 1879, and May 1, 1876, and allow \$1,021.50 (71 E, defense), 3253.

French, November 13, 1878, to allow \$172.75 for embracing Raton from July 1, 1878, retroactive (10 E), 1031; November 11, 1879, filing subcontract of S. W. Dorsey (14 E), 1034.

Payments, tabulated statement showing, to H. M. Vaile, S. W. Dorsey, and J. W. Bosler, assignees, and John R. Miner, subcontractor, 729, 730.

Petitions:

for increase to 3 times a week, and that the time be made faster, filed May 10, 1879 (64 E, defense), 3257:

from Colfax County to Brady, April, 1879, for 3 trips and fast time (76 E, defense), 3255.

Remissions of fines and deductions, statement of, 730.

Reports of the Auditor certifying balances due and to whom payable, third quarter 1878 (20 E), 1056; fourth quarter 1878 (23 E), 1057; first quarter 1879 (26 E), 1057; second quarter 1879 (29 E), 1057, 1058; third quarter 1879 (32 E), 1058; fourth quarter 1879 (35 E), 1058; first quarter 1880 (38 E), 1059; second quarter 1880 (41 E), 1059; third quarter 1880 (44 E), 1060; fourth quarter 1880 (47 E), 1060; first quarter 1881 (50 E), 1060; second quarter 1881 (53 E), 1061; third quarter 1881 (55 E), 1061.

Revenues, certified transcript of, 2748-2749.

Schedule of departures and arrivals, November 13, 1878 (12 E), 1033.

Subcontract of S. W. Dorsey, dated April 1, 1879, full pay, witnessed by M. C. Rerdell, filed November 11, 1879 (overt act) (15 E), 1034.

Warrants signed by the Postmaster-General and the Sixth Auditor, payable to:

Bosler, J. W., March 1, 1880 (39 E), 1059; May 15, 1880 (40 E), 1059; August 15, 1880 (43 E), 1059; October 26, 1880 (46 E), 1060; February 7, 1881 (49 E), 1060; April 23, 1881 (52 E), 1060; August 1, 1881 (55 E), 1061; December 2, 1881 (57 E), 1061.

Witnesses:

Bergner William C., subcontractor, testimony of, 1050-1056; carried the mail for De Busk 3 trips, schedule of 12 hours, drove himself, used 3 horses, and had 3 extra horses, 1050; when he carried it for himself used 4 horses, 1052; men and animals 1052-1054; received checks for his pay from Rerdell signed by Miner, 1054; identifies letters received from Miner, 1054; when he quit carrying the mail, there was one quarter's pay due, Rerdell paid him last February, 1056.

Boone, A. E., mail contractor, testimony of, relating to this route, 2691-2692.

Handwriting:

5 E. Letter of J. W. Dorsey (1029); signature and all written by S. W. Dorsey, 2691.

6 E. Oath of J. W. Dorsey (1029); body was written by Kellogg; cannot say as to the signature of J. W. Dorsey; filled in by S. W. Dorsey, except the word "twelve," which resembles Rerdell's handwriting, 2692.

17 E. Letter of Miner and S. W. Dorsey (1035); written by Rerdell except the signature of Dorsey, which is genuine, 2692.

Brady, Thomas J., one of the defendants, testimony of, relating to this route.

Having made the order (3 E, 1028) putting Raton upon this route and increasing it 23 miles, when the paper upon which it was made showed that it could be connected with another route by the addition of only 10 or 12 miles; witness made the order (4 E, 1028-1029) granting expedition over the extended route upon the request of Senator Chaffee and Mr. Belford, instead of detaching it and putting it upon the route Senator Teller had asked, 3416; although Raton was within 10 miles of Pulaski, a railroad station, by connecting it with another route that was from 50 to 100 miles from a railroad station, it gave them direct connection with the county seat, 3417; cannot say why he did not comply with the request of the postmaster at Raton for connection with an entirely different route on the request of Senator Teller to the same effect, 3415; the jacket states without change of distance or pay any bureau officer would sign that without question, 3416; if the order had been made provisionally to embrace until the question of increased pay could be adjusted it ought

(E.) *Route 38140. Trinidad, Colo., to Madison, N. Mex.*—Continued.

Witnesses—Continued.

Brady, Thomas J.—Continued.

to have said "distance to be hereafter stated," 3416; order (10 E, 1031) to allow \$173 for embracing Raton was made by French, and very properly, 3416; the reason he made the route 3 trips and expedited it from 19 to 12 hours, paying \$2,222 more than it would have cost to have made it 6 trips, original schedule, was to make it a fast instead of a frequent service, and Belford and Chaffee both asked that it be made fast, 3417; being shown order for expedition (4 E, 1028-1029), and papers 5, 7, 8, and 9 E, and 66 to 70 E, defense, states that none of them ask for any specific time, but that Belford and Chaffee both recommended that the trip be made in one day, 3553; the route having been 19 hours, he presumed they meant about 12 hours; the fact that the affidavit of the contractor sworn to April 26, preceding, specifies 12 hours does not aid his recollection as to how he arrived at a 12-hour schedule, 3553; probably it did not suggest itself to him that he could have transferred Raton to the route that the postmaster and Senator Teller asked, and leave this route as a 13-hour route without expedition, and save \$4,200. Raton having been added, and expedition asked for afterwards, the fact that it added 23 miles would not militate against reducing the time, 3418; does not remember whether he considered the fact that the revenues of all the offices on the route other than Trinidad were but \$168 per annum, as they were not stated on the jacket, 3418; presumes that affidavit of John W. Dorsey (6 E, 1029) was the one upon which he acted in making the order for expedition, 3432, 3433; he accepted the statement made on the jacket by Turner that J. W. Dorsey was subcontractor, 3433.

De Busk, S. W., postmaster at Raton and sub-subcontractor, testimony of, 1027, 1028, 1035-1050, 1061-1068; as to sketch map, 1027, 1028, 1048; name of Raton was changed to Alfalfa, and that of San José to Grinnell, 1035; was postmaster about a year, his appointment was dated from January, 1878, salary was about \$12 per annum, based upon stamps sold, no service at Raton while he was postmaster, 1035; Pulaski was the nearest post-office to Raton that had a mail service, it was 12 miles distant, 1041, and was supplied by a railroad in the fall of 1878, 1048; the subcontractor used 1 man and 2 horses for 1 trip a week, 1036; witness carried the mail from October, 1879, until October, 1880, 3 trips, 12-hour schedule, and used 1 man in summer and 2 men in winter, and had 3 horses for daily use, and 3 more for changes, 1036, 1039; received his remittances from M. C. Rerdell, statements of account were signed by Miner, 1037; struck out, 1038; received \$1,550 per annum, 1037; struck out, 1038; corrects his testimony, 1039; did not make close connection at Trinidad or Madison, 1039; letter (2 E), 1040-1044; men and animals, 1036, 1039, 1045-1048; location of Barela, 1048; distances, 1049, 1050; Raton was taken off the route in August, 1881, 1062; letters of Rerdell (59 E and 60 E), 1062-1066; received one check signed by S. W. Dorsey and another by J. W. Bosler, 1067.

Dorsey, John W., one of the defendants, testimony of, relating to this route.

6 E. Oath of J. W. Dorsey (1029); witness signed the affidavit; did not have any interest in the route at that time; does not know whether he was subcontractor; he believed the affidavit was true; accepted Rerdell's statement, 4142; presumed Rerdell asked him to swear to it, 4142, but will not say so, 4143; does not remember that J. W. Dorsey asked him to swear to it, 4143; does not think he sent affidavits to Rerdell in blank, 4142.

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route.

Referring to order May 9, 1879, increasing the route from \$388 to \$2,758, remembers that it was increased, 3940; this route ran along the north side of Raton Mountains, it was a farming and stock-grazing country; no mines there in 1878, 1879, or 1880; the increase of stock men, large purchases and investments were very great, the want of communication was so great that they built their own telegraph and telephone lines; witness had one at his place, and his neighbors had one which followed the wagon track along the route; Trinidad was the center of business, 3806.

Miner, John R., one of the defendants, testimony of, relating to this route.

17 E. Letter of Miner (1035); witness did not sign that letter, 4209.

63 E. Defense, letter of Miner (3251); witness did not write that letter, 4207.

31 E, 34 E, 37 E, 42 E, 49 E, and 55 E, contractors' drafts, were signed by witness prior to May 5, 1879, and the dates inserted afterwards 4210-4211.

40 E, 43 E, and 46 E, contractors' drafts, the dates in which are now blank, were signed by witness prior to May 5, 1879, 4210-4211.

Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2336.

(E.) *Route 38140. Trinidad, Colo., to Madison, N. Mex.*—Continued.

Witnesses—Continued.

Handwriting:

- 5 E. Letter of J. W. Dorsey (1029); signature and all written by S. W. Dorsey, 2336.
 - 6 E. Oath of J. W. Dorsey (1029); body was written by Kellogg; signature of J. W. Dorsey genuine; the number of the route and men and animals by S. W. Dorsey, and the word "twelve" was written in by witness after it was filed, having previously erased the word "fifteen," 2336.
 - 8 E. Letter of Chaffee (1031); all except signature was written by John A. Sibbald, 2336.
 - 15 E. Subcontract of S. W. Dorsey (1034); MS. and signature of Miner by Miner; signatures of S. W. Dorsey and Rerdell are genuine, 2336.
 - 17 E. Letter of Miner and S. W. Dorsey (1035); body and signature of Miner by witness; signature of S. W. Dorsey is genuine, 2336.
 - 18 E. Letter of Miner (1054-1055); all of MS. and signature by witness, 2336.
 - 19 E. Letter of Miner (1056); all of MS. and signature by witness, 2336.
- Sleman, John B., Chief Pay Division, testimony of, 1056; produces reports, drafts, and warrants from the Sixth Auditor's office, 1056.
- Sweeney, George M., Chief Inspection Division, testimony of, 1020-1024; identifies files, 1020, 1021; custody of files, 1021-1024.

(F.) *Route 38145. Garland to Parrott City, Colorado (Ojo Caliente Route).*

Advertisement of November 1, 1877, 288 miles, once a week, 7 days, 522.

Argument, opening, of Mr. Bliss, referring specifically to this route, 244, 245, 253, 256, 264, 270, 279, 280, 283, 316, 318.

on the question as to whether evidence is admissible to show the fraudulent character of an order not set out in the indictment as an overt act, of Mr. Merrick, 1140, 1141; Mr. Bliss, 1146; Mr. Chandier, 1142-1148; Mr. Ingersol, 1141, 1148, 1149.

on the admission of the question as to whether any money was paid at the time that Jaramillo was released from his subcontract, of Mr. Bliss, 1168, 1169; Mr. Merrick, 1169; Mr. Wilson, 1169, 1170; Mr. Carpenter, 1170.

on the question of the admission of retroactive order of Brady (60 F) to allow pay for embracing Pagosa Springs, of Mr. Bliss, 1183-1187; Mr. Chandler, 1183, 1184; Mr. Ingersoll, 1188, 1189; Mr. Merrick, 1189, 1190; Mr. Wilson, 1184-1187.

of W. W. Ker for the prosecution relating to this route, 4581-4598.

of Jeremiah M. Wilson for the defense, relating to this route, 5150-5158.

Calculations relating to failures: First quarter 1879 (111 F, defense), 2992; second quarter 1879 (117 F, defense), 2995; fourth quarter 1880 (306 F, defense), 3041; first quarter 1881 (375 F, defense), 3056.

Certificate of Jesus Hernandez: That Anthony Joseph, subcontractor, has performed service from April 1 to May 12, 1879, once a week; May 12 to July 5, 1879, twice a week; July 5 to July 19, 1879, three times a week; and July 19 to August 25, 1879, twice a week; that he construed the order of May 12 to mean twice-a-week service (120 F, defense), 2996-2997.

Contract of John W. Dorsey with the United States, dated March 15, 1878, \$2,745 per annum; oath of Dorsey acknowledged before A. E. Boone, March 28, 1878, witnessed by A. E. Boone and John R. Miner (1 F), 547, 1074.

Decisions of the court:

admitting evidence to show the fraudulent character of an order not set out in the indictment as an overt act, under the general charge of means to be used, 1149, 1150.

that where the indictment charges the object of a conspiracy to be the commission of a crime, the crime or the means need not be specifically described, 1156-1157.

admitting retroactive order of Brady to allow pay for Pagosa Springs, 1190, 1191.

that if Brady imposed fines and remitted them, it is the same as if he had imposed no fines, 1171-1172.

Distance circular received May 15, 1879 (105 F), 1256.

received May 15, 1879, stating distance from Ojo Caliente to Animas City as 181 miles (463 F, defense), 3279-3280; received January 24, 1879 (465 F, defense), 3283.

(F.) *Route 38145. Garland to Parrott City, Colo. (Ojo Caliente Route)*—Continued.

Drafts drawn by John W. Dorsey, contractor, on the Sixth Auditor, in favor of:

Austin, S. F., assistant cashier, witnessed by Paul Gaylor and Reuben Cox, June 10, 1878, third quarter, 1878 (71 F), 1210, 1211.

Bosler, J. W., witnessed by L. R. Walker, S. Darling, and A. S. Tracy, July 10, 1880, third quarter 1880 (95 F), 1213; October 1, 1880, fourth quarter 1880 (98 F), 1214; January 14, 1881, first quarter 1881 (101 F), 1214; May 10, 1881, second quarter 1881 (104 F), 1214.

Dorsey, S. W., witnessed by P. F. Chapman, May 5, 1879, second quarter 1879 (81 F), 1212; witnessed by Otto Ludke, Alvah Ketchum, and C. A. Loundsberry, July 7, 1879, third quarter 1879 (84 F), 1212; witnessed by M. C. Rerdell and P. S. Chapman, October 7, 1879, fourth quarter 1879 (87 F), 1212, 1213; witnessed by P. S. Chapman and A. S. Tracy, no date, second quarter 1880 (90 F), 1213.

Vaile, H. M., witnessed by M. C. Rerdell, and L. M. Griffin, and C. A. Loundsberry, October 1, 1878, first quarter 1879 (76 F), 1211.

Exceptions to rulings admitting oath of John W. Dorsey (20 F), it being based on a schedule of 80 hours, while the order made was for 50 hours, 1086; letters of S. W. Dorsey (39 F), 1102, (42 F), 1104; subcontract of Anthony Joseph (47 F); that it does not prove the charge in the indictment, and on account of its date, 1110; letters of M. C. Rerdell (44 F, 45 F, and 46 F), 1105; release of Pedro Jaramillo (60 F), 1172; order of Brady (63 F), 1191; evidence showing fines and deduction that the indictment avers that none were made, 1195; letter of John M. Trew (69 F), on account of its date, 1201; to witness (Joseph), stating contents of letter said to have been received from S. W. Dorsey, 1100; to questions, as to what was said between witness (Joseph) and S. W. Dorsey as to what witness had received from him or anybody else, 1113; as to what was said about the \$109 paid witness by S. W. Dorsey, 1114; as to who preceded witness in carrying the mail, 1118; as to what proportion of mail matter consisted of letters and merchandise, 1152; as to men and animals, as there is no complaint of any false affidavit in the indictment, 1157, 1163; as to whether it was possible to carry the mail in 50 hours, that the witness must state facts and not opinions, 1167; to ruling refusing to allow defense to prove that a railroad has since been constructed over this route, 1130; to refusal to exclude all evidence in regard to expedition, 1130; to ruling excluding question as to when railroad was completed between San Juan City and Chama, 1131; excluding map offered by defense, 1137; excluding question as to whether there is anything in the contract office showing the amount of mail carried over any star route, 1197; to language of the court, 1190, 1191.

Fines and deductions, statement of, 730, 731.

Jacket inclosing certificates of arrivals and departures and mail bills (not marked), 1200; headed Appointment office, June 5, 1878, relating to the establishment of a post-office at Pagosa Springs (108 F, defense), 2833; with memorandum of failures third quarter 1879 (119 F, defense), 2996.

Indictment setting out as overt acts the subcontract of J. L. Sanderson, dated June 12, 1880 (62 F), and the order of Brady, dated February 26, 1881, to increase to seven trips from January 15, 1881 (11 F), 1084, 1085.

Journal of the Postmaster-General, extract from showing entry of order of February 26, 1881 (11 F, 1079-1080), signed Horace Maynard, 4327.

Letters of:

Atkinson, Henry M., to D. M. Key, April 14, 1879, urging daily service (37 F), 1095.

Barnes, Sidney M., United States attorney, to Brady, April 24, 1879, suggest increase to daily service with fast time (466 F, defense), 3284.

Bowen, Judge Thomas M., to Postmaster-General, received April 22, 1879, suggesting daily mail (29 F), 1092.

Chaffee, J. B., to D. M. Key, *New York*, April 14, 1879, requesting increase to three trips with faster schedule (28 F), 1092.

Dorsey, S. W., to Brady, *United States Senate Chamber*, June 10, 1878, will be necessary to increase service from D. and R. G. R. R. to Santa Fé, N. Mex., to seven trips with fast schedule (10 F), 1079; April 24, 1879, inclosing petition for increase of mails, is personally acquainted with the facts stated (23 F), 1087.

to Anthony Joseph, April 9, 1879, department talks of discontinuing the mail route, send every protest in your power, get letters to the Postmaster-General urging that this route be made a daily line with a fast schedule, have taken this route myself on account of *Peck's* illness, inclosing forms of petitions, with request not to have any two written by the same person (39 F),

(F.) *Route 38145. Garland to Parrott City, Colo. (Ojo Caliente Route)*—Continued.

Letters of—Continued.

Dorsey, S. W.—Continued.

1102; April 30, 1879, service has been increased to three trips, schedule fifty hours, thinks it will be made daily July 1, 1879, am personally responsible, address letters to M. C. Rerdell, box 706 (42 F), 1103, 1104; June 22, 1879, fifty hours is slow walking time, your statement that it will cost \$12,000 to run this service is absurd, average cost of horseback service is less than \$5 per mile per annum (43 F), 1104, 1105.

Dorsey, J. W., to Brady, April 23, 1879, inclosing statement of the number of men and animals, based on a schedule of *fifty hours*, filed April 24, 1879 (19 F), 1085; April 14, 1879, inclosing proposition for expedited schedule (21 F), 1086, 1087; August 16, 1880, with inclosures, asking remission of deductions (65 F), 1198.

Hatch, General Edward, to S. W. Dorsey, April 17, 1879, will be thankful for a daily line to Pagosa, if the petition has any influence, it has signers enough to insure it (464 F, defense), 3282.

Hernandez, Jesus, postmaster, Ojo Caliente, to Brady, July 19, 1879, recommending summer schedule of five days, that time cannot be made in winter (38 F), 1095; Ojo Caliente to Second Assistant, March 14, 1881, mail has been run daily since March 6 (427 F, defense), 3068; to J. L. Sanderson & Co., March 27, 1881, daily service commenced March 8, 1881 (429 F, defense), 3069; to French, February 11, 1879, the new contract thence to Parrott City, made last January, is being fulfilled (468 F, defense), 3286.

Jaramillo, Pedro J., to Brady, September 22, 1879, filing his subcontract (58 F), 1165; asking whether Sanderson & Co. were paid for services from July 1 to November 20, 1880; they represent the government has not paid them (answered February 21, 1882) (231 F, defense), 3025.

Joseph, Anthony, to Brady, April 2, 1879, impossible to carry the mail inside 100 hours (8 F), 1078, 1107; to John W. Dorsey, January 6, 1879, will carry the mail 6 trips for \$14,160 per annum (48 F, defense), 1119-1120; January 15, 1879, commenced service January 1, 1-79, will carry the mail once a week for \$23,060 (?) (49 F, defense), 1120; March 5, 1879, complaining that postmasters send over this route mail matter intended for other lines, mail should be increased to 3 trips (53 F, defense), 1123; March 6, 1879, has forwarded petitions and concluded to commence tri-weekly service whether the department orders it or not (51 F, defense), 1121; February 10, 1879, complaining of the loss of horses and the accumulation of mail matter, service should be increased to either 3 or 6 trips (50 F, defense), 1121; to S. W. Dorsey, January 20, 1879, in compliance with letter of Miner, written at Dorsey's request, has stocked the route, and asking to have service increased to 6 trips (52 F defense), 1122.

Mann, Josiah, to T. M. Patterson, May 30, 1878, inclosing petition for a post-office at Pagosa Springs (107 F, defense), 2833.

Miller, D. J., to M. C. Rerdell, February 21, 1880, asking for statement of deductions (67 F), 1199.

Perkins, Freeman, postmaster Piedra, to Second Assistant, January 3, 1880; mail from the west arrived on December 28 with no lock on the bag; detained the mail matter until the next mail east (128 F, defense) 3001.

Rerdell, M. C., to Anthony, Joseph, August 7, 1879, informing him of deductions (44 F), 1105; August 22, 1879, have relet the route for \$1,200 more per annum, "shall hold you responsible" (45 F), 1105; December 13, 1879, expects to recover from Joseph the excess of deductions over his pay and for nearly \$3,500 difference between his pay and Jaramillo's (46 F), 1106.

Rich, W. G., to Postmaster-General, April 15, 1879, concurring in the efforts to establish a daily mail (27 F), 1091, 1092.

Teller, H. M., to Brady, November 15, 1880, requesting that service be ordered from the end of the D. and R. G. R. R. to Animas City; it will only require 20 miles of new service (13 F), 1081; November 13, 1880, incloses petitions for mail service from the end of the Denver and Rio Grande Railway to Durango; hopes he will order it at once (467 F, defense), 3285.

Trew, John M., postmaster, Animas City, to Brady, July 16, 1878, making suggestions as to mail service, route 38145 is not the slightest benefit to the San Juan and La Plata counties, distance circulars annexed (69 F), 1201, 1203; April 4, 1880; it is physical impossibility to take the mail through on schedule time (68 F), 1199, 1200; March 11, 1881, J. L. Sanderson & Co. have taken the mail daily from January 21, 1881, but have brought the mail but 3 times a week, owing to the failure of the railroad company to deliver it to them at Chama station (400 F, defense), 3062, 3063. Same date, contractors have taken the

(F.) *Route 38145. Garland to Parrott City, Colo. (Ojo Caliente Route)*—Continued.

Letters of—Continued.

Trew, John M.—Continued.

mail daily since January 21, 1881, but have delivered it but 3 times a week; since February 25, 1881, mail has been received and delivered daily (428 F, defense), 3068, 3069.

Webster, Ed., to Brady, April 18, 1879, giving reasons for increase of service (26 F), 1091.

Mail bills showing departure of each mail from—

Ojo Caliente, and arrival at Animas City, fourth quarter 1879 (129 to 161 F, defense), 3001-3008; second quarter 1880 (169 to 188 F, defense), 3012-3016; (200 to 211 F, defense), 3018-3021; (213 F, defense), 3021; (222 F, defense), 3023; and (224-228 F, defense), 3023-3024; third quarter 1880 (230 and 232 to 268 F, defense), 3025-3032; fourth quarter 1880 (326 to 338 F, defense), 3046-3048; (340 to 346 F, defense), 3049-3050; (353 and 356 to 365 F, defense), 3051-3053; (460 to 461 F, defense), 3076; first quarter, 1881 (379 to 399 and 401 to 408 F, defense), 3058-3064.

Animas City, and arrival at Ojo Caliente, second quarter 1880 (189 to 199 F, defense), 3016-3018; (212 and 214 to 221 F, defense), 3020-3023; (223 F, defense), 3023; third quarter 1880 (269 to 304 F, defense), 3032-3040; fourth quarter 1880 (311 and 313 to 325 F, defense), 3043-3046; (339 F, defense), 3048; (347 to 352 F, defense), 3050, 3051; (354 to 355 F, defense), 3051; (366 to 371 F, defense), 3053, 3054; first quarter 1881 (379 to 399, 401 to 408 F, defense), 3058-3064; (409 to 426, 430 to 456 F, defense), 3065-3074.

Mail registers showing the arrivals and departures of the mail at—

Animas City, for May, 1879 (115 F, defense), 2994; June, 1879 (116 F, defense), 2995; July, 1879 (123 F, defense), 2998; August, 1879 (121 F, defense), 2997; September, 1879 (122 F, defense), 2998; April, 1880 (168 F, defense), 3011; May, 1880 (164 F, defense), 3009; June, 1880 (167 F, defense), 3011; November, 1880 (308 F to 310 F, defense), 3042-3043; December, 1880 (373 F, defense), 3055-3056; January, 1881 (376 F, defense), 3057; February, 1881 (377 F, defense), 3057; March, 1881 (378 F, defense), 3058.

Ojo Caliente, for May, 1879 (114 F, defense), 2993, 2994; June, 1879 (113 F, defense), 2993; July, 1879 (125 F, defense), 2999; August, 1879 (124 F, defense), 2999; September, 1879 (126 F, defense), 3000; April, 1880 (165 F, defense), 3010; May, 1880 (166 F, defense), 3010; June, 1880 (163 F, defense), 3009; November, 1880 (307 F, defense and 312 F, defense), 3043, 3044; December, 1880 (372 F, defense), 3055; January, 1881 (458 F, defense), 3075; February, 1881 (457 F, defense), 3075; March, 1881 (459 F, defense), 3076.

Parrott City, for January, 1879 (110 F, defense), 2992.

Oath of John W. Dorsey, contractor, sworn to March 11, 1879, original schedule, 3 trips, 3 men, 7 animals, schedule of 80 hours, 9 men, and 27 animals (20 F), 1085, 1086; second oath of John W. Dorsey, sworn to April 26, 1879, original schedule, 3 trips, 5 men, 15 animals, schedule of 50 hours, 12 men, and 42 animals (22 F), 1087.

Orders of:

Brady, June 26, 1878, curtail to end at Ojo Caliente, decreasing distance 116 miles, deduct \$1,105.66, one month's extra pay (2 F), 1074, 1075; April 29, 1879, from May 12, 1879, *increase two trips, allow \$3,316.80, expedite schedule to 50 hours, allow \$8,457.84 per annum.* (18 F), 1084; September 29, 1879, filing subcontract of Pedro Jaramillo (56 F), 1164; August 19, 1880, remitting deductions to the amount of \$1,655.98 (64 F), 1197, 1198; February 26, 1881, from January 15, 1881, increase to 7 trips, allow contractor \$17,910.72; subcontractor, \$10,666.64, *retroactive*, overt act (11 F), 1079, 1080; April 24, 1879, from July 1, 1878, allow contractor \$190.62 for embracing Pagosa Springs, subcontractor \$125, *retroactive* (63 F), 1192; to deduct \$21.92 for failures in first quarter 1879 (109 F, defense), 2991, 2992; to deduct \$429.12 for failures in fourth quarter 1879 (127 F, defense), 3000; to deduct \$2,140.84 for failures in second quarter 1880 (162 F, defense), 3008; to deduct \$1,042 for failures in fourth quarter 1880 (305 F, defense), 3040; to deduct \$2,192.23 for failures in first quarter 1880 (64 F), 1197, 1198.

French, January 23, 1879, curtail to end at Animas City, decreasing distance 18 miles, deduct \$171.56 (3 F), 1075; June 30, 1880, to stop payments to subcontractor (59 F), 1172; June 30, 1880, filing subcontract of J. L. Sanderson (61 F), 1182; to deduct \$708.01 for failures in second quarter 1879 (112 F, defense), 2992; to deduct \$1,373.12 for failures in third quarter 1879 (118 F, defense), 2995, 2996; to deduct \$1,366.53 for failures in third quarter 1880 (229 F, defense), 3024, 3025; to deduct \$3,422.19 for failures in first quarter 1881 (374 F, defense), 3056.

(F.) *Route 38145. Garland to Parrott City, Colo. (Ojo Caliente Route)*—Continued.

Payments, tabulated statement showing, to B. U. Keyser, receiver, assignee, H. M. Vaile, S. W. Dorsey, and J. W. Bosler, assignees, and J. H. Watts, P. J. Jaramillo, and J. L. Sanderson, subcontractors, 730, 731.

Petitions:

Addressed to Postmaster-General for the establishment of a post-office and appointment of a postmaster at Pagosa Springs, indorsed by T. M. Patterson (106 F, defense), 2832, 2833.

Blank forms of, inclosed by S. W. Dorsey to Anthony Joseph (40 F and 41 F), 1103.

Five, from Dolores, Animas City, and Grand Park View, Colo., October 20, 1880, for daily mail from terminus of the D. and R. G. R. R., to Animas City (12 F), 1080, 1081; four similar (14 F, 15 F, 16 F, and 17 F), 1081.

For daily service and increase of speed to 4 miles an hour, printed in full (24 F), 1088, 1089.

From Ojo Caliente, for 3 trips on a shorter schedule, indorsed by H. M. Teller and N. P. Hill, filed April 16, 1879 (30 F), 1092.

Similar, from Pagosa Springs, indorsed by H. M. Teller and N. P. Hill, filed April 16, 1879 (31 F), 1093.

Similar, from Park View, indorsed by H. M. Teller and N. P. Hill, filed April 16, 1879 (32 F), 1093.

From Pine River, indorsed by H. M. Teller and N. P. Hill, filed April 16, 1879 (33 F), 1094.

From Navajos, indorsed by H. M. Teller and N. P. Hill, filed April 16, 1879 (34 F), 1094.

From Tierra Amarilla, filed March 11, 1879 (35 F), 1094.

From El Rito, filed February 24, 1879 (36 F), 1094, 1095.

For extension of service to Taos, and for daily service and faster time (55 F), 1138.

Proposal of J. W. Dorsey, sworn to before A. E. Boone, January 14, 1878, witnessed by Boone and Miner. Sureties J. O. Evans and J. H. Watts (proposal 7), 553.

Release of Pedro J. Jaramillo from his subcontract in consideration of \$500, signed John W. Dorsey, by J. W. Steel, attorney, filed June 27, 1880 (60 F), 1173.

Reports of the Auditor, certifying balances due and to whom payable; third quarter 1878 (70 F), 1210; fourth quarter 1878 (73 F), 1211; first quarter 1879 (75 F), 1211; first quarter 1879 (78 F), 1212; second quarter 1879 (80 F), 1212; third quarter 1879 (83 F), 1212; fourth quarter 1879 (86 F), 1212; second quarter 1880 (89 F), 1213; for remissions (92 F), 1213; fourth quarter 1880 (97 F), 1213; first quarter 1881 (100 F), 1214; second quarter 1881 (103 F), 1214.

Revenues, certified transcripts of, 2744-2749.

Schedules of departures and arrivals, May 26, 1879 (4 F), 1075; June 23, 1879 (5 F), 1076; October 27, 1879 (6 F), 1076, 1077; May 31, 1879 (7 F), 1077; April 29, 1879, signed by the postmasters at Ojo Caliente and Animas City, stating that it is impracticable and almost impossible to carry the mail in 50 hours (9 F), 1058.

Subcontracts of:

Jaramillo, Pedro J., dated August 7, 1879, 3 trips, \$6,200, signed John W. Dorsey, by M. C. Rerdell (57 F), 1164, 1165.

Joseph, Anthony, dated January 30, 1879, 1 trip \$2,360, 2 trips \$3,800, 3 trips \$5,300, and 40 per cent. of expedition, signed John W. Dorsey, by M. C. Rerdell (47 F), 1110, 1111.

Sanderson, J. L., & Co., dated June 12, 1880, 3 trips, schedule 50 hours, \$8,000, signed John W. Dorsey, by M. C. Rerdell, attorney (overt act, 62 F), 1182.

Telegram of Brady, Thomas J., to J. L. Sanderson, January 13, 1881, authorizing daily service from Chama to nearest point on Ojo Caliente route, twenty-five miles, and increase to daily service from the junction made to Animas City from the 15th instant, 4346.

Warrants signed by the Postmaster-General and the Sixth Auditor payable to:

Bosler, J. W., assignee, March 1, 1880 (83 F), 1213; August 6, 1880 (91 F), 1213; September 28, 1880 (93 F), 1213; October 26, 1880 (96 F), 1213; February 4, 1881 (99 F), 1214; date not given (102 F), 1214.

Donnell, Lawson & Co., assignees, November 13, 1879 (85 F), 1212.

Keyser, Benjamin U., receiver, assignee, November 12, 1878 (72 F), 121, 1211.

Middleton & Co., assignees, August 1, 1879 (82 F), 1212.

Vaile, H. M., assignee, January 30, 1879 (74 F), 1211; April 30, 1879 (77 F), 1211; May 9, 1879 (79 F), 1212.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route 2693-2695.

Handwriting:

10 F. Letter of S. W. Dorsey (1079), all written by Rerdell, except the words

(F.) *Route 38145. Garland to Parrott City, Colo. (Ojo Caliente Route)*—Continued.

Witnesses—Continued.

Boone, A. E.—Continued.

Handwriting—Continued.

“Denver and,” “river,” and “this,” and the signatures which were written by S. W. Dorsey, 2692.

19 F. Letter of J. W. Dorsey (1085), signature and all written in disguised hand, which resembles that of S. W. Dorsey, 2693.

20 F. Oath of J. W. Dorsey (1085–1086), all written by Rerdell, except the signature of J. W. Dorsey, which is genuine, and the words “State of Vermont, Addison County,” “eleven,” and the signature of the county clerk, 2693.

21 F. Letter of J. W. Dorsey (1086–1087), signature and all by Rerdell, 2693.

22 F. Second oath of J. W. Dorsey (1087), body written by Kellogg, except the number “38145” and the words “three,” “five,” “fifteen,” “fifty,” “three,” “twelve,” and “forty-two,” which are in a handwriting similar to that of S. W. Dorsey; does not think J. W. Dorsey wrote the signature, 2693–2694.

23 F. Letter of S. W. Dorsey (1087), written by S. W. Dorsey, 2694.

26 F. Petition (1094–1095), body was written by M. C. Rerdell, 2694.

39 F. Letter of S. W. Dorsey (1102); the signature and the P. S. were written by S. W. Dorsey, 2694.

40 F. and 41 F. Pencil forms of petition; were written by S. W. Dorsey, 2694.

55 F. Petition (1138) taken in connection with the two preceding papers, would say it was written by S. W. Dorsey, 2694–2695.

65 F. Letter of J. W. Dorsey (1198); signature of J. W. Dorsey was written by M. C. Rerdell, 2695.

Bowen, Thomas M., United States Senator, Colorado, testimony of, for the defense, 3125; has lived in Colorado eight years, was judge of the fourth judicial district in 1879, 3125; wrote letter (29 F, 1092); the facts stated were true, 3125.

Brady, Thomas J., one of the defendants, testimony of, relating to this route. Does not remember, independently of the papers, who interested himself in procuring the order for increase and expedition on this route, 3419; or why he did not prefer to make it a 6-trip route instead of expediting from 90 to 50 hours, and thus save the Government \$4,626 a year, except that it was much better to have a fast 3 times a week service than a slow 6 times a week service, 3419; the statement of postmasters in reply to circulars requesting them to fix the schedule within 50 hours, that it was impossible, is ridiculous on the face of it, nothing was impossible in that direction, they could have carried the mail in 50 hours if they had had men and horses enough, 3119; does not know that he ever saw schedule (9 F 1058), indorsed by terminal postmasters that schedule time was immaterial and it was impracticable and almost impossible to carry the mail in 50 hours, 3420; if at the time witness made the order (18 F. 1084) to increase 2 trips, allow \$3,316.80, and to expedite to 50 hours and allow \$8,457.84, there were two affidavits on file, (20 F and 22 F, 1085–1087), one for 80 hours and the other for 50 hours, presumes he made the order on the one for 50 hours, does not know that he had any information as to the number of men and horses other than contained in those affidavits, 3586; or that his attention was called to the fact that there were two affidavits, 3587; if one states that for 3 trips on the then schedule it took 5 men and 15 animals, and the other 3 men and 7 animals, he seems to have accepted one of them as conclusive, 3587.

Calleghan, John T., inspection clerk, contract office, testimony of, 1192–1197; identifies files of the inspection division, 1192; course of business as to fines and deductions, 1192–1197.

Dorsey, John W., one of the defendants, testimony of, relating to this route, 20 F and 22 F, oaths of John W. Dorsey, (1085–1087); witness signed both affidavits, one was for a 50-hour and the other for an 80-hour schedule; they both make the same propositions; witness had no pecuniary interest in this on March 11, 1879; the trade had then been virtually made; Vaile and Miner had charge of the route at that time, 4141.

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route: In 1879 the revival had just begun, Animas City probably had 300 or 400 people, Durango had begun to grow and has now 3,000 or 4,000 people, 3806; at the mining camp of Rico, west of there, were 3,000 or 4,000 people in 1879; soon after Fort Lewis was established and the troops moved there in 1879, 3806–3807; letter (10 F, 1079) of witness to Brady, June 10, 1878, refers to the route from Garland to Conejos to Ojo Caliente; in consequence of that letter the route from Garland to Ojo Caliente was discontinued, that part from Ojo Caliente to Animas City was left on, the letter re-

(F.) *Route 38145. Garland to Parrott City, Colo. (Ojo Caliente Route)*—Continued.

Witnesses—Continued.

Dorsey, Stephen W.—Continued.

sulted in discontinuing at least 100 miles of the Ojo Caliente route, 3807; witness at that time had no interest in the route, 3807; witness made a little diagram to explain the letter at the time Rerdell was being tried in the police court, 3807; thinks that if J. W. Dorsey had no interest in the route and made an affidavit for expedition on April 26, 1879, it was because the Department required the contractor to make the affidavit; does not know that it was in execution of the agreement made the division that each side should render the necessary service to the other for the purpose of expediting and increasing the routes, 3937; has no recollection of having written the number of the route, the words "three trips," "five," "fifteen," "fifty," "three," "twelve," and "forty-two," in oath of John W. Dorsey (22 F, 1087) 3771-3772, 3937; the order of April 29, allowing \$11,774 on that affidavit, or the testimony of Boone (2693) that witness had filled up the affidavit, does not refresh his recollection; one other party can write a very similar hand to his, 3938; will not say he did not fill it up, 3939; does not know where J. W. Dorsey was April 26, 1879, or whether he had gone to California, 3939; does not think he ever had any conversation with Rerdell, 2240; directing him to send out blank affidavits to Dorsey and Peck, 3772.

Route 38150.—There was a great mining boom in 1879 between Silverton and Animas City, 3808; in relation to order June 12, 1879, increasing the pay from \$1,288 to \$14,808, there was an increase made, but witness was not here at that time, and does not remember, 3940.

Jaramillo, Pedro J., subcontractor, testimony of, 1163-1177, 1253-1254; identifies his subcontract (57 F) and letter (58 F), 1164, and release of subcontract (60 F), 1168, and letter of Miller (67 F), 1177; carried the mail for 10 months; commenced Sept. 1, 1879, 1165; carried the mail 3 trips, and from 60 to 70 hours, afterwards in 50 hours; used 6 carriers and 16 horses, and had 10 horses in his stable, 1166; mail would weigh from 150 to 200 pounds, once it weighed 600 pounds, 1166; from December to March it was impossible to make the trip in 50 hours, 1166-1167; was fined but never received any remissions, 1173; distances, 1173-1174; men and animals, 1174-1175; time made, 1175; fines and remissions, 1175-1176; had a contract with J. L. Sanderson without any schedule, 1176; always carried the mail by Pagosa Springs, 1253; it was a military post, 1253.

Joseph, Anthony, subcontractor, testimony of, 1097-1163, 1254-1255. Identifies letters of S. W. Dorsey (39 F 1102), 1097, (42 F), 1103, (43 F), 1104; and letters of Rerdell (44 F), (45 F), and (46 F), 1105; and his own letters (8 F), 1106; and (48 F defense), 1119, (49 F defense), 1120, (50 F defense), 1120, (51 F defense), 1121, (52 F defense), 1122, and (53 F defense), 1123; and subcontract (47 F), 1109; witness put service on route January 1, 1879, at request of ex-Senator Dorsey, 1097; the request was made by letter; has made diligent search and cannot find the letter, 1098; the letter stated that John H. Watts would discontinue service on January 1, 1879, and that he wished witness to stock route and continue it, and that he would be personally responsible for the cost, and that his brother John W. Dorsey had the contracts and was sick or absent, 1100; received the letter in December, 1878, 1100; corrects his testimony so as to say that the lost letter said to have been from S. W. Dorsey was from John W. Dorsey, 1125; roads, 1107; mountains crossed, 1108-1109; could not travel at night, 1107-1108; made a subcontract the latter part of January, 1879, with Rerdell as agent of J. W. Dorsey, 1109; conversation with S. W. Dorsey in August, 1879, told him it was impossible to carry the mail on 50-hour schedule, Dorsey said "we have not received a dollar for the service you have rendered, as the fines and deductions have consumed the earnings of the service," 1113; S. W. Dorsey paid him at that time \$109.39, witness had previously received for first quarter 1879, \$383.89, 1113; witness showed Dorsey a check for \$109.39 which had not been signed, Dorsey signed it and told witness to get the certificates of service from the postmasters and he would endeavor to get a remission of the fines, 1115; witness procured the certificates but never received the remissions, 1115, 1139; circulated petitions at request of S. W. Dorsey, 1116; made the time in 7 days, one trip a week, used 3 men and 6 horses, 1116-1117; afterwards increased to 6 men and 9 horses, 1157; two trips, used 9 men and 18 horses, 1157; 3 trips used 6 carriers and 27 horses, 1158; in February, 1881, mail from Barancas to Ojo Caliente was carried by a man named Kimball, 1159; men and animals, 1160-1163; J. H. Watts preceded and Pedro J. Jaramillo succeeded witness in carrying the mail, 1118; distances, 1124, 1125; petitions, 1125, 1138, 1139; construction of railroad, 1125, 1126, 1131; identifies map submitted by defense, 1131-1133; mail connections, 1134-1138;

(F.) *Route 38145. Garland to Parrott City, Colo. (Ojo Caliente Route)*—Continued.

Witnesses—Continued.

Anthony, Joseph—Continued.

after he testified at the last trial S. W. Dorsey paid him \$500, in full settlement of his claims, 1140; 25 per cent. of mail matter was letters and papers, the remainder was merchandise, 1152; mail weighed from 200 to 500 pounds, 1153; always carried the mail by Pagosa Springs, 1254; was instructed by contractor to carry it that way, 1255; the road by Park View was 25 or 30 miles shorter, 1254; there were 5 or 6 companies of troops at Pagosa Springs, 1255.

Miner, John R., one of the defendants, testimony of, relating to this route:

47 F. Subcontract of Anthony Joseph (1110-1111); does not know that this is the subcontract Rerdell made, 4246.

Olcott, John H., corresponding clerk, contract office; testimony of, 1192-1197, 1203-1210; produces route register for Colorado and New Mexico from 1878 to 1882, 1203; there was no mail route from Barancas to Ojo Caliente, 1206; no order adding Pagosa Springs to this route prior to April 27, 1879, 1207, 1208; orders in route-book relating to this route, 1209, 1210; testimony of for the defense, 2825; papers called for in subpoena not in his possession, 2825.

Rerdell, M. C., one of the defendants; testimony of, relating to this route, 2227, 2337-2338, 2545, 2546; witness went to Taos and Ojo Caliente, reaching there January 25 or 26, 1879; thinks that he made his subcontract with Joseph, 2227.

Handwriting:

Proposal 7 (553) was partly written by Miner and partly by Boone, the amount filled in by Rerdell; signature of J. W. Dorsey is genuine, 2338.

10 F. Letter of S. W. Dorsey (1079), all written by Rerdell except the words "Denver and," "this," "river," and the signature and the pencil diagram annexed, which were written by S. W. Dorsey, 2337, 2545; witness does not believe that Dorsey made the plat for Ingersoll at the time of the trial before Judge Snell nor that the writing upon the back was written by Ingersoll, 2546.

19 F. Letter of J. W. Dorsey (1085), signature and all were written by S. W. Dorsey, 2337.

20 F. Oath of J. W. Dorsey (1085-1086); body was written by Rerdell, signature of John W. Dorsey genuine, the number and description of the route and figures relating to the men and animals and the time were written in by witness, by direction of S. W. Dorsey, after the oath was sworn to, 2337.

21 F. Letter of J. W. Dorsey (1086, 1087); signature and all were written by witness, 2337.

22 F. Second oath of J. W. Dorsey (1087); body was written by W. F. Kellogg, except figures "38145," and words "three," "five," "fifteen," "fifty," "three," "twelve," and "forty-two," which were written by S. W. Dorsey, signature of J. W. Dorsey genuine, 2235, 2338; witness did not see him fill it up, 2560.

23 F. Letter of S. W. Dorsey (1087) was written and signed by S. W. Dorsey, 2338.

28 F. Letter of Chaffee (1092), all except the signature was written by John A. Sibbald, 2338.

35 F. Petition (1138), down to and including the word "names," was written by S. W. Dorsey, 2338.

36 F. Petition (1094-1095), body written by witness, 2338.

39 F. Letter of S. W. Dorsey (1102), the words "written" and "route," and the signature and P. S. were written by S. W. Dorsey, 2338. Dorsey was on his way west when this letter was written, 2546.

40 F. and 41 F. Forms of petition (1103) were written by S. W. Dorsey, 2338.

65 F. Letter of J. W. Dorsey (1198), body was written by John W. Steele, 2338.

Sleman, John B., Chief Pay Division, testimony of, 1154-1155. Produces reports, drafts, and warrants, 1154; explains reports, 1155.

Sweeney, George M., Chief Inspection Division Contract Office, testimony of, 1068-1074, 1179, 1181. Identifies files 1068 to 1070, 1179, 1180. Custody of files, 1181. Delivered files to Woodward, 1068.

Teller, Henry M., Secretary of the Interior, testimony of for the defense, 2823. Identifies his recommendations on petitions (32 F 1093, 31 F 1093, 34 F 1094), 2823. This route was supplying the southwestern part of the State, where the mining camps were, 2823.

Trew, John M., received a number of schedule circulars from the Department; answered some of them, threw the others in a waste basket, as they asked what they did not want and protested against, 1882; identifies his signatures to papers 6 F and 7 F; they are in the general form of the circulars destroyed, 1884; was required to fix schedule to go through in 50 hours, protested, and sent schedule after schedule back, finally acquiesced, 1889-1890; does not recollect signing petition for quicker time, 1890.

(N.) *Route 38150. Saguache to Lake City, Colo.*

Advertisement November 1, 1877, 95 miles, 3 trips, 36 hours, 523.

Argument, opening of Mr. Bliss, referring specifically to this route, 261, 318, 319; of W. W. Ker, for the prosecution, relating to this route, 4616-4618.

Contract of J. R. Miner with the United States, dated March 15, 1878, \$3,426 per annum; sureties, D. W. C. Wheeler and S. N. Hoyt; witnessed by John W. Dorsey and A. A. Friederich (1 N), 549, 1786.

Exception to ruling refusing to strike out all evidence relating to route 38150, that the route was turned over to Sanderson, 1793.

Fines and deductions, statement of, 730, 731.

Indictment setting out as overt acts orders of Brady, July 26, 1880, to reduce 3 trips, and, August 24, 1880, to increase to 7 trips, *between Powder Horn and Barnum, 7 miles*, 1785, 1786.

Journal of the Postmaster-General, extract from, showing entry of order of Aug. 24, 1880 (8 N. 1793), signed D. M. Key, 4327; and order of July 26, 1880 (6 N. 1793), 4327, 4329.

Letters of:

Elmer, R. A., Second Assistant Postmaster-General, to Assistant Attorney-General, October 10, 1881, asking advice as to whether the subcontractor is entitled to one month's extra pay (227 N, defense), 3273.

Freeman, A. A., Assistant Attorney-General, October 12, 1881, to Second Assistant Postmaster-General, returning letter, with the advice that the subcontractor is entitled to one month's extra pay (228 N, defense), 3273.

Mail bills showing departure of each mail from:

Barnum and arrival at Saguache, fourth quarter 1879 (23 to 63 N, defense), 3188-3195; (69 to 74 N, defense), 3196-3197; (80 to 81 N, defense), 3198; (101 N, defense), 3204. First quarter 1880 (150 to 165 N, defense), 3212-3215; (172 to 198 N, defense) 3216-3221; (200 to 206 N, defense) 3222-3223; (219 N, defense) 3225-3226.

Saguache and arrival at Barnum, fourth quarter 1879 (10 to 22 N, defense), 3185-3187; (64 to 68 N, defense), 3195-3196; (75 to 79 N, defense), 3197-3198; (82 to 108 N, defense) 3198-3204; (110 N, defense) 3204; first quarter, 1880 (113 to 149 N, defense), 3205-3212; (166 to 177 N, defense), 3215, 3216; (199 N, defense), 3221; (207 to 218 N, defense), 3223-3225; (220 N, defense), 3226.

Memoranda:

Indorsement, application for remission of deductions, "Let me know about it, Brady" (112 N defense), 3205; "Saguache to Barnum, reduce to 3 times a week, Brady" (7 N), 1793.

Oath of J. L. Sanderson, *carrier*, sworn to September 19, 1878; original schedule, 7 trips, 6 men, and 20 horses; schedule 24 hours, 14 men, and 48 horses (4 N), 1787.

Orders of Brady, September 20, 1878, from October 1, 1878, *increase 4 trips, allow \$4,568, expedite to 24 hours, allow \$15,437.12* (2 N), 1786, 1787; October 1, 1878, *curtail to end at Barnum, deduct \$5,179.51* (3 N), 1787; July 26, 1880, from August 15, 1880, *reduce to 3 trips, deduct \$10,429.48, one month's extra pay* (overt act, 6 N), 1793; August 24, 1880, from September 1, 1880, *increase to 7 trips, Powder Horn to Barnum, 7 miles, allow \$986.57* (overt act, 8 N), 1793; to deduct \$3,014.07, for failures fourth quarter 1879, (9 N, defense), 3185.

Elmer, Aug. 11, 1881, to correct clerical error in the allowance made for expedition (229 N., defense), 3274.

French, to deduct \$2,526.03 for failures first quarter, 1880 (111 N., defense), 3204.

Payment, statement showing, to J. L. Sanderson, subcontractor, and John R. Miner, 731.

Petition for daily service and increased schedule, recommended by H. M. Teller, John L. Routt, and Charles Adams (5 N), 1788.

Revenues, certified transcript of, 2750-2751.

Subcontract of J. L. Sanderson with John R. Miner, dated May 15, 1878, full pay, printed in full (226 N, defense), 3271-3273.

Witnesses:

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route. There was a great mining boom in 1879 between Silverton and Animas City, 3808; in relation to order June 12, 1879, increasing the pay from \$1,288 to \$14,808, there was an increase made, but witness was not here at that time, and does not remember, 3940.

(N.) *Route 38150. Saguache to Lake City, Colo.*—Continued.

Witnesses—Continued.

- Laird, Charles H., clerk Finance Division, testimony of, 1794; produces receipts for warrants from Third Assistant Postmaster-General's Office, 1794.
- Olcott, John H., testimony of, for defense, produces papers from the files, 3273.
- Rerdell, M. C., one of the defendants, testimony of, relating to this route. This is the route upon which he told Postmaster-General James there was double service, 2319.
- Sleman, John B., chief Pay Division, testimony of, 1763; produces reports, drafts, and warrants from the Sixth Auditor's Office, 1763.
- Sweeney, George M., Chief Inspection Division, testimony of, 1761-1763; identifies files, 1761-1763. Testimony of for the defense, as to the subcontract of Sanderson on this route, 3270.
- Teller, Henry M., Secretary of the Interior, testimony of, for the defense, 2823; identifies his indorsement on, and quite a number of signatures to, petition (5 N, 1788); the facts stated were true, 2823. Saguache and Lake City are county seats, 2823.

(M.) *Route 38152. Ouray to Los Pinos, Colo.*

- Advertisement of November 1, 1877, 25 miles, 1 trip, 12 hours, 523.
- Argument, opening, of Mr. Bliss, referring specifically to this route, 261, 319; of W. W. Ker, for the prosecution, relating to this route, 4618-4621.
- Contract of John W. Dorsey with the United States, dated March 15, 1878, \$348 per annum; sworn to by Dorsey before A. E. Boone, March 28, 1878; sureties, D. W. C. Wheeler and S. N. Hoyt, witnessed by John R. Miner and A. E. Boone (1 M), 547, 1766.
- Drafts drawn by John W. Dorsey, contractor, on the Sixth Auditor, in favor of:
- Brown, A. H., witnessed by L. R. Walker and S. Dabney, August 4, 1880, third quarter 1880, one months' extra pay (14 M), 1776.
- Rerdell, M. C., witnessed by P. F. Chapman and A. S. Tracy, January 2, 1880, fourth quarter 1879 (13 M), 1775, 1776.
- Vaile, H. M., witnessed by J. W. Raymond and C. A. Loundsberry, October 1, 1878, third quarter 1878 (7 M), 1775; October 1, 1878, fourth quarter 1878 (8 M), 1775; witnessed by M. C. Rerdell and N. L. Griffith, October 1, 1878, first quarter 1879 (10 M), 1775; witnessed by P. F. Chapman and A. S. Tracy, April 15, 1879, second quarter 1879 (12 M), 1775.
- Exceptions to rulings admitting:
- Order of Brady on route 38146, as evidence on route 38152 (18 M), 1779, 1781; letter of A. J. McDonald, January 7, 1879 (23 M), 1782; receipt for warrant (27 M), that Vaile's signature is not proven, 1809; to ruling excluding question as to whether Mr. Sanderson was the party carrying the mail referred to in these papers, 1764; ruling refusing to strike from the record all testimony relative to this route, on the ground that the mail was carried by Sanderson, 1773, 1785.
- Fines and deductions, statement of, 732.
- Indictment, setting out as overt acts order of Brady, August 3, 1880, to discontinue service, and allow one month's extra pay, and the claim that John W. Dorsey, on August 15, 1880, did demand and receive \$526 for carrying the mail, and for one month's extra pay, 765, 766.
- Journal of the Postmaster-General, extract from, showing entry of order of August 3, 1880 (6 M. 1775), signed D. M. Key, 4327.
- Letters of:
- Adams, Charles, special agent, to Second Assistant, February 7, 1878, suggesting change of service on route 38146, so as to travel via Barnum from Lake City to Ouray (20 M), 1781.
- Barlow and Sanderson to A. J. McDonald, February 8, 1879; service on route 38152 has never been discontinued; we are transporting mail over both routes (5 M), 1774.
- Dorsey, John W., to postmaster at Los Pinos; deliver the mail to J. L. Sanderson from November 15, 1878 (4 M), 1774.
- McDonald, A. J., postmaster at Los Pinos, to J. L. Sanderson, January 27, 1879, has notified the department that no trips were made in November and December, and supposed that the route was discontinued; shall he regard the arrival of the mail on Fridays and its departure on Saturdays as traveling on route 38152 (23 M), 1782, 1783. To contract office, March 18, 1879, daily mail having been established, October 12, 1878, between Ouray and Lake City,

(M.) *Route 38152. Ouray to Los Pinos, Colo.*—Continued.

Letters of—Continued.

McDonald, A. J.—Continued.

which makes route 38152 quite superfluous, concluded that the route was discontinued, and reported that no mail had been carried, inclosing correspondence with Barlow and Sanderson and requesting instructions (2 M), 1773, 1774.

Ruggles, Henry, postmaster at Lake City, to Brady, February 5, 1878, suggests change of service on route 38146, so as to embrace Barnum (21 M), 1782.

Sanderson, J. L., to Brady, September 30, 1878, suggesting that Barnum be embraced on route 38146, indorsed, "Turner, do this, Brady" (19 M), 1781; September 19, 1878, making proposition for temporary service between Barnum and Ouray (25 M), 1784.

Memorandum; draft of order (22 M), 1782.

Orders of:

Brady, September 2, 1878, putting on temporary service route 38166, Barnum to Ouray (24 M), 1783; October 1, 1878, to embrace Barnum on route 38146 (18 M), 1779-1780; August 3, 1880, from August 15, 1880, discontinue service, allow one month's extra pay (overt act 6 M), 1775.

Payments, statement showing, to H. M. Vaile, Lewis Johnson & Co., Middleton & Co., and A. H. Brown, assignees, John W. Dorsey, contractor, and J. L. Sanderson, subcontractor, 731, 732.

Petition for establishment of daily service on route 38166, from Ouray to Barnum, via Los Pinos, recommended by H. M. Teller, John L. Routt, and Charles Adams, indorsed, "Turner, is this a route? Invite proposals from contractors present. Brady" (26 M), 1784, 1785.

Proposal of John W. Dorsey, sworn to before A. E. Boone January 19, 1878, witnessed by Boone and Miner, sureties J. O. Evans and L. S. Filbert (proposal 10), 553.

Receipts for warrants signed by:

Vaile, H. M., November 12, 1878 (27 M), 1509.

Dorsey, John W., November 13, 1879 (28 M), 1809.

Reports of the Auditor certifying balances due on this route, 1775, 1776.

Revenues, certified transcript of, 2752-2753.

Warrants, signed by the Postmaster-General and the Sixth Auditor in favor of—

Brown, A. H., November 9, 1880 (15 M), 1776.

Dorsey, John W., August 6, 1880 (16 M), 1776; November 10, 1879 (17 M), 1776.

Lewis Johnson & Co., July 29, 1879 (12 M), 1775.

Middleton & Co., March 1, 1882 (?) (13 M), 1775.

Vaile, H. M., January 30, 1879 (9 M), 1775; April 30, 1879 (11 M), 1775.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route.

4 M. Letter of J. W. Dorsey (1774), all written by Miner, 2698.

27 M. Receipt for warrant (1809), receipt written by Vaile, 2698.

28 M. Receipt for warrant (1809), signature of J. W. Dorsey is genuine.

Calleghan, John T., inspection clerk, testimony of, 1763-1765; identifies files from inspection division, 1763-1765.

Dorsey, John W., one of the defendants, testimony of, relating to this route (28 M.), 1809; identifies his signature to receipt for warrant, 4143.

Dunbar, A. G., postmaster, Ouray, Colo., testimony of, 1766-1771; has been postmaster since April 26, 1880, 1766; there was a mail route from Ouray to Los Pinos and one from Ouray to Lake City which went by Los Pinos and Barnum, 1766; both routes passed over the same road from Ouray to Los Pinos, 26 miles, 1766; put the mail matter for Los Pinos in the Lake City pouch—there was but one pouch, 1767; Sanderson carried the mail from Lake City to Ouray, 1769; did not report to the department the fact of duplicate service, 1770; understood it had been reported by the postmaster at Los Pinos, 1771; weekly service discontinued August 15, 1880, 1770; at that time there was no change in the way the mail was carried, 1771.

Rerdell, M. C., one of the defendants, testimony of:

27 M. Receipt for warrant (1809), signature of Vaile is genuine, 2345.

28 M. Receipt for warrant (1809), signature of John W. Dorsey genuine, 2345; proposal 10 (553), body was written by Miner, the amount filled in by Rerdell, signature of J. W. Dorsey genuine, 2345.

Sleman, John B., Chief Pay Division, testimony of, 1763; produces reports, drafts, and warrants, 1763.

Sweeney, George M., chief Inspection Division, testimony of, 1761; identifies files, 1761; testimony of, for the defense; produces statement showing deductions on this route, 3312; the practice is never to remit for trips absolutely lost, exceptions, 3313; remissions are made for lost expedition, failures to connect, and damaged mails, 3313-3314.

(Q.) *Route 38156. Silverton to Parrott City, Colo.*

Advertisement of November 1, 1877, 69 miles, twice a week, 36 hours, 523.,
Affidavits of:

George W. Kephart, J. P. Wallace, Eugene Engley, and Luke Hunter, sworn to June 2, 1880; mail was carried during the winter as near on time as it could be. Troops, under Buell, used nearly all the forage (35 Q), 1896.

John Rogers and Ben. Harwood, carriers; the mail was carried daily a distance of 7 miles in February and March, 1880, on snowshoes in as short a time as possible (37 Q), 1897.

Argument of Mr. Bliss, referring specifically to this route, 255-257, 262-263, 271, 278-279, 283, 320-321; of W. W. Ker, for the prosecution, relating to this route, 4598-4607; of Jeremiah M. Wilson, for the defense, relating to this route, 5158-5162.

Certificate of:

John M. Trew, postmaster, Animas City; subcontractor has kept the line supplied with men, animals, and forage; physically impossible to carry the mail on schedule time (34 Q), 1895-1896.

Postmaster and late postmaster at Silverton, April 29, 1880; subcontractor and carriers have done all in their power to carry the mail, schedule time was physically impossible (36 Q), 1986.

Contract of John W. Dorsey with the United States, dated March 15, 1878, \$1,488 per annum, sworn to by Dorsey before A. E. Boone, March 28, 1878; sureties, D. W. C. Wheeler and S. N. Hoyt, witnessed by A. E. Boone and John R. Miner (1 Q), 547-548, 1854.

Distance schedule (17 Q), 1859.

Drafts drawn by John W. Dorsey, contractor, on the Sixth Auditor in favor of—

Austin, S. F., June 10, 1878, third quarter 1878 (38 Q), 1948.

Bosler, J. W., witnessed by L. R. Walker and S. Darling, July 10, 1880, third quarter 1880 (43 Q), 1951.

Dorsey, S. W., July 7, 1879, third quarter 1879 (39 Q), 1948; witnessed by Rerdell and Chapman October 7, 1879, fourth quarter 1879 (40 Q), 1948; witnessed by P. F. Chapman and A. S. Tracy, no date, second quarter 1880 (42 Q), 1951.

Exceptions to rulings admitting—

Conversation of Fred. Steinegar with J. W. Dorsey, 1856; questions as to men and animals, 1867; as to what witness did with circulars sent him, 1883; proof of payments, that they are not the amounts mentioned in the indictment, 1949.

Expedition, calculation for (not read, second quarter), 1856.

Fines and deductions, statement showing, 732-733.

Indictment setting out as overt acts the filing of the oath of John W. Dorsey, sworn to April 21, 1879, as of June 12, 1879; the orders of French, upon jacket indorsed, "Do this. Brady," June 12, 1879, for increase and expedition; and of Brady, December 28, 1880, to allow pay for embracing Fort Lewis; and the filing of the subcontract of S. W. Dorsey, as of November 11, 1879, 1852, 1853.

Journal of the Postmaster-General, extract from, showing entry of order of June 12, 1879, (4 Q, 1855), signed D. M. Key, 4325.

Letters of:

Belford, James B., M. C., to D. M. Key, May 5, 1879, transmitting letter from State officers of Colorado asking for daily service on fast time (8 Q), 1856.

Brady, Thomas J., to J. W. Dorsey, August 9, 1880, notifying him of remission of deductions (stricken out), 1948.

Chaffee, J. B., to Brady, *New York*, April 23, 1879, recommending a daily mail, with fast schedule (10 Q), 1856.

Dorsey, J. W., to Brady, May 5, 1879, inclosing proposition to carry the mail upon an expedited schedule (5 Q), 1855; August 16, 1880, asking remission of deductions for first quarter, 1880 (31 Q), 1895; June 12, 1880, inclosing statements and affidavits relative to failures in first quarter 1880, and asking remission of deductions (32 Q), 1895; to J. M. McGrew, August 3, 1880, requesting that the sum of \$1,129.02 of remissions be paid to him, he having advanced that amount to subcontractor (struck out), 1948, 1949; and S. W. to Brady, January 7, 1880, requesting withdrawal of subcontract of S. W. Dorsey, and that that of Frederick Steinegar be filed (23 Q), 1861.

Hagan, F. G., to M. C. Rerdell, April 30, 1880, carriers worked faithfully; physically impossible to carry the mail on a schedule of 15 hours (33 Q), 1895, to 2nd Assistant Feb. 14, 1879; the contractor embraces Animas next after

(Q.) *Route 38156. Silverton to Parrott City, Colo.*—Continued.

Letters of.—Continued.

Hagan, F. G.—Continued.

Hermosa (45 Q, defense), 3276; July 2, 1878, service commenced to-day (46 Q, defense), 3276; February 14, 1879 contractor has curtailed service to Animas City, omitting that office (46 Q, defense), 3278. July 9, 1879, order to increase to seven trips has been complied with since first instant. (44 Q, defense) 3275.

Hill, N. P., U. S. S., to Brady, November 8, 1880, inclosing petitions, asking extension of schedule from 15 to 24 hours; much of the time it is absolutely impossible to get the mail through in 15 hours (13 Q), 1857, 1858.

Hill, M. G., assistant postmaster, Parrott City, to second assistant, December 10, 1880, states distance is increased 4 miles from Parrott to Animas City by Fort Lewis (42 Q, defense), 3288, 3289; December 29, 1880, states the distance via Fort Lewis to Animas City is increased 5 miles (51 Q, defense), 3290.

McDonald, A., to Brady, *New York*, April 24, 1879, urging a daily and fast line (7 Q), 1856.

Price, J. G., postmaster, Fort Lewis, December 8, 1880; states the distance is increased four miles one way to include that office (49 Q, defense), 3289.

Reynolds, A. E., to D. M. Key, *Chicago*, April 26, 1879, requesting daily service and fast time (9 Q), 1856.

Steinegar, Fred., filing his subcontract (not read, 26 Q), 1861; to J. W. Dorsey, June 5, 1880, acknowledges receipt of draft for \$1,129.02 (struck out), 1949; to Brady, November 12, 1880, submitting schedule of 29 hours one way and 24 hours the other, no connections will be missed (15 Q), 1858-1859.

Trew, John M., postmaster, Animas City, to Second Assistant, January 14, 1878, stating that Animas City should be embraced, without additional pay, as the carriers cannot avoid passing through it during eight months of the year (16 Q), 1859; received December 16, 1880; states distance was increased three miles, via Fort Lewis to Parrott City (50 Q, defense), 3289.

Oath of John W. Dorsey, contractor, sworn to April 21, 1879, original schedule 7 trips, 3 men, and 10 animals, schedule of 15 hours, 7 trips, 6 men, and 30 animals (overt act averred as of June 12, 1879, 6 Q), 1855.

Brady, October 1, 1878, filing subcontract of William E. Earle (18 Q), 1860; March 17, 1879, to change schedule (27 Q), 1861-1862; January 21, 1880, to stop all payments to subcontractor (22 Q), 1860-1861; January 21, 1880, filing subcontract of Frederick Steinegar (24 Q), 1861; no date, deducting \$1,958.05 for failures in first quarter, 1880, and August 19, 1880, remitting \$1,845 (30 Q), 1894; French, January 23, 1879, from February 16, 1879, embrace Animas City, increasing distance 10 miles, allow contractor \$215.65, subcontractor \$330.43 (3 Q), 1854; June 12, 1879, upon jacket indorsed "Do this July 1, Brady;" from July 1, 1879, increase 5 trips, allow \$4,259.12, expedite to 15 hours, allow \$10,549.51 additional (overt act, 4 Q), 1855; November 11, 1879, filing subcontract of S. W. Dorsey (20 Q), 1860.

French, December 28, 1880, from November 1, 1880, allow contractor \$716.62; subcontractor, \$407.95; on 4 miles increase for Fort Lewis (47 Q, defense), 3288.

Payments, statement showing, to W. E. Earle, F. Steinegar, and H. M. Vaile, subcontractors, J. W. Bosler and H. M. Vaile, assignees, 732-733.

Petitions: Of State officers of Colorado, dated April 28, 1879, for daily service, and that the time be made faster (12 Q), 1857, addressed to Horace Maynard, September 24, 1880, for extension of schedule to 24 hours, from November 15 to April 15, physically impossible to carry the mail on present schedule, or in less time than 24 hours (14 Q), 1858.

Proposal of John W. Dorsey, sworn to before A. E. Boone, January 14, 1878, John O. Evans and L. S. Filbert, sureties; witnessed by John R. Miner and A. E. Boone (2 Q), 1854.

Remissions, statement of, 733.
order for, 1844.

Report of the Auditor certifying balance due for remission of deductions as payable to J. W. Bosler, \$1,129; to Frederick Steinegar, \$715.98, 1948.

Revenues, certified transcript of, 2754, 2755.

Schedule of arrivals and departures, recommended by postmasters and subcontractor February 17, 1879 (28 Q), 1862.

Subcontracts of:

Dorsey, S. W., dated April 1, 1879, full pay (overt act, averred as of November 11, 1879) (21 Q), 1860.

Earle, Wm. E., dated May 1, 1878, \$2,280 per annum (19 Q), 1860.

Steinegar, Frederick, dated November 25, 1879, 7 trips, \$9,400 per annum. Guaranteed by S. W. Dorsey, November 24, 1879 (25 Q), 1861.

(Q.) *Route 38156. Silverton to Parrott City, Colo.*—Continued.

Telegram of Frederick Steinegar to S. C. Ramage, "November 30, 1881; present schedule must not be changed; will send remonstrance" (29 Q, defense), 1873.

Warrant, dated September 8, 1880, in favor of J. W. Bosler, assignee, \$1,129.02 (41 Q), 1951.

Witnesses:

Belford, James B., M. C., Colorado, testimony of for the defense; identifies his signature to letter (8 Q, 1856), thinks the body is in the handwriting of his clerk, D. W. Gee, 2784, 2786, 2808; necessities for increased mail facilities, 2787, 2789.

Boone, A. E., mail contractor, testimony of, relating to this route:

Handwriting:

5 Q. Letter J. W. Dorsey (1855) all written by Rerdell, 2700.

6 Q. Oath of J. W. Dorsey (1855) all written by Rerdell except the word and figures "April 21st"; signature of J. W. Dorsey is genuine, 2700.

25 Q. Subcontract of Steinegar (1861) was partly written by Rerdell and partly by J. W. Dorsey; the words and figures "guarantee," "S. W. Dorsey," "Nov. 24, 1879," were written by S. W. Dorsey, 2700.

32 Q. Letter of J. W. Dorsey (1895), "J. W. Dorsey" and "M. C. Rerdell" (M. C. Rerdell is crossed out) were written by Rerdell, 2700.

Brady, Thomas J., one of the defendants, testimony of, relating to this route: Being shown 4, 5, 7, 8, 9, 10, 11 and 12 Q, being the order and accompanying papers for expedition, has no recollection as to how he arrived at the precise time of 15 hours to which he reduced the schedule, 3552; petitions generally call for faster time and an increased number of trips, but none specify any particular time; as the route was 65 miles long 15 hours was a little more than 4 miles an hour, 3552; the fact that the only paper on file other than the order which specifies 15 hours is the contractor's oath made on April 21; preceding does not aid his memory as to how it happened that the contractor, on April 21, and witness on June 12, hit upon the 15-hour schedule, 3553; does not remember that the route passed 10,000 feet above the level of the sea, but knows it was a very difficult route, 3553; or to have seen petition for extension of schedule from 15 to 24 hours (14 Q, 1858), and letter of Senator Hill transmitting it (13 Q, 1857, 1858), filed in November, 1880; witness went to Indiana and is not certain that he was here at that time, 3461-3462.

Calleghan, John T., inspection clerk, testimony of, 1893-1894; identifies papers relating to deductions and remissions, 1893-1894.

Cornell, Clarence W., mail carrier, testimony of, 1875-1879; carried the mail from July 1, 1879, to October, 1879, 1875; they were making 7 trips on a schedule of 15 hours, 1875-1876; there were 4 drivers on the route; they averaged 3 horses each, sometimes 4; each driver took care of his own stock, 1875; in going from Silverton to Parrott City you pass through Animas City; there is a trail another way, but no one travels it, 1876; mail would not weigh over 40 pounds, 1876; carried the mail on horseback; if there were passengers would take a 2-horse team, 1876; men and animals, 1876-1879.

Rerdell, M. C., one of the defendants, testimony of, relating to this route:

2 Q. Proposal (554), body written by Miner, amount "1,488" by Rerdell, signature of J. W. Dorsey genuine, 2348-2349.

6 Q. Oath of J. W. Dorsey (1855), body was written by witness, signature of Dorsey genuine, figures were put in by witness after the oath was sworn to, about May 5 or 6, 1879, by direction of S. W. Dorsey, who furnished the figures, 2348, 2559-2560.

8 Q. Letter of James B. Belford (1856), body written by witness, signature of Belford genuine, 2348.

10 Q. Letter of J. B. Chaffee (1856), all except signature written by John A. Sibbald, 2348.

19 Q. Subcontract of William E. Earle (1860), part written by Miner, genuine signature of John W. Dorsey, 2348.

21 Q. Subcontract of S. W. Dorsey (1860), body written by Miner, signatures of J. W. and S. W. Dorsey are genuine, 2348.

23 Q. Letter of J. W. and S. W. Dorsey (1861), signature and all, written by witness, 2348.

25 Q. Subcontract of Fred. Steinegar (1861) partly written by witness and partly by J. W. Dorsey, genuine signature of J. W. and S. W. Dorsey to guarantee on the back, 2348.

31 Q. Letter of J. W. Dorsey (1895), signature and all, by witness, 2348.

32 Q. Letter of J. W. Dorsey (1895), body written by clerk; signature of J. W. Dorsey was written by witness, 2348.

(Q.) *Route 38156. Silverton to Parrott City, Colo.—Continued.*

Witnesses—Continued.

Sleman, John B., Chief Pay Division, testimony of, 1903; produces reports, drafts, and warrants, 1903.

Steinegar, Frederick, subcontractor, testimony of, 1862-1874; carried the mail from November 25, 1879, to June 30, 1882, under subcontract made with J. W. Dorsey at Silverton, Colo., 7 trips, schedule 15 hours, 1862-1863; witness told Dorsey it would be impossible to make 15-hour schedule in winter, Dorsey said the Post-Office Department made allowance for bad weather in winter, but that witness should not miss any trips, 1866; in the winter of 1879 and 1880 the mail was carried for 4 months on snowshoes for part of the distance, it was impossible to use horses over this portion, 1867; used 6 men and 20 horses in summer; winter of 1879-1880 used 14 horses; winter 1880-1881 used 20 horses, impossible to make the time with more horses, 1867; tried to have the time extended in winter without change of pay, 1868; received remissions to the amount of \$1,800, 1868; deductions for failures amounted to \$2,860, 1869; Miner, 1869-1870; spoke to Belford and Senators Teller and Hill about getting remissions, 1871; identifies and explains telegram (29 Q, defense, 1873), 1872-1873; his contract with Dorsey was to carry the mail in accordance with instructions from the Post-Office Department without specifying the time, 1874.

Sweeney, George M., Chief Inspection Division, testimony of, 1846-1849; identifies files, 1846-1849; Turner's duties, 1847-1849.

Trew, John M., postmaster Animas City, testimony of, 1881-1893; was postmaster from 1877 to 1881; the mail from Silverton to Parrott City passed through Animas City most of the time; there was a trail a little shorter traveled in dry weather, 1881; the mail carrier stopped in Animas City over night, 1881; the mail increased very rapidly in 1878 and 1879, 1881; identifies his signatures to letter of Trew (16 Q, 1859), 1881, and distance circular (17 Q, 1859), 1881, 1898; trail by Hermosa, 1886-1887; Animas City was not officially declared on route 38156, and the mail-carriers collected contributions for bringing the mail down, 1887; distances, 1887-1888; refused to certify that Animas City added 10 miles to the distance, because they were getting paid for 69 miles, 1888.

(K.) *Route 40104. Mineral Park to Pioche, Ariz.*

Advertisement of November 1, 1877, 232 miles, once a week, 84 hours, 523.

Affidavits of—

Dorsey, John W., sworn to August 27, 1880; the interest of J. W. Bosler in this route will cease when the drafts now on file are paid; all remissions belong to M. C. Rerdell (100 K), 1661.

Rerdell, M. C., sworn to August 27, 1880; he is subcontractor and entitled to the pay and all fines and deductions remitted (101 K), 1661.

Keeley, J. V., sworn to March 9, 1880, that the inclosed are true copies of the mail registers and orders of the Second Assistant, relating to this route in the post-office at Pioche, Nev. (192 K, defense), 2957.

Argument, opening of Mr. Bliss, referring specifically to this route, 249, 250, 256-258, 266, 267, 308, 309, 340-345; of W. W. Ker, for the prosecution, relating to this route, 4650-4667; of Jeremiah M. Wilson for the defense, relating to this route, 5778-5185.

Calculations relating to failures (164 K, defense), 2946; (165 K, defense), 2947; (166 K, defense), 2947-2948; (167 K, defense), 2948; (188 K, defense), 2954-2955.

Contract of John W. Dorsey with the United States, dated March 15, 1878, \$2,982 per annum. Sureties, D. W. C. Wheeler and S. N. Hoyt, witnessed by A. E. Boone and John R. Miner (2 K), 1629.

Drafts drawn by John W. Dorsey, contractor, on the Sixth Auditor, in favor of—

Bosler, J. W., February 28, 1879, second quarter 1880 (94 K), 1660; July 10, 1880, third quarter 1880 (95 K), 1660.

Dorsey, S. W., May 5, 1879, second quarter 1879 (91 K), 1660; October 7, 1879, fourth quarter 1879, witnessed by Rerdell (93 K), 1660.

Emporia National Bank, October 1, 1879, third quarter 1879 (92 K), 1660.

Rerdell, M. C., April 10, 1880, one month's extra pay on trips reduced (97 K), 1660.

Vaile, H. M., October 1, 1878, third quarter 1878 (87 K), 1659; October 1, 1878, fourth quarter 1878 (89 K), 1659; October 1, 1878, first quarter 1879, witnessed by M. C. Rerdell (90 K), 1659, October 1, 1878, first quarter 1879 (326 K), 4067.

Drawn by M. C. Rerdell, subcontractor, on the Sixth Auditor, in favor of himself, April 10, 1880, for one month's extra pay (98 K), 1660.

(K.) *Route 40104. Mineral Park to Pioche, Ariz.*—Continued.

Exceptions to rulings admitting order of Brady, May 9, 1879 (19 K), on account of its date, 1639; order of Brady, January 22, 1880 (24 K), that it is not alleged as an overt act, 1643; order of Brady December 31, 1878 (28 K), 1647; subcontract of H. M. Vaile (29 K), that the signature of Vaile is not proven, 1648; letter of H. M. Vaile and John W. Dorsey (31 K), 1648; letter of M. C. Rerdell (33 K), 1649; subcontract of M. C. Rerdell (34 K), 1649; order of June 29, 1880, that it is signed by French (35 K), 1650; subcontract of McKibben (39 K), as irrelevant, 1651; petition on route 40105, as evidence on route 40104 1638; to ruling refusing to strike out all evidence touching this route since July 1, 1879, the date the subcontract of Jennings went into effect, 1659; questions as to quantity of mail, 1598.

Fines and deductions, statement of, 733.

Indictment setting out as overt acts, the filing of the subcontract of M. C. Rerdell as of July 23, 1879, the filing of the oath of J. W. Dorsey as of July 23, 1879, and the orders of Brady of July of 23, 1879, to increase trips, and April 10, 1880, to allow one month's extra pay, 1627, 1628.

Jackets, dated December, 1878, inclosing letters and petitions, and stating cost of two additional trips and expedition to 60 hours, indorsed "Do this, Brady" (11 K), 1634; dated January 21, 1880, indorsed by Brady that the mail bills showing little mail passing over this route, ordered that the service be reduced to what it was at the original letting, without one month's extra pay (25 K), 1644; 1880, relating to failures in first, second, and third quarters 1879 (187 K, defense), 2953-2954; 1880, stating Eli H. Murray, governor of Utah, George Q. Cannon, Delegate, Jay Gould, and Sidney Dillon recommend increase to daily service, stating cost for 4 additional trips (318 K, defense), 3295-3296.

Journal of the Postmaster-General, extract from, showing entry of order of April 10, 1880 (not in evidence) signed D. M. Key, 4326; and order of July 23, 1879 (21 K, 1640), signed Thos. J. Brady, Acting Postmaster-General, 4325, 4329.

Letters of:

Beene, Horace D., to Second Assistant, August 25, 1879; an average of six letters a day goes over this route either way; government pays largely for service that is useless; if this letter fails, shall use a copy of it as a preface to other communications to be sent through surer channels to the highest authority (27 K), 1646.

Brady to postmaster, Pioche, January 22, 1880, service has been reduced to once a week, and time increased to 84 hours (192 K, defense), 2959.

Cannon, George Q., to Brady, October 15, 1880, recommending daily mail (320 K, defense), 3296.

Dillon, Sidney, to Brady, received July 21, 1879, asking daily mail between and Pioche Prescott, indorsed "Turner, make up case Pioche to Mineral Park" (23 K), 1641.

Dorsey, John W., to Brady, November 26, 1878, proposing to carry the mail 3 trips, 60-hour schedule, for \$19,318 additional (13 K), 1634; May 5, 1879, requesting change of address to care of M. C. Rerdell, box 706 (20 K), 1640; and Joseph McKibbin to Brady, August 12, 1880, requesting withdrawal of subcontract (41 K), 1651; and M. C. Rerdell, R, to Brady, May 15, 1879, requesting withdrawal of subcontract (36 K), 1650; June 29, 1879, requesting withdrawal of subcontract (37 K), 1650; and H. M. Vaile, M, to Brady, May 5, 1879, requesting withdrawal of subcontract (31 K), 1648.

Frémont, J. C., governor, to Key, October 21, 1878, recommending increase to 2 trips and schedule of 60 hours, filed December 20, 1878 (16 K), 1636.

French, J. L., to postmaster Pioche, July 23, 1879, service has been increased to 7 trips (192 K, defense), 2959.

Gould, Jay, to Brady, August 20, 1880, increase to 7 times a week service would make a uniform service, and through line between the Utah Southern and Southern Pacific Railroad (321 K, defense), 3296.

Jennings, Isaac, to Key, sworn to April 5, 1880, asking for remission of deductions, on the ground that he was not informed of any expedition of the schedule until about the middle of February, 1880 (91 K, defense), 2956-2957; May 10, 1880, asks to withdraw his letter of April 5, 1880, which was drawn by his attorney, Judge Wilshire, and signed when he was angry and out of humor with J. W. Dorsey (109 K, defense), 2956.

Krider, W. M., postmaster Mineral Park, September 3, 1880, in answer to inquiry of department, mail dispatched will average about 3 letters and from 3 to 5 papers, mail received about 10 letters and from 6 to 8 papers (84 K), 1657; August 16, 1879, received September 2, 1879, daily service commenced (excluded), 1643; to Brady, the same letter as 84 K, 1657 (153 K, defense), 2943.

McKibbin, Joseph C., and John W. Dorsey, to Brady, August 12, 1880, requesting withdrawal of subcontract (41 K), 1651.

(K.) *Route 40104. Mineral Park to Pioche, Ariz.*—Continued.

Letters of—Continued.

- Murray, Eli H., governor, and John A. Hunter, chief justice of Utah, to Brady, October 15, 1880, recommending daily mail, which would complete a daily service from the Central to the Southern roads, and greatly increase the benefits of a daily mail on the routes now established (322 K, defense), 3296-3297.
- Myers, Chas. F., postmaster Pioche, to Second Assistant, July 27, 1878, service not yet commenced (4 K), 1631; July 31, 1878, contractor has failed to appear (5 K), 1632; September 3, 1878, service commenced, August 31, 1878 (6 K), 1632; August 5, 1879, seven-trip service not yet commenced (23 K), 1641; September 18, 1880, in answer to inquiry of department, mail dispatched will average 5 lbs., mainly papers and packages, mail received 4 oz., mainly letters (85 K), 1658; same letter as 85 K, 1658 (154 K, defense), 2943-2944; to Brady, March 2, 1879, tri-weekly service commenced February 22 (104 K, defense), 2930; January 25, 1879, extra service should have started January 16, none yet put on (105 K, defense), 2930; August 20, 1879, seven trips service was commenced August, 1879 (323 K, defense), 3297; October 30, 1880, contractor carried the mail regularly to September 30, 1880 (293 K, defense), 2986; to Jennings, March 15, 1880, is convinced it is impossible for him to carry the mail within 60 hours; has received no instructions from the department as to any prescribed schedule (189 K, defense), 2956.
- Peck, John M., *M.*, to Brady, November 27, 1878, requesting permission to sublet (9 K), 1633.
- Randall, Alder, postmaster Mineral Park, to Brady, July 15, 1878 (?), contractor failed to put on service, contract price much below what the actual cost of carrying the mail should be, time has been shortened and cost increased without any corresponding benefit (withdrawn), 1632; August 28, 1878, service commenced to-day (7 K), 1633.
- Rerdell, M. C., to Sixth Auditor, August 21, 1880, deductions in first quarter 1879, should be charged to Vaile; will you permit Vaile to take advantage of his own wrong and thus defraud another man out of his money (102 K), 1661, 1662; to Brady, May 7, 1879, inclosing his subcontract (33 K), 1649; and John W. Dorsey, *R.*, to Brady, May 15, 1879, requesting withdrawal of subcontract (36 K), 1650.
- Rodgers, W. K., secretary, Executive Mansion, November 18, 1880, by direction of the President, refers letters of Eli H. Murray, governor, Hunter, chief justice, Cannon, Delegate, recommending increase of mail service (319 K, defense), 3295-3296.
- Stevens, H. S., Delegate, to Brady, October 21, 1878, recommending increase to 3 trips, filed December 20, 1878 (14 K), 1635; no date, recommending expedition to 60 hours, filed December 20, 1878 (15 K), 1635-1636.
- Vaile, H. M., and John W. Dorsey, *M.*, to Brady, May 5, 1879, requesting withdrawal of subcontract (31 K), 1648.
- Vaile, H. M., to J. M. McGrew, July 9, 1880 (*read from the record of the last trial*) relative to the Jennings's case; although he was subcontractor of record, it was as trustee for J. W. and S. W. Dorsey, Jennings and others; all the money collected not paid to Jennings was paid to liquidate the debts of J. W. and S. W. Dorsey and others; believes that Jennings and both J. W. and S. W. Dorsey are irresponsible, and it would be impossible for the writer to receive back the \$2,800, 4065.
- Mail bills, 39, covering the period from November 16, 1879, to December 24, 1879, showing the amount of mail dispatched at Mineral Park and received at Pioche (45 K. to 83 K, inclusive), 1653-1657.
- Mail bills showing departure of each mail from—
 Mineral Park and arrival at Pioche in third quarter 1879 (114 to 152 K, defense), 2935-2943; the mail bills have already been put in evidence by the prosecution, first quarter 1880 (156 to 163 K, defense), 2944-2946; (169 to 185 K, defense), 2943-2953; second quarter 1880 (194 to 263 K, defense), 2960-2976; third quarter 1880 (270 to 291 K, defense), 2980-2985; (294 to 296 and 298 to 301 K, defense), 2986-2988; fourth quarter 1880 (303 to 317 K, defense), 2988-2991.
- Mail registers showing the arrivals and departures of the mails at—
 Mineral Park, January, 1879 (108 K, defense), 2932; February, 1879 (106 K, defense), 2931; August, 1879 (111 K, defense), 2934; May, 1880 (264 K, defense), 2977; July, 1880 (267 K, defense), 2978-2979; August, 1880 (266 K, defense), 2978.
- Pioche, January, 1879 (107 K, defense), 2931; February, 1879 (109 K, defense), 2933; August, 1879 (112 K, defense), 2934; October, November, and December, 1879 (192 K, defense), 2958-2959; July, 1880 (268 K, defense), 2979; August, 1880 (239 K, defense), 2980.

(K.) *Route 40104. Mineral Park to Pioche, Ariz.—Continued.*

Oath of John W. Dorsey, contractor, sworn to November 26, 1878, filed December 20, 1878; original schedule, 3 trips, 6 men, and 10 animals; schedule of 60 hours, 14 men and 32 animals (12 K), 1634.

Orders of:

Brady, June 18, 1878, to change contractor's address to lock-box 714 (3 K), 1631; November 29, 1878, permission to sublet (8 K), 1683; December 24, 1878, from January 16, 1879, *increase 2 trips, and expedite to 60 hours, allow contractor \$19,318 per annum additional* (10 K), 1623; December 31, 1878, filing the subcontract of H. M. Vaile (28 K), 1647; May 8, 1879, to stop all payments to subcontractor (30 K), 1648; May 8, 1879, filing subcontract of M. C. Rerdell (32 K), 1648, 1649; May 9, 1879, to change address care M. C. Rerdell, box 706 (19 K), 1640; January 22, 1880, from February 1, 1880, reduce to 1 trip, increase schedule to 84 hours, deduct \$49,051.33 rescinded (24 K), 1643; January 28, 1880, rescinding order of January 22, 1880, from February 1, 1880, reduce 4 trips, deduct \$29,733.33 (26 K), 1644, 1645; January 21, 1880, deducting \$7,789.83 for failures (44 K), 1652; August 23, 1880, to stop all payments to subcontractor (40 K), 1651; August 23, 1880, filing subcontract of M. Salisbury (42 K), 1652; to deduct \$1,563.10 for failures in first quarter 1879 (103 K, defense), 2930; to deduct \$7,789.83 for loss of expedition fourth quarter 1879 (113 K, defense), 2935; to deduct \$3,367.08 for failure in second quarter 1880 (193 K, defense), 2960; to deduct \$376.83 for failures in fourth quarter 1880 (302 K, defense), 2988.

French, July 23, 1879, upon jacket indorsed, "Do this, Brady," from August 1, 1879, *increase 4 trips, allow \$29,733.33* (overt act, 21 K), 1640; June 29, 1880, to stop all payments to subcontractors (35 K), 1649, 1650; June 29, 1880, filing subcontract of J. C. McKibbin (38 K), 1650, 1651; to deduct \$1,211.59 for failures in third quarter 1879 (110 K, defense), 2933; to deduct \$2,653.67 for loss of expedition first quarter 1880 (155 K, defense), 2944; to deduct \$2,142.97 for loss of expedition first quarter 1880 (168 K, defense), 2949; to deduct \$2,514.61 for failures in third quarter 1880 (265 K, defense), 2977; to deduct \$10,747.41 for loss of expedition in first, second, and third quarters 1879 (186 K, defense), 2953; to deduct \$999.19 for failures in August and September, 1880 (292 K, defense), 2985.

Payments, tabulated statement showing, to H. M. Vaile, S. W. Dorsey, M. C. Rerdell, I. Jennings, assignees; M. Salisbury and M. C. Rerdell, subcontractors, 733.

Petitions for increase to 3 trips and schedule to 60 *hours instead of 84 hours*, filed December 20, 1878 (17 K), 1636; on route 40105, signatures to which are identical with petition on route 40104, names printed in full (18 K), 1638, 1639.

Proposal of John W. Dorsey sworn to January 9, 1878, before A. E. Boone; sureties, J. O. Evans and L. S. Filbert; witnessed by A. E. Boone and John R. Miner (1 K), 553, 1629.

Receipt of H. M. Vaile, subcontractor, January 31, 1879, to J. W. Dorsey, contractor, for \$4,870.08 in full for service for first quarter, 1879, 4066.

Remissions, statement of, 733.

Reports of the Auditor, dated April 14, 1880, certifying balance payable to Jennings for one month's extra pay (96 K), 1660; August 31, 1880, for amount of deductions in first quarter, 1879, erroneously charged to M. C. Rerdell (99 K), 1660; first quarter 1879 (325 K.), 4066-4067.

Revenue, certified transcript of, 2756-2757.

Subcontracts of—

Jennings, Isaac, dated July 1, 1879, 3 trips \$12,600, 6 trips \$25,200, 7 trips \$28,000, signed John W. Dorsey, indorsed, "Filed with me March 17, 1881, Thos. J. Brady," also, "Turner, file this subcontract, to take effect July 1, 1879, and instruct Auditor to readjust payment accordingly, Brady" (86 K), 1658.

McKibbin, J. C., dated June 29, 1880, full pay, signed John W. Dorsey, by M. C. Rerdell, attorney (39 K), 1651.

Rerdell, M. C., dated April 1, 1878, full pay, signed John W. Dorsey, by M. C. Rerdell (M. C. Rerdell erased and signed again as subcontractor) (overt act 34 K), 1652.

Salisbury, Monroe, dated April 20, 1880, signed J. W. Dorsey, by M. C. Rerdell (43 K), 1652.

Vaile, H. M., dated December 1, 1878, full pay, signed John W. Dorsey, by John R. Miner (29 K), 1647, 1648.

Warrants (not read), 1659-1669.

(K.) *Route 40104. Mineral Park to Pioche, Ariz.*—Continued.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route, 2697-2698, 2710.

1 K. Proposal of J. W. Dorsey (553, 1629) was filled up by Miner except the words "twenty-nine hundred and eighty-two"; J. W. Dorsey took the oath in blank before witness, and the date of the oath was filled in afterwards, 2697-2698.

9 K. Letter of Peck, M. (1633), signature and all written by Miner, 2697.

12 K. Oath of J. W. Dorsey (1634), all except the signatures written by Miner; J. W. Dorsey did not write his signature, 2697, 2710.

13 K. Letter of J. W. Dorsey (1634), written by J. R. Miner; J. W. Dorsey did not write his signature, 2697, 2710.

17 K. Petition (1636), the words "three trips on a schedule of 60 hours instead of 84 hours," and the word "Pioche," were written by Rerdell, 2697.

18 K. Petition (1638-1639), the words "Ehrenberg," "forty," "eight," and "sixty" were written by Miner, 2697.

20 K. Letter of J. W. Dorsey, signature and all written by Rerdell, 2697.

36 K. Letter of Rerdell and J. W. Dorsey, R. (1650), written by Rerdell, 2697.

37 K. Letter of J. W. Dorsey and Rerdell (1650) was written by Rerdell, 2697.

41 K. Letter of J. C. McKibbin and J. W. Dorsey (1651), all written by Rerdell except the signature of McKibbin, which is genuine, 2697.

86 K. Subcontract of Jennings (1658), the first page is all in the handwriting of Rerdell, except the words "W. H. Henderson," "J. M. Craig," "W. C. Woodman," and "G. R. Alexander"; the signature of J. W. Dorsey is by Rerdell, 2697.

Brady, Thomas J., one of the defendants, testimony of, relating to this route: they were anxious to get up a continuous daily mail service from the southernmost point of the Utah Southern Railroad on through to the Southern Pacific; if the service had been properly performed it would have made a much shorter connection for the mail from San Francisco and the East, 3399; the service was not properly performed and was cut down to once a week; it was represented that a great injustice was done to the contractor and they were induced to put it back to three times a week instead of seven; constant and persistent efforts were made to restore it to seven times a week again, but witness refused, 3399; thinks the members of Congress and Senators from Nevada and the Delegate from Utah interested themselves in getting increase and expedition, 3544-3545; does not know that their names do not appear as recommending anything, his impression is there ought to be a letter from Senator Jones among the papers, 3545; does not know that it was not until a subsequent application which the witness did not grant that the Delegate from Utah intervened, believes the facts connected with order (24 K, 1643), January 22, 1880, reducing the service to one trip and restoring the original schedule, are stated on the jackets, no member or Senator interested himself in procuring that order, 3545; made the order January 28, 1880 (26 K, 1644-1645), rescinding order 24 K, and reducing the service four trips, to give the contractors an opportunity, by putting it back to three times a week, to make the route what it ought to have been, 3545-3546; understands that the mail bills show that in 19 days only 35 letters passed over the route, had no evidence between January 22 and January 28, 1880, the dates of the two orders, that the mails had, in fact, increased upon the route, 3546; but the service was put back to three times a week upon the representation that great injustice had been done to the contractors, and if they were given an opportunity, they would not permit the delay at the Colorado River of 12 hours, which made the expedition practically useless, and prevented the mails going over that line, 3546; cannot say why he did not state that reason on the jacket, 3547; the statement on the jacket was one of the true reasons, but not the chief one, the one that moved him most was to give the contractors a chance to make the service what it ought to be, 3547; the only paper referred to upon the jacket being the letter of Sidney Dillon, president of the Union Pacific Railroad Company, witness had the power under the laws and regulations of the department six days after he had made an order reciting that there was little or no mail carried on the route to restore it, paying an additional sum of \$20,000 and odd to prevent injustice to the contractor, 3547; does not remember what contractor or agent approached him between January 22 and January 28, 1880, to urge that original order was unjust, 3548; but remembers a discussion with Senator Plumb and numbers of others about it, 3548; what Senator Plumb, representing Kansas, had to do with a route in Arizona he could probably answer more correctly than the witness, his statement was that

(K.) *Route 40104. Mineral Park to Pioche, Ariz.*—Continued.

Witnesses—Continued.

Brady, Thomas J.—Continued.

the contractors were friends of witness, and he believed witness was doing them an injustice, 3548; the fault had been entirely with the subcontractors in making the delay at the Colorado River, which practically did away with the good that was intended by expedition, witness made the reduction when he was angry at the manner in which the service had been performed, and thinks he recouped for a portion of what had been paid, 3547; did not allow one month's extra pay in either of the orders, it was putting it down practically for cause, does not remember that he subsequently allowed them for extra pay, 3549; does not remember that at the time he made the original order for increase that he examined petition (17 K, 1636), he was not in the habit of examining petitions with a microscope nor carefully, possibly he read them over, does not know whether he examined to see whether apparently they were all in the same handwriting, 3548; or to have seen letter of Beene (27 K, 1646) before he made the order restoring service, 3587; identifies order (8 K, 1683) giving permission to sublet, cannot say how it happened that upon a jacket which recited that J. W. Dorsey was contractor he granted a permission upon application of John M. Peck, these were mere matters pro forma, he probably did not look inside the jacket, but signed it as a matter of course 3552.

Calleghan, John T., clerk inspection division, testimony of, 1614-1619, 1655; identifies mail bills, 1614-1615, 1655; mail bills are first opened by a messenger, 1615; then distributed to the clerks, 1616; unless there was a failure the Second Assistant would not in usual course of business see the mail bills, 1617; in case of failure, clerk makes up a case and takes to chief of division, who, in turn, takes it to Second Assistant, 1617; no doubt the case containing the mail bills went to General Brady, 1619.

Dorsey, John W., one of the defendants, testimony of, relating to this route, (12 K.) 1634; oath of John W. Dorsey; it is not witnesses's signature, 4106.

Krider, W. M., postmaster Mineral Park, Ariz., testimony of, 1597-1605; had charge of the office since Dec. 25, 1878, 1598; received a 4-horse load of mail on that day; no mail had been received prior to that for 2 or 3 months, 1600; identifies sketch map, 1598, and mail bills, 1599; distances and location of post-offices, 1598; there were about 500 or 600 people got their mail at Mineral Park, 1600; scarcely any mail came over the route from Pioche to Mineral Park, 1598; bulk of the mail from Mineral Park was sent by way of Prescott, 1598; identifies signatures to petition (17 K, 1636, and 18 K, 1639) as those of residents of Signal, 1599, 1602-1603; Signal is about 100 miles south of Mineral Park, 1598; no letters for Signal passed through the Mineral Park office, 1600.

Handwriting:

Miner, John R., one of the defendants, testimony of, relating to this route; denies Rerdell's testimony (2224), that witness had asked him to interline petition (17 K.), 4178.

12 K. Oath of J. W. Dorsey (1634), the body is in witness's handwriting; did not write the signature; does not know who did, 4187.

18 K. Petition (1638-1639), the word "Ehrenberg" is in witness's handwriting, 4191-4192.

Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2224, 2235-2237, 2320, 2343-2344.

This is the route which bothered witness in the Congressional investigation on account of its having been jumped up and down, 2320.

17 K. Petition (1636). Some time in November, 1878, Miner showed witness a petition for increase of service on either 40104 or 40105, and asked him to write a line in it, 2224; witness wrote "three trips on a schedule sixty hours instead of eighty-four hours," and the words "Pioche, Nev.," and the last figure "4" in the number 40104, 2235-2236, 2344.

9 K. Letter of Peck, M. (1633); signature and all was written by Miner, 2343.

12 K. Oath of J. W. Dorsey (1634); the signature of J. W. Dorsey was not written by him, 2343; Dorsey was either in Dakota or Montana at that time, 2236-2237.

13 K. Letter of J. W. Dorsey (1634); was all written by Miner, except the signature, which is not that of J. W. Dorsey, 2343.

18 K. Petition (1638). The word and figures "5," "Ehrenburg" and "60," were written by Miner, 2344.

(K.) *Route 40104. Mineral Park to Pioch, Ariz.*—Continued.

Handwriting—Continued.

Rerdell, M. C.—Continued.

- 20 K. Letter of J. W. Dorsey (1640); signature and all written by witness, 2344.
- 29 K. Subcontract of Vaile (1647-1648), and the signatures of J. W. Dorsey and Miner were written by Miner; signature of H. M. Vaile was genuine, 2344.
- 31 K. Letter of Vaile and J. W. Dorsey, M. (1648); body was written by witness, and the signature of J. W. Dorsey by Miner; signature of Vaile was genuine, 2344.
- 36 K and 37 K. Letters of Rerdell and John W. Dorsey, R. (1650); signatures and all written by witness, 2344.
- 41 K. Letter of J. W. Dorsey and McKibbin (1651) was all written by witness except signature of McKibbin, 2344.
- 86 K. Subcontract of Jennings (1658). body, except the names of sureties, was written by witness, signature of J. W. Dorsey is by himself, 2344, was written by witness; witness supposed he had the right to sign Dorsey's signature, 2559.
- 1 K. Proposal of J. W. Dorsey (553, 1629), body was written by Miner; the amount, "\$2,982," was filled in by witness; signature of J. W. Dorsey is genuine, 2344.
- Sleman, John B., Chief Pay Division, Sixth Auditor's Office, testimony of, 1662.
Produces reports, drafts, and warrants, 1659; identifies letter of Rerdell (102 K) as belonging to the files of the Sixth Auditor's Office, 1662.
- Sweeney, George M., Chief Inspection Division; testimony of, 1625-1627; identifies files, 1625-1627.
- Vaile, Harvey M., one of the defendants, testimony of, relating to this route; received the pay on this note for a while, 4064; identifies his letter to McGrew printed in the record of the last trial, 4064; has not got the letter of McGrew 4065; presumes the receipt (324 K) and the draft (326 K) and the statement of Rerdell (102 K, 1661) are the ones referred to in his letter to McGrew, 4066-4067.
- Wright, Caldwell, Mineral Park, Ariz.; testimony of, 1619-1625, 1629; in 1879 and 1880 the mail received at Mineral Park over this route was very small, sometimes nothing, 1620; witness often bet two to one that there would be nothing in the bag, 1620; identifies signatures to two petitions, one on route 40104 and the other on route 40105, as identical, 1621; does not think the signatures are in the handwriting of the people whose names are signed, 1621; some of the signatures are genuine, 1622-1623; the names are people living in and near Signal, 1621; Signal got its mail from Ehrenberg, 1620; population of Ehrenberg, 1622.

(O.) *Route 40113. Tres Alamos to Clifton, Ariz.*

- Advertisement of November 1, 1877, 232 miles, once a week, 84 hours, 523.
- Argument, opening of Mr. Bliss, referring specifically to this route, 256, 324-326; of W. W. Ker, for the prosecution, relating to this route, 4667-4673; of Jeremiah M. Wilson, for the defense, relating to this route, 5186-5192.
- Contract of John W. Dorsey with the United States, dated March 15, 1878, \$1,568 per annum, sworn to by Dorsey before A. E. Boone, March 28, 1878; sureties, D. W. C. Wheeler and S. N. Hoyt, witnessed by A. E. Boone and John R. Miner (1 O), 548, 1796.
- Drafts drawn by John W. Dorsey, contractor, on the Sixth Auditor, in favor of:
 - Bosler, J. W., witnessed by L. P. Walker and S. Darling, July 10, 1880, third quarter 1880 (27 O), 1852.
 - Dorsey, S. W., witnessed by P. F. Chapman and A. S. Tracy, May 5, 1879, second quarter 1879 (23 O), 1851-1852; July 7, 1879, third quarter 1879 (24 O), 1852; October 7, 1879, fourth quarter 1879 (25 O), 1852; no date, first quarter 1880 (26 O), 1852.
 - Vaile, H. M., witnessed by J. W. Raymond and C. A. Loundsberry, October 1, 1878, third quarter 1878 (20 O), 1851; October 1, 1878, fourth quarter 1878 (21 O), 1851; witnessed by M. C. Rerdell and N. L. Griffin, October 1, 1878, first quarter 1879 (22 O), 1851.
- Exceptions to ruling admitting contractors' drafts, that Vaile's indorsement is not proven, 1851.
- Expedition, calculation for (not read), 1800.

(O.) *Route 40113. Tres Alamos to Clifton, Ariz.*—Continued.

Fines and deductions, statement of, 734.

Indictment setting out as overt acts the filing of the oath of John W. Dorsey, as of June 3, 1879, and fraudulent petitions as of June 3, 1879, and the orders of Brady June 3, 1879, for increase and expedition, January 24, 1881; to omit Tres Alamos, and February 11, 1881, for increased trips, 1795, 1796.

Journal of the Postmaster-General, extract from, showing entry of order of February 11, 1881 (36 O, defense, 3295), signed Horace Mayard, 4327.

Letters of:

Arnold, Major A. K., May 3, 1879, recommends daily mail, filed June 5, 1879 (29 O, defense), 3292.

Baines, Sidney M., to D. M. Key, May 15, 1879, asking increase of service and fast time (8 O), 1798.

Campbell, John G., delegate, to D. M. Key, May 16, 1879, requesting increase to 3 trips on a shorter schedule (13 O), 1800.

Dorsey, John W., to Brady, May 7, 1879, inclosing proposition for increase service on a reduced schedule (6 O), 1797; May 10, 1879, inclosing two petitions for increased service (7 O), 1798; May 23, 1879, inclosing petition for increased service (5 O), 1797, and S. W. to Brady, December 6, 1878 (180), requesting withdrawal of subcontract of S. W. Dorsey (19 O), 1802.

Dunbar, Thomas, postmaster, Tres Alamos, to Second Assistant, March 10, 1879, as the contractor is getting \$1,400 and is paying the subcontractor \$2,600, public opinion is that contractor will fail April 1, asking instructions (15 O), 1800.

Eaton, Ray P., assistant superintendent railway mail service, to Brady, December 28, 1880: The route should be curtailed to embrace and begin at Wilcox, omitting Tres Alamos; there is need of a daily mail from Wilcox to Camp Thomas. Indorsed: "Turner, I think this should be done. Brady," (33 O, defense) 3293, 3294.

McKusick, H. J., superintendent railway mail service, to Brady, December 2, 1880: Route should be changed to begin at Wilcox instead of Tres Alamos (34 O, defense), 3294.

Stacey, M. H., lieutenant colonel, to D. M. Key, May 6, 1879, asking for daily, or, at least, a tri-weekly mail, over a line more expeditious than the one now used. Filed June 19, 1879 (28 O, defense), 3292.

Oath of *John W. Dorsey, contractor*, sworn to April 21, 1879, original schedule, 3 trips, 6 men and 6 animals. Schedule, 40 hours, 3 trips, 12 men and 24 animals (overt act, averred as of June 3, 1879) (4 O), 1797.

Orders of:

Brady, June 3, 1879, from June 16, 1879, *increase two trips, allow \$3,136. Expedite to 40 hours, allow \$9,408* (overt act, 30 P), 1796-1797; December 7, 1880, to stop all payments to subcontractor (18 O), 1801-1802.

Brady, January 4, 1881, from January 20, 1881, omit Tres Alamos and embrace and begin at Wilcox, deduct \$2,149.03 (35 O, defense overt act), 3294. February 11, 1881, from February 20, 1881, increase 4 trips, allow \$15,950.62 (36 O, defense overt act), 3295.

French, November 11, 1879, filing subcontract of S. W. Dorsey (16 O), 1801.

Payments, statement showing, to H. M. Vaile, S. W. Dorsey, and J. W. Bosler, assignees, and John W. Dorsey, contractor, 734.

Petitions (overt act, averred as of June 3, 1879): From military officers and citizens of Camp Grant, for daily mail with a fast schedule (9 O), 1798; of the citizens of Santa Fé and vicinity, for daily mail or tri-weekly service, with fast time (10 O), 1799; for increase to 3 trips and faster time, indorsed by John G. Campbell, delegate (11 O), 1799; from Clifton, Arizona, for increase to 3 trips, with faster time, indorsed by John G. Campbell, delegate (12 O), 1799.

To Postmaster-General for daily line from Camp Thomas, filed June 19, 1879 (30 O, defense), 3293. From Clifton to Postmaster-General for 3 mails a week, with faster time (31 O, defense), 3293. Similar (32 O, defense), 3293.

Proposal of John W. Dorsey, sworn to before A. E. Boone January 9, 1878, sureties, John O. Evans and Lewis S. Filbert, witnessed by A. E. Boone and John R. Miner (2 O), 554, 1796.

Reports of the Auditor certifying balances due (not read), 1851-1852.

Revenues, certified transcript of, 2758-2760.

Subcontract of S. W. Dorsey, dated April 1, 1879, full pay (17 O), 1801.

Warrants (not read), 1851-1852.

Witnesses:

Boone, A. E., mail contractor; testimony of, relating to this route.

Handwriting:

2 O. Proposal of J. W. Dorsey (554, 1793); J. W. Dorsey signed and swore to proposal in blank before witness, 2699.

(O.) *Route 40113. Tres Alamos to Clifton, Ariz.*—Continued.

Witnesses—Continued.

Boone, A. E.—Continued.

Handwriting—Continued.

4 O. Oath of J. W. Dorsey (1797); all written by M. C. Rerdell, except the word and figures "April 21st," and a part of the jurat; signature of J. W. Dorsey is genuine, 2698.

5 O. Letter of J. W. Dorsey (1797); all written by M. C. Rerdell, 2698-2699.

6 O. Letter of J. W. Dorsey (1797); signature and all by Rerdell, 2699.

7 O. Letter of J. W. Dorsey (1798); signature and all by Rerdell, 2699.

9 O. Petition (1798); heading was written by S. W. Dorsey, 2699.

17 O. Subcontract of S. W. Dorsey (1801); genuine signatures of John W. Dorsey and S. W. Dorsey, 2699.

19 O. Letter of J. W. and S. W. Dorsey, (1802); body and signature of J. W. Dorsey written by Rerdell; signature of S. W. Dorsey genuine, 2699.

Brady, Thomas J., one of the defendants, testimony of, relating to this route: Does not remember, independently of the papers, upon whose application he made the order for increase and expedition, the reason he expedited it from 84 to 40 hours and added 2 trips instead of making it a 6-trip route, original schedule, and saving \$4,704, was the same as in the case of the other routes, 3420, the Tre Alamos and Clifton route was rather a small affair, 3422; productiveness was not an element to consider in the increase of routes in that country, 3420; presumes that some representations as to the amount of mail matter were made in the letters or petitions or by parties that may have called upon him, 3420; it was almost solely his practice to derive his information upon those subjects from the parties who were interested in procuring the increase, 3420; they were representatives in Congress, 3421; referring to the curtailment of service to Wilcox, the railroad company upon its first construction claimed they were only running construction trains, and did not want to put on the mail until they put on the passenger trains, witness finally made a peremptory order, and by that means forced them to carrying it, 3398; the terminus was changed to Wilcox, under the law enabling them to change the terminus from one point to another upon a railroad in order to better the service, 3398.

Dorsey, Stephen W., one of the defendants; testimony of, relating to this route. Fort Thomas and Fort Grant, San Carlos Indian Agency, and Clifton were supplied by this route; Clifton was a very important mining town, 3808; in relation to order of June 3, 1879, increasing the pay from \$1,568 to \$12,544, recollects an increase was made, but was not here at the time, 3940.

Eaton, Ray P., testimony of, for defense: Identifies his report (33 O. defense, 3293-3294); report is true, 3334; the mail from Wilcox to Camp Grant at the time this report was written, 3337; when witness was at Camp Grant thinks he counted nine bags of mail there one day, 3334; Wilcox is a station on the Southern Pacific Railroad; Globe was sixty odd miles west of Camp Thomas; the San Carlos Indian Agency was between Globe and Camp Thomas; witness wanted to extend the route to Globe, 3335; witness did not go to either Camp Thomas, San Carlos, Globe, or Clifton, 3337; there were six companies of soldiers at Camp Grant, 3337; the railroad carried the mail to Wilcox and the stage took them to Camp Grant and Clifton; the department had not ordered the mails on the railroad, 3338-3339.

Rerdell, M. C., one of the defendants; testimony of, relating to this route.

2 O. Proposal (554, 1796) written by John R. Miner; the amount "1568" filled in by Rerdell; genuine signature of John W. Dorsey, 2346.

4 O. Oath of J. W. Dorsey (1797), body written by witness, and amount filled in after the oath was sworn to; signature of J. W. Dorsey genuine, 2345, 2559.

5 O. Letter of J. W. Dorsey (1797); signature and all by witness, 2345.

6 O. Letter of J. W. Dorsey (1797); signature and all by witness, 2345.

7 O. Letter of J. W. Dorsey (1798); signature and all by witness, 2345.

9 O. Petition (1798), in handwriting of S. W. Dorsey; witness saw him write it in April, 1879, 2345, 2346.

11 O. Petition (1799), was written by John A. Sibbald, 2346.

12 O. Petition (1799), was written by James W. Donnelly, a clerk in the Land Office, 2346, 2560.

17 O. Subcontract of S. W. Dorsey (1801), was written by Miner; signatures of J. W. and S. W. Dorsey are genuine, 2346.

19 O. Letter of J. W. and S. W. Dorsey (1802); the letter and signature of J. W. Dorsey written by Rerdell; signature of S. W. Dorsey genuine, 2346.

(O.) *Route 40113. Tres Alamos to Clifton, Ariz.—Continued.*

Witnesses—Continued.

- Sherman, William T., General, testimony of, for defense; necessities of frequent mail between Wilcox and Clifton, 3609-3610.
- Sleman, John B., chief Pay Division, testimony of, produces reports, drafts, and warrant, 1816.
- Steele, Thomas, testimony of, 1802-1808, 1810; sketch map, 1802; route traveled by the mail, 1802; population of post-offices, 1803; quantity of mail, 1803, 1804, 1808; geography, 1804-1806; acquaintance with route, 1806-1807; stock-raising, 1808, and mines, 1807-1808; no post-offices between Tres Alamos and Fort Grant, 1808; whereabouts of the postmasters of Camp Grant and Tres Alamos, 1807, and of John H. Norton, who was subcontractor, 1810.
- Sweeney, George M., chief Inspection Division, testimony of, 759-760, 762-763; identifies files, 759-760, 762-763.

(D.) *Route 41119. Toquerville to Adairville, Utah.*

- Advertisement of November 1, 1877, 132 miles, once a week, 60 hours, 523.
- Argument, opening of Mr. Bliss referring to this route, 250, 257, 270, 282, 313-316; of W. W. Kerr for the prosecution, relating to this route, 4607-4616; of Jeremiah M. Wilson for the defense, relating to this route, 5162-5167.
- Argument on the question of the admission of petition of postmasters for extension of schedule (15 D), filed March 13, 1880, and subsequent to the date of the order for expedition, of Mr. Davidge, 956-957; Mr. Wilson, 958-959; Mr. Merrick, 960-963; Mr. Carpenter, 963-964.
- On the motion to strike out letter of M. C. Rerdell (22 D) asking Johnson to get up petitions, and to direct all letters to him, as he has charge of Peck's business, of Mr. Ingersoll, 983-986; Mr. Bliss, 984; Mr. Merrick, 985.
- Contract of John M. Peck with the United States, dated March 15, 1878, executed by Peck May 11, 1878, \$1,168 per annum, sureties S. N. Hoyt and D. W. C. Wheeler, witnessed by George P. Fall and A. E. Boone (1 D), 546, 948-949.
- Decisions of the court:
- Excluding petition (15 D, 956) of postmasters for extension of schedule, filed March 13, 1880, upon the ground that it was filed long after the contract had been entered into, and the act complained of had been done, 964-965; and letter of Nephi D. Smithson (144 D, 954) stating that expedition is unnecessary, received December 16, 1879, on account of its date, and, that if there was impropriety in the order, it will have to be made out by other and different notice to Brady before the contract was entered into, 965; overruling motion excluding letter of Rerdell, dated April 12, 1879 (22 D, 981), asking Johnson to get up petitions upon the ground, that, although the efforts of a contractor to get up petitions, if they are fair, are no evidence of fraud, yet it is competent for the prosecution to show in what manner these petitions, that seem to be spontaneous applications, were inspired, who inspired them, and who suggested them, for the purpose of showing that there was an understanding and combination, 986-987.
- Drafts drawn by John M. Peck, contractor, on the Sixth Auditor, in favor of:
- Bosler J. W., witnessed by L. R. Bacon and Harvey G. Gray, no date, second quarter, 1880 (54 D), 1016-1017; no date, third quarter, 1880 (57 D), 1017; October 1, 1880, fourth quarter, 1880 (60 D), 1017; January 4, 1881, first quarter, 1881 (63 D), 1017.
- Dorsey, S. W., witnessed by L. R. Bacon and Harvey G. Gray, April 1, 1879, second quarter, 1879 (42 D), 1015; July 17, 1879, third quarter, 1879 (45 D), 1015; October 7, 1879, fourth quarter, 1879 (48 D), 1016; no date, first quarter, 1880 (51 D), 1016.
- Vaile, H. M., witnessed by M. C. Rerdell and Harvey G. Gray, November 1, 1878, fourth quarter, 1878 (34 D), 1014, November 1, 1878, first quarter, 1879 (38 D), 1015.
- Exceptions to rulings, admitting:
- Files, that they are not shown to be complete, 947; subcontract of Vaile (8 D), 953; petition of postmasters for extension of schedule (15 D), 956, afterwards excluded, 965; subcontract of Nephi Johnson (17 D), without proof of signature; subcontract of Nephi Johnson (18 D), that it was not filed until 1882, 972; letter of J. W. Dorsey (19 D), that proof of handwriting is not suffi-

(D.) *Route 41119. Toquerville to Adairville, Utah.*—Continued.

Exceptions to rulings, admitting—Continued.

Files—Continued.

cient, 973; letters of Peck and Rerdell (21 D, 22 D, 23 D, and 24 D), that they are not proven, 981; receipts for warrants, 1019; letter of Smithson, stating that the people do not require the extra speed, filed December 1, 1879, and after the order for expedition, 956, excluded, 965; questions as to the quantity of mail matter, 979; as to the number of men and animals, 988; as to whether witness (Johnson) circulated any petition asking for 33 hours' schedule, 1007.

Fines and deductions, statement showing, 734-735.

Journal of the Postmaster-General, extract from, showing entry of order of July 8, 1879 (2 D, 949), signed D. M. Key, 4326.

Letters of:

Dorsey, John W., to Nephi Johnson, July 9, 1879, refers to an error in subcontract and states that "it brings it nearer prorating than any trade I have made since I left home" (19 D), 973-974.

Dorsey, S. W., to Nephi Johnson, headed M. C. Rerdell, agent, May 5, 1879, in forming him of the dissolution of the firm, guaranteeing his pay, and giving references as to Dorsey's responsibility, inclosing new subcontracts for execution (20 D), 980.

Johnson Nephi, to Miner, Peck & Co., April 28, 1878, will carry the mail for \$1,635 per annum (27 D), 992; no date, will carry the mail for \$1,600; thinks that an increase of service can be had (28 D), 992; May 15, 1878, will carry the mail for \$1,125 per annum (29 D), 992; June 6, 1878, inclosing subcontracts executed (30 D), 992.

Peck, J. M., to Nephi Johnson, October 11, 1878, notifying him of increase to three trips (26 D), 988; November 6, 1878, asking him to get up strong petitions for 48-hour schedule, if granted "I can pay you \$5,000" for carrying the mail (31 D), 1007; April 15, 1879, address M. C. Rerdell, agent, box 706 (21 D), 981; to Brady, June 23, 1879, inclosing proposition for expedition (3 D), 950.

Peck, John M., and M. C. Rerdell to Brady, May 15, 1879, asking to withdraw subcontract of Rerdell (16 D), 966.

Peck, John M., M. and H. M. Vaile to Brady, May 5, 1879, asking to withdraw subcontract (10 D), 954.

Rerdell, M. C., agent, to Nephi Johnson, April 12, 1879, inclosing petition to have signed, and asking Johnson to get up other petitions after that form (22 D), 981; July 10, 1879, service has been increased to seven trips, schedule 33 hours (23 D), 981-982; April 3, 1880, have voluntarily increased Johnson's pay \$1,556 per annum, write Delegate to withdraw objection to present schedule (24 D), 982; May 9, 1880, write Mr. Cannon to withdraw objection to present schedule (25 D), 988; to Brady, May 6, 1879, filing his subcontract (12 D), 954.

Smithson, Nephi, P. M. Pahreah, to Brady, December 1, 1879, people do not require extra speed, and if it is any expense to the department would recommend its discontinuance (14 D), 955; excluded, 965.

Oath of John M. Peck, contractor; sworn to January 22, 1879; filed June 25, 1879; original schedule, 7 trips, 3 men, 6 animals; 33-hour schedule, 5 men, 18 animals (placing among the papers, averred as of June 25, 1879, overt act) (6 D), 951.

Orders of:

Brady, May 8, 1879, to stop all payments to subcontractor (9 D) 954; May 8, 1879, filing subcontract of M. C. Rerdell (11 D) 954; July 8, 1879, *increase 4 trips* from August 1, 1879; *allow \$4,672; expedite to 33 hours; allow \$12,718.22* per annum additional (overt act) (2 D), 949.

French, March 8, 1879, filing subcontract of H. M. Vaile (7 D), 951; July 14, 1879, from August 1, 1879, curtail to end at Pahreah; one month's extra pay (67 D), 1020; October 10, 1878, from November 1, 1878, increase two trips, allow \$2,336 (68 D, defense), 3290.

Payments, tabulated statements showing, to John M. Peck, contractor, M. C. Rerdell, subcontractor, and H. M. Vaile, S. W. Dorsey, and J. W. Bosler, assignees, 734-735.

Petitions (overt acts, averred as of July 8, 1879), for daily service, 7 (*seven*) times a week and schedule of 48 hours; indorsed by George Q. Cannon; filed June 25, 1879 (4 D), 950; for daily mail and schedule of about 48 hours; indorsed by George Q. Cannon; filed June 25, 1879 (5 D), 950-951; addressed to D. M. Key; received March 13, 1880; for *extension of schedule to 60 hours*; increased speed entirely unnecessary and an uncalled-for expense to the government (15 D), 956; excluded, 965; from Kanab, addressed to Postmaster-General, September 12, 1878, asking tri-weekly mail, filed October 8, 1878 (70 D, defense), 3291; of postmasters recommending service, filed October 8, 1878 (69 D, defense), 3291.

(D.) *Route 41119. Toquerville to Adairville, Utah*—Continued.

Proposal of John M. Peck; sworn to before A. E. Boone, January 10, 1878; J. O. Evans and L. S. Filbert, sureties, 552.

Receipts for warrants, signed by—

Peck, John M., contractor, November 20, 1878 (65 D), 1019.

Vaile, H. M., by John R. Miner, January 29, 1879 (66 D), 1019.

Reports of the Auditor certifying balances due and to whom payable, third quarter, 1878 (29 D?), 1014; fourth quarter, 1878 (33 D), 1014; first quarter, 1879 (37 D), 1014-1015; second quarter, 1879 (41 D), 1015; third quarter, 1879 (44 D), 1015; fourth quarter, 1879 (47 D), 1016; first quarter, 1880 (50 D), 1016; second quarter, 1880 (53 D), 1016; third quarter, 1880 (56 D), 1017; fourth quarter, 1880 (59 D), 1017; first quarter, 1881 (62 D), 1017.

Revenues, certified transcript of, 2162-2163.

Subcontracts of—

Johnson Nephi with J. M. Peck, dated May 27, 1878, \$1,127 per annum—trips (17 D), 970; second subcontract made with J. W. Dorsey, dated July 10, 1879, 1 trip \$1,127, 3 trips \$3,381, 6 trips \$6,381, 7 trips \$7,444, if speed is reduced to 4 miles an hour, subcontractor to receive \$1,000 additional, witnessed by M. C. Rerdell and A. E. Madison, guaranteed by S. W. Dorsey, May 5, 1879 (18 D), 972.

Rerdell, M. C., dated April 1, 1878, full pay, (13 D), 955.

Vaile, H. M., dated April 1, 1878, full pay, signed John M. Peck by John R. Miner, witnessed by M. C. Rerdell (8 D), 952.

Warrants signed by the Postmaster-General and the Sixth Auditor, payable to—

Bosler, J. W., assignee, February 23, 1880 (49 D), 1015; May 1, 1880 (52 D), 1016; August 18, 1880 (55 D), 1017; October 25, 1880 (58 D), 1017; January 29, 1881 (61 D), 1017; April 16, 1881 (64 D), 1017-1018.

Middleton & Co., assignees, July 24, 1879 (43 D), 1015; November 3, 1879 (46 D), 1015-1016.

Peck, J. M., box 714, November 20, 1878 (31 D), 1014.

Vaile, H. M., assignee, January 29, 1879 (35 D), 1014.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route, 2687-2689.

Handwriting:

3 D. Letter of J. M. Peck (950), all written by Rerdell, 2687.

5 D. Petition (950), written by Rerdell, 2687.

6 D. Oath of Peck (951), body written by Miner; number "41119," "seven," "three," "six," "thirty-three," "seven," "five," and "eighteen," by Rerdell. Does not know the signatures of Peck and the notary, 2688.

16 D. Letter of Peck and Rerdell (966); signatures and all by Rerdell, 2688.

17 D. Subcontract of Nephi Johnson (970), all down to the signatures by Miner; signature of Peck by Miner, 2689.

18 D. Subcontract of Nephi Johnson (972); body written by J. W. Dorsey. Does not know who wrote signature of Peck. MS. of indorsement is in the handwriting of S. W. Dorsey, 2689.

20 D. Letter of S. W. Dorsey (980); body was written by W. F. Kellogg, S. W. Dorsey, assignee, by S. W. Dorsey, 2689.

26 D. Letter of J. M. Peck (988); signature and all by Miner, 2689.

31 D. Letter of J. M. Peck (1007); signature and all by Miner, 2689.

"Proposal 4" (552). Bond and proposal, except the signatures, were written by Miner, and the amount, \$1,168, by Rerdell. Does not know the signatures, 2689, 2690.

Brady, Thomas J., one of the defendants, testimony of, relating to this route, referring to order (2 D, 949) to decrease the running time from 60 to 33 hours and allow the contractor \$12,718.22 based upon the affidavit (6 D, 951) which recites that the necessary men and animals to carry the mail 7 times a week on the then present schedule was 3 men and 6 animals, and the number necessary on a 33-hour schedule was 5 men and 18 animals; witness did not figure to ascertain if the affidavit was true, or that on the existing schedule each animal must have traveled 20 hours in each day, and each man must have traveled 40 hours in every 24, and before expedition each animal would have to travel 44 miles a day, and after expedition only 14 miles; about the only figuring he did was to ascertain that after increase and expedition the service would cost about \$22.61 a mile, which was considerably less than his general rule, and comparatively cheap, 3555; thinks he made the order for expedition (2 D, 949) on this route upon application of Delegate Cannon, 3434; presumes he arrived at the 33-hour schedule called for in the order by ascertaining that would make the running time about 4 miles an hour night and day; the reduction of time from 60 to 48 hours asked for in petitions would not

(D.) Route 41119. Toquerville to Adairville, Utah—Continued.

Witnesses—Continued.

Brady, Thomas J.—Continued.

have been much of an expedition, 3435; the order having been made July 8, upon petitions filed June 25, witness cannot tell how it happened that John M. Peck, the contractor in New Mexico, in January, 1879, happened to make an affidavit which called for precisely the schedule of 33 hours; the affidavit was filed June 25, the same time the petitions were, 3435; and witness made the order upon that affidavit, 3436.

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route, in relation to order July 8, increasing pay from \$1,168 to \$17,390, remembers there was an increase, but not as to time, 3940; referring to affidavit of Peck (6 D, 951), does not think he directed Rerdell to fill up the blank affidavit and preserve the proportion of 150 to 200 per cent., but it is possible he may have done so, 3773, 3945; questions of that sort were determined by the officials of the Post-Office Department, 3773; cannot tell when it was filled up; the indorsement that it was filed in the department June 25, 1879, is probably correct; witness was here at that time, 3946; is quite sure he did not tell Rerdell to take one of the blank affidavits and fill it up, for the reason that Rerdell had entire charge and attended to that business, 3946; has not seen the benefit of the increase to \$17,390 from \$1,168; he drew the draft for the September quarter 1879, 3946; Rerdell had no interest in the route, but believes he claimed one; he paid Rerdell \$3,000 a year for his services; whatever work Rerdell did ought to have been done for his benefit, 3946; Rerdell stole \$4,900 on that route from Bosler and himself in February, 1882; in the division there was a subcontract for the entire pay, and Bosler had the draft for the entire pay and Bosler sent out the checks to pay the carrier, and the money paid to Bosler was charged up to witness's account; that is his part of it, 3947; *Mr. Merrick will have a chance to ask Bosler about it*, 3947.

Johnson, Nephi, subcontractor, testimony of, 966, 1009; as to sketch map, 967; distances, 968, 979, 989; identifies subcontracts (17 D), 969 (18 D), 971; letter of John W. Dorsey (19 D), 973; of Stephen W. Dorsey (20 D), 974; of Peck (21 D), 980, (26 D), 988; of Rerdell (22 D, 23 D, 24 D, and 25 D), 980, 981; letters written by himself (27 D, 28 D, 29 D, and 30 D, defense), 991; had a conversation with John W. Dorsey in July, 1879; Dorsey admitted that his brother, Stephen W., was interested in the mail contracts, 975; and wanted witness to send in petitions that they had influence to get them granted, 975, 978; Dorsey offered him a thousand dollars to sign the clause for reduced speed and witness signed it, 975; was notified to put on expedited service July 15, 1879, 976; circulated petition (4 D), 976; signed it, 993; mailed it to box 706, 977; understood the petition asked for 6 trips, 977; did not know of or circulate any petition for 33 hours' schedule, 978, 1006; recognizes signatures to petition (5 D), 978; population, 978-799; returned subcontract received from S. W. Dorsey unexecuted, 980; pay after expedition, \$8,444; after January 1, 1880, they increased it \$1,556, 982; was fined \$600 for not putting service on route 41120, 983; used 2 men and 6 horses for 1 trip, 60-hour schedule, 988; used 4 men and 10 horses for 3 trips, 60-hour schedule, 989; used 7 men and 15 horses, 7 trips, 33-hour schedule, 989; mines, 994; stockraising 995, railroad connections, 995, 996; men and animals, 997-1002, 1002, 1006; carried passengers, 997; claim for extra distance rejected, 1009.

Johnson, Wm. D., merchant, Kanab, Utah, testimony of, 1009-1014; wrote the body of petition (4 D), 1010; the word and figure "seven" not in petition when he wrote it, 1011; wrote the petition for six trips (6); called 6 times a week a daily route, 1011; recognizes certain signatures to petitions (5 D), 1011 (4 D), 1012; cross-examined as to petitions (4 D and 5 D), 1012, 1013.

Laird, Chas. H., clerk Finance Office, testimony of, 1018; produces receipts for warrants from the Third Assistant Postmaster-General's office, 1018.

Miner, John R., one of the defendants, testimony of, relating to this route:

6 D. Oath of Peck (951); body is in witness' handwriting, except the words "seven times a week," "three," "six," "thirty-three," "seventy-five," and "eighteen;" thinks Rerdell filled it in, 4244; does not know that it was in blank when he sent it to Peck, 4245; thinks it is Peck's signature, 4246.

Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2241-2242, 2278, 2334-2335, 2342, 2361, 2568.

Handwriting:

3 D. Letter of J. M. Peck (950), signature and all written by witness, 2334.

5 D. Petition (950); body was written by witness in Washington by direction of S. W. Dorsey, and sent to Nephi Johnson, 2334.

(D.) *Route 41119. Toquerville to Adairville, Utah—Continued.*

Witnesses—Continued.

Rerdell, M. C.—Continued.

- 6 D. Oath of Peck (951); body was written by Miner, except the number "41119" and the words "seven times a week," "three," "six," "thirty-three," "seven," "five," and "eighteen," which was written by witness, about June 25, 2241, 2557. Genuine signature of Peck, 2558. The oath is one of the blanks turned over at the time of the separation of the interests, and when a petition for increase arrived S. W. Dorsey instructed witness to fill up one of Peck's affidavits for daily service, and to preserve the proportion of 150 to 250 per cent. increase, 2241-2242, 2278, 2334-2335, 2361. Witness had no information as to the number of men and animals used on the existing schedule, 2342.
- 8 D. Subcontract of Vaile (952); it was all written by Miner except signatures of Vaile and Rerdell, which are genuine, 2335.
- 10 D. Letter of Vaile and Peck (954); body was written by Rerdell, signature of Peck by Miner, signature of Vaile genuine, 2335.
- 13 D. Subcontract of Rerdell (955); signatures and all written by Rerdell, 2335.
- 17 D. Subcontract of Nephi Johnson (970); body of subcontract and signature of Peck was written by Miner, 2335.
- 18 D. Subcontract of Nephi Johnson (972); body was written by J. W. Dorsey; the signature of Peck and MS. of indorsement by S. W. Dorsey; genuine signature of Rerdell, 2335, 2558.
- 19 D. Letter of J. W. Dorsey (973, 974) all written by J. W. Dorsey, 2335.
- 20 D. Letter of S. W. Dorsey (980); body was written by W. F. Kellogg; signature of S. W. Dorsey and the note "You can also inquire of M. Salisbury about me, S. W. D.", by S. W. Dorsey, 2335. With reference to clause stating that Johnson could file his subcontract in the department, witness explained that Johnson was refusing to make a new subcontract, not being satisfied with the guarantee, 2563-2564.
- 21 D. Letter of J. M. Peck (981); signature and all by Miner, 2335.
- 26 D. Letter of J. M. Peck (988); signature and all was written by Miner on U. S. paper with heading cut off, 2335.
- 31 D. Letter of J. M. Peck (1007); signature and all by Miner, U. S. Senate paper, 2335.
- Sleman, John B., Chief Pay Division, testimony of, 1009; produces reports, drafts, and warrants from the Sixth Auditor's office, 1009.
- Sweeney, George M., Chief Inspection Division, testimony of, 942-947; identifies files, 942, 943; delivered them to Mr. Woodward in September, 1881, 943; papers are sometimes in the jacket and not mentioned in the brief, 945; what constitutes files, 946.

¹(I.) *Route 44140. Eugene City to Bridge Creek, Oreg.*

Advertisement of November 1, 1877, 207 miles, once a week, 130 hours, 523.

Affidavits of:

- Hickson, W. A., carrier, sworn to October 4, 1880, as to cause of failures third quarter 1880 (311 I, defense), 3100.
- A. S. Power, subcontractor, and William Gebhart, as to difficulties in making 50-hour schedule (26 I), 1338, 1339.
- Powers, A. S., subcontractor, sworn to before P. H. Woodward, February 25, 1882, as to failures and remissions (316 I, defense), 3103, 3104.
- Rachel Powers, assistant postmaster, Mackenzie Bridge, sworn to January 12, 1880, relative to the arrivals of the mail in fourth quarter 1879 (55 I), 2091.
- Argument, opening, of Mr. Bliss, referring specifically to this route, 250, 254, 255, 257, 271, 278, 325, 326.
- Of W. W. Ker, for the prosecution, relating to this route, 4626-4635.
- Of Jeremiah W. Wilson, for the defense, relating to this route, 5174-5178.
- Calculations relating to failures (255 I, defense), 3082; (256 to 258 I, defense), 3083, 3084; (264 I, defense), 3088; (313 I, defense), 3101; (314 I, defense), 3102; (326 I, defense), 3111; (386 to 389 I, defense), 3123-3125.

Certificates of:

- Hindman, S. M. W., postmaster at Camp Pope, October 1880, subcontractor, and carriers manifested great energy in carrying the mails under unusual difficulties (303 I, defense), 3096, 3097.

¹(I.) *Route 44140. Eugene City to Bridge Creek, Oreg.*—Continued.

Certificates of—Continued.

Millican, George, postmaster, Mackinzie Bridge, October 5, 1880, as to failures in third quarter 1880 (312 I, defense), 3100, 3101.

P. C. Renfrew, postmaster at McKinzie Bridge, as to failures to make schedule time (26 I), 1340.

Contract of John M. Peck with the United States, dated March 15, 1878, \$2,468, executed by Peck, May 11, 1878, sureties, S. N. Hoyt and D. W. C. Wheeler, witnessed by George P. Fall and A. E. Boone, 550, 1331.

Drafts drawn by John M. Peck on the Sixth Auditor in favor of:

Bosler, J. W., witnessed by Bacon and Young, no date, second quarter 1880 (34 I), 1353; witnessed by Bacon and Gray, no date, third quarter 1880 (36 I), 1353; October 1, 1880, fourth quarter 1880 (38 I), 1353; January 4, 1881, fourth quarter 1881 (42 I), 1354; June 30, 1880, second quarter 1880 (44 I), 1354; June 6, 1881, third quarter 1881 (46 I), 1354; June 4, 1881, fourth quarter 1881 (48 I), 1354.

Dorsey, S. W., witnessed by Bacon and Gray, July 7, 1879, third quarter 1879 (33 I), 1353.

Lewis, Johnson & Co., witnessed by Bacon and Gray, October 28, 1878, third quarter 1879 (32 I), 1353.

Vaile, H. M., witnessed by Rerdell and Gray, November 1, 1878, fourth quarter 1878 (30 I), 1353.

Exceptions to rulings admitting:

The files, 1331; contract and proposal, 1331; question as to the average amount of the mail, 1343; to the ruling excluding question as to whether the contractor required witness (Powers) to stand all the deductions, 1457; decision overruling motion to strike out the mail bills, that they are subsequent to the order for expedition, and that there is no evidence that they were ever brought to the knowledge of General Brady, 2132.

Expedition, calculation for, not read (20 I), 1337.

Indictment setting out as overt acts, the making of the oath of Peck (8 I) as of May 23, and the delivering of it as of May 24, 1879, and the order of Brady (5 I) dated June 26, 1879, for increase and expedition, 1330, 1331.

Jacket inclosing petitions and stating cost of increase and expedition, indorsed "Do this, Brady" (6 I), 1332.

Jacket and order of Brady to deduct \$4,318.07 for failures in fourth quarter 1879 (63 I), 2098; jacket and order of Brady to deduct \$1,723.01 for failures (85 I), 2101; jacket and order of Brady showing deductions and remissions for second quarter 1880 (105 I), 2119.

Journal of the Postmaster-General, extracts from, showing entry of order of June 26, 1879 (5 I, 1332); signed D. M. Key, 4325.

Letters of:

Dorsey, S. W., to Brady, May 23, 1879, asking consideration of letters inclosed, relative to increase of service (9 I), 1333.

Brady to postmaster Eugene City, December 27, 1880, stating that no mail bills for November 13 and 23 had been received at Mitchell or the department; explanation requested (317 I, defense), 3104; to postmaster at Mitchell, February 16, 1881, no mail bills of a later date than January 8, 1881, have been received, explanation requested (327 I, defense), 3111.

Finn, B. F., to S. W. Dorsey, U. S. S., May 10, 1879, having learned of his willingness to assist in procuring mail facilities, asks his assistance in getting increase of service (11 I), 1334.

French, J. L., to postmaster at Eugene City, December 26, 1879, complaining that postmaster failed to comply with letter of instructions sent to him in October, directing him to put mail bills on this route (263 I, defense), 3086; to postmaster at Mitchell, December 26, 1879, complaining that postmaster failed to comply with letter of instructions sent to him in October, directing him to put mail bills on this route (262 I, defense), 3086.

Maxwell, W. S., to Whiteaker, ———, 1879, asking for daily service and fast time, indorsed by Whiteaker (16 I), 1335.

Mitchell, John H., to Brady, April 20, 1879, asking increase to 3 trips and schedule of 100 hours, filed April 19, 1879 (17 I), 1336.

Osborne, F. W., to Whiteaker, M. C., April 30, 1879, asking assistance in obtaining increase of speed, indorsed by Whiteaker, filed May 22, 1879 (18 I), 1336.

Paterson, A. S., postmaster at Eugene City, to French, January 10, 1880; received the mail bills and dispatched them according to instructions; was informed by the postmaster at Mitchell that they were all received at once, via the Dalles (263 I, defense), 3087; to Brady, January 10, 1881, mail bills referred to may not have been sent, or may have been lost (317 I, defense), 3104;

¹(I.) *Route 44140. Eugene City to Bridge Creek, Oreg.*—Continued.

Letters of—Continued.

Paterson, A. S.—Continued.

March 2, 1881, has received circular of February 16, 1881; has always sent mail bills with the mail except once; 2 bridges and all the ferries have been carried away with high water (318 I, defense), 3105.

Peck, John M., to Brady, October 23, 1879, requesting that subcontractor be paid \$7,400 per annum (22 I), 1337; November 15, 1880, almost impossible to perform service in winter on a schedule of 50 hours, asking change of schedule to 40 hours in summer and 60 hours in winter (24 I), 1338; November 15, 1880, inclosing affidavits and asking remissions of deductions for third quarter 1880, (25 I), 1338; May 24, 1879, inclosing proposition for three trips on a reduced schedule (7 I), 1332; May 5, 1879, asking change of address to care of M. C. Rerdell, box 706, (4 I), 1331.

Powers, A. S., to M. C. Rerdell, January 11, 1880, in relation to the dates upon which the summer and winter schedules are to take effect (51 I), 1459, 1460; September 15, 1880, unless deductions are remitted will have to quit, thinks it possible to carry six times a week service in 50 hours, even in winter, with few failures (50 I), 1459; July 10, 1881, mail is running nicely, no failures since my last (54 I), 1462; to J. M. Peck, accepting proposition to carry the mail 3 trips for \$9,400; "I know what I have undertaken to do" (52 I), 1460; to the Second Assistant, January 12, 1880, inclosing affidavits as to the arrival and departure of the mail in fourth quarter 1879, and asking for honest service (56 I), 2092.

Rerdell, M. C., to A. S. Powers, February 20, 1880, department has ordered all service to be reduced to one trip (29 I), 1346.

Sargent, I. N., postmaster Mitchell, to Brady, July 23, 1879, the order to increase service has not been complied with; service has only been once a week (247 I, defense), 3079; August 1, 1879, service has only been rendered once a week (248 I, defense), 3079; January 10, 1880, there has been no departure from this office since November 11 and no arrivals since November 15, 1879; received five or six mail bills from Eugene via The Dalles, which he has forwarded; no service from Mitchell to Eugene for the entire month of December (263 I, defense), 3086, 3087; March 10, 1881, reports no mail bills accompanied the mail on certain days in January, 1881; no mail arrived at that office from February 1 to February 11, 1881, on account of bridges being carried away by high water (318 I, defense), 3105.

Walker, W. R., to W. S. Dorsey, U. S. S., May 10, 1879, asks assistance in securing increase of service (10 I), 1334; to John Whiteaker, M. C., May 10, 1879, asking assistance in securing increase of service, indorsed by Whiteaker, filed May 22, 1879 (15 I), 1335.

Walton, Joshua J., to S. W. Dorsey, U. S. S., May 3, 1879, asking him to aid in getting a daily mail (12 I), 1334.

Mail bills showing departure of each mail from—

Eugene City and arrivals at Mitchell, third quarter 1880 (266 to 280 I, defense), 3089-3092; first quarter 1881 (359 to 385 I, defense), 3117-3123.

Mitchell, and arrivals at Eugene City, third quarter 1880 (281 to 302 I, defense), 3092-3096; first quarter 1881 (328 to 358 I, defense), 3111-3117.

Form of (262 I, defense), 3086-3087.

Mail bills (57 I to 62 I, 127 I to 164 I, and 166 I to 240 I), 2094, 2095, 2102-2119, 2120-2131.

Mail registers showing the arrivals and departures of the mail at—

Bridge Creek, May, 1879 (245 I, defense) 3078.

Eugene City, July, 1879 (249 I, defense), 3079; August, 1879 (253 I, defense), 3081; September, 1879 (252 I, defense), 3081; January, 1880 (261 I, defense), 3085, 3086; February, 1880 (260 I, defense), 3085; July, 1880 (308 I, defense), 3099; August, 1880 (310 I, defense), 3100; September, 1880 (306 I, defense), 3098; January, 1881 (321 I, defense), 3105; February, 1881 (320 I, defense), 3105; March, 1881 (319 I, defense), 3105.

Mitchell, May, 1879 (243 I, defense), 3077; June, 1879 (244 I, defense), 3078; July, 1879 (250 I, defense), 3080; August, 1879 (254 I, defense), 3082; September, 1879 (251 I, defense), 3080; July, 1880 (307 I, defense), 3098; August, 1880 (309 I, defense), 3099; September, 1880 (305 I, defense), 3097; January, 1881 (325 I, defense), 3110, 3111; February, 1881 (323 I, defense), 3109; March, 1881 (324 I, defense), 3110.

Memoranda:

"Lake, please make up this case for remission, Brady" (304 I, defense), 3097; relating to failures (320½ I, defense), 3106; of failures attached (321½ I, defense), 3106-3108; of failures in summer schedule (322 I, defense), 3108, 3109.

¹(I.) *Route 44140. Eugene City to Bridge Creek, Oreg.*—Continued.

Oath of John M. Peck, contractor, sworn to January 22, 1879, original schedule 3 trips, 4 men, and 9 animals; schedule of 50 hours, 3 trips, 10 men, and 30 animals (8 I), 1333.

Orders of:

Brady, April 21, 1879, curtail to end at Mitchell, decreasing distance 12 miles, deduct \$143.07, one month's extra pay (28 I), 1342; May 9, 1879, to change address to care of M. C. Rerdell, box 706 (3 I), 1331; June 26, 1879, from July 14, 1879, increase 2 trips, allow contractor \$4,649.86, expedite to 50 hours, allow contractor \$14,486.10, allow subcontractor \$3,971.02 for 3 trips, 50-hour schedule (overt act, 5 I), 1332; November 20, 1880, to change schedule to 40 hours in summer and 60 hours in winter (23 I), 1338; March 29, 1881, to change the dates upon which the summer and winter schedules are to take effect (27 I), 1342.

to deduct \$3,026.97 for failures first quarter 1880 (259 I, defense), 3084, 3085; to deduct \$947.11 for failures in third quarter 1880; January 8, 1881, to remit \$889.75 of the deductions of third quarter 1880 (265 I, defense), 3088, 3089.

Elmer, March 10, 1882, to remit \$969.76 of deductions made for failures in first quarter, 1881 (315 I, defense), 3102.

French, October 24, 1879, to amend order of June 26, 1879, so as to pay subcontractor \$7,400 (21 I), 1337.

to deduct \$96.87 for failures in second quarter 1879 (242 I, defense), 3077; to deduct \$1,922.83 for third quarter 1879 (246 I, defense), 3078, 3079; April 25, 1881, to deduct \$1,372.82 for failures in first quarter 1881 (315 I, defense), 3102.

Hazen, to remit \$96.87, amount deducted for failures in second quarter 1879 (242 I, defense), 3077.

Payments, tabulated statement showing, to P. J. Wycoff and A. S. Powers, subcontractors, and Lewis Johnson & Co., S. W. Dorsey, and J. W. Bosler, assignees, 730.

Petitions:

For daily service and greatly increased speed, filed May 24, 1879 (13 I), 1335; similar, filed May 22, 1879 (14 I), 1335.

For 3 trips and much faster schedule, filed May 26, 1879 (19 I), 1336.

Proposal of John M. Peck, bidder, sworn to by Peck before A. E. Boone, December 28, 1877, witnessed by A. E. Boone and John R. Miner; sureties, John O. Evans and William B. Moses, 552, 1331.

Receipts for warrants.

Remissions, orders for, payable to J. W. Bosler (40 I and 41 I), 1354.

Reports of the Auditor certifying balances due and to whom payable, 1353, 1354.

Warrants in favor of Vaile and Bosler, 1353, 1354.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route, 2696.

Handwriting:

2 I. Proposal of Peck (552, 1331), all written by Miner, except the signature, without taking the circumstances into consideration could not say who wrote the signature of Peck, 2696.

4 I. Letter of Peck (1331), signature and all written by Rerdell, 2696.

8 I. Oath of Peck (1333), body was written by Miner and filled in by Rerdell, 2696.

22 I. Letter of Peck (1337), was written by Rerdell, 2696.

24 I. Letter of Peck (1338), part of the letter and signature of Peck written by Rerdell, 2696.

Brady, Thomas J., one of the defendants, testimony of, relating to this route.

Order (5 I, 1332) to reduce running time from 121 to 50 hours; allow the contractor \$14,486.10 and subcontractor \$6,971.02: the length of the route was 195 miles, and 50 hours would make it about 4 miles an hour, 3584; petition (19 I, 1336) asks for much faster speed, and letter of Maxwell (16 I, 1335) asks for fast time; petitions (13 and 14 I, 1335) for greatly increased speed; none of them name any time, except letter of Senator Mitchell (17 I, 1336), which asks for 100 hours; cannot explain how it was that on January, 1879, J. M. Peck, in New Mexico, knew he wanted an affidavit showing the number of men and horses that would be required on a schedule of 50 hours, 3584; having made that order in June, witness made the order (23 I, 1338) upon the request of the contractor to change the schedule to 60 hours from November 1 to March 31; to 40 hours from April 1 to October 31, 3584; only explanation he knows of is the affidavit (26 I, 1338, 1339) stating the snow attains the depth of 50 feet, 3584, 3585; witness considers that that schedule answers the public convenience just as well, 3585; the reason he increased and expedited this route and allowed \$6,652.89 more than it would have cost for six trips,

¹(I.) *Route 44140. Eugene City to Bridge Creek, Oreg.*—Continued.

Witnesses—Continued.

Brady, Thomas J.—Continued.

original schedule, was the same as on the other routes, 3422; the reason witness made the order (5 I, 1332) and allowed the contractor \$14,486.10, and subcontractor, who was to perform the service, \$6,971.02, was, it was provided for in the subcontract; he was not dealing with the subcontractor; the contractor is held for the service winter and summer, and the subcontractor is not, 3459, 3460; this service cost only \$28.66 per mile, and it was an exceedingly difficult service to perform, 3460; upon this route he paid \$21,603, and of that amount subcontractor got \$6,976; that was a proper contract for him to make, and the service was cheap then, 3460.

Calleghan, John T., inspection clerk, testimony of, 2094-2102, 2133-2135; identifies mail bills, 2100, 2102, 2133-2135; in making up cases for deductions and remissions, they do not take the amount of mail into consideration, nor do they call the attention of the Second Assistant to the amount of mail, 2134; there are from 600 to 1,000 cases of deductions and remissions in a quarter, 2134; everything material is indorsed upon the jacket, 2135.

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route, referring to order of June 26, 1879, increasing the pay from \$2,468 to \$19,133, witness was here June 26; the route ought to have been made daily, in his judgment, at any reasonable cost, 3940; does not think that he wrote to Frank Wilcox, saying, "It is now once a week" (the route from Eugene City to Bridge Creek); "have the time faster than it now is; I inclose you about the form of petition," 3997; or that he told him to send witness ten or a dozen petitions; Wilcox was employed on this route, the Looking-Glass route, and another one that is discontinued, 3997; does not believe he told him that the petitions should be written by different persons, 3997; does not remember saying to him that he specially wanted prominent Democrats to write to the governor and to Slater; if he did not say it to him then he would now, 3997; does not remember telling him to get up ten or a dozen petitions on each route with what names he could, and to multiply papers, 3997; has no recollection of telling him to be sure that all petitions should ask for daily service and fast time, 3997; wrote him a general letter about subletting the contracts, and probably asked him to send in petitions for increase, 3997; does not remember that he asked him "to send on the papers, and send them immediately; that time was very important," 3997; does not think he wrote to him, May 5, 1879, that "the time on this route will be reduced to 40 hours, and perhaps to 38," unless the order had been made covering that time, 3997; does not recollect writing to him, April 16, that witness did not want any subcontracts on file here, 3997; or that "If the present subcontractors do not want the routes and you can get some one else to take them, give them notice, and their present contract ceases when the increased service begins," 3998.

Hall, Edwin, postmaster, Canyon City, Oreg., testimony of, 1733.

Miner, John R., one of the defendants, testimony of, relating to this route, 82; oath of Peck (1333); body is in witness' handwriting, except the words "three times a week," "four," "nine," "fifty," "three," "ten," "thirty," which appear to have been filled in by Rerdell; has no recollection of the paper, 4248.

Moore, A. W., agent, testimony of, 1367, 1392, 1395, 1422; sublet this route to Wykoff, 1367; witness was to have a one-fourth interest in this route, 1392, 1395, 1422.

Powers, A. S., subcontractor, testimony of, 1342-1353, 1451-1473; distances, character of the country and settlements, 1343; from Eugene City to Mackenzie Bridge, carried the mail in a spring wagon, remainder of the distance on horseback, in winter a portion of the way on snow-shoes, 1343; mail from Eugene would weigh 100 pounds, of which hardly 10 pounds were letters; carried about one-third of it as far as Mackenzie Bridge, 1343; from Mackenzie Bridge it would average from one to a dozen letters, 1344; the other way, from Mackenzie Bridge to Eugene City, from ten to twelve letters, 1344; commenced to carry the mail February 23, 1880, on a schedule of 100 hours, 1344, 1353; April 13, 1880. Rerdell telegraphed that the schedule was 50 hours, 1344, 1469; three trips, schedule 120 hours, used 5 men and 9 horses to carry the mail; three trips, schedule of 84 hours, used 7 men and 12 horses; three trips, 50 hours, used 7 men and 13 horses, of which two were extras, 1345. This number would require a horse to travel 13 or 14 miles a day. Made his subcontract with Rerdell as agent for Peck, 1345; at first he received \$9,500, the first of June it was increased to \$10,500, and afterwards to \$12,000, 1346; identifies letter of Rerdell (29 I), 1346, and telegram (53 I), 1451; reduced the service to 1 trip, a few

¹(I.) *Route 44140. Eugene City to Bridge Creek, Oreg.*—Continued.

Witnesses—Continued.

Powers, A. S.—Continued.

days afterwards received notice of restoration to 3 trips, 1346; identifies map submitted by the defense, 1346; connecting mail routes, 1347-1348; identifies papers filed relative to remissions, 1348; cause of failures, 1349; recognizes most of the names to petitions filed, with two or three exceptions no signers reside further east than Springfield, $3\frac{1}{2}$ miles from Eugene, 1351; there was a petition circulated for one additional trip, without expedition, which he does not find on file, 1351; on March 8, 1882, Rerdell wanted to charge witness fifty per cent. of the remissions, that it cost that to obtain them, 1352; explained it afterwards by saying it was paid to lawyers, 1352; recognizes the signatures to letters and petitions as the names of reputable citizens, 1452-1454; contractors owe witness \$1,000 for service dispensed with, 1455; understood that deductions were to be made upon the basis of his pay, and not on that of contractor, 1455; did not file his subcontract until March, 1882, 1455; witness wrote letters, 50 I, 51 I, and 52 I, 1457-1458; it was impracticable to perform service in fifty hours in winter, 1458; it could be done by running a railroad across the mountain and snow-shedding the road, 1458; explains his testimony in connection with his letters, 1470-1473.

Powers, Mrs. Rachel H., assistant postmaster Mackenzie Bridge, testimony of, 2085-2093; was assistant postmaster from 1876 until the fall of 1881, 2085; there was one pouch for the whole route which was opened there, and the mail taken out, 2085; in 1878 the mail consisted of from ten to a dozen letters and a dozen papers, 2086; there was about the same amount of mail after the increase to 3 trips, 2086; from Mackenzie Bridge east over the mountains there was from one-half a dozen letters to none at all, 2086; the mail was wrapped in a gum boot-leg and put in the carrier's pocket, one trip a week from Eugene City to Mackenzie Bridge there was 1 carrier and 3 horses; mail matter did not increase any while she was on the route, 2086; is the wife of Mr. Powers, the subcontractor, 2087; made the affidavit (55 I) at the instance of her husband, 2087.

Rerdell, M. C., one of the defendants, testimony of, relating to this route 2340-2341.

Handwriting:

"Proposal 2" (552, 1331). Body written by Miner, except certain words written by J. W. Dorsey, the signature of Peck in two places written by S. W. Dorsey, 2341.

4 I. Letter of Peck (1331), signature and all written by witness, 2340.

7 I. Letter of Peck (1332), signature and all written by witness, 2340.

8 I. Oath of Peck (1333), body was written by Miner, except the figures "44140," and the words "three," "four," "nine," "fifty," "ten," and "thirty," which were written by witness by direction of S. W. Dorsey, several months after the date of the jurat, 2340.

19 I. Petition (1336), written by witness; does not know the handwriting of certificate attached, 2340.

22 I. Letter of Peck (1337), signature and all by witness, who had a power of attorney of John M. Peck turned over to him by John W. Dorsey, 2340.

24 I. Letter of Peck (1338), a portion of the body written by a clerk of Rerdell's, and a portion, including the signature of Peck, was written by witness, 2341.

25 I. Letter of Peck (1338), body written by a clerk, signature of Peck by witness, 2341.

Sleman, John B., chief pay division, testimony of, 1350. Produces reports, drafts, and warrants, 1350.

Sweeney, George M., chief inspection division, testimony of, 1219-1220, 1223-1227; identifies files, 1219-1220; custody of files, 1223-1227; testimony of, for the defense, 3077; identifies files, 3077.

(L.) *Route 44155. The Dalles to Baker City, Oreg.*

Advertisement of November 1, 1877, 275 miles, twice a week, 120 hours, 523.

Argument, opening of Mr. Bliss, referring specifically to this route, 258, 259, 279, 284, 329-331.

On the admission of testimony to show that signatures to petition are not genuine, of Mr. Wilson, 1725, 1726, 1731, 1732; Mr. Henkle, 726, 727; Mr. Bliss, 1727; Mr. Ingersoll, 1727-1730; Mr. Chandler, 1730, 1731.

(L.) *Route 44155. The Dalles to Baker City, Oreg.*—Continued.

Argument, &c.—Continued.

On the right of the defense, at the time, to show papers to the jury, which have been submitted to the witness by the defense and the signatures identified as genuine, in order that the jury may compare them with signatures already in evidence the genuineness of which is disputed, of Mr. Wilson, 1738; Mr. Bliss, 1738; Mr. Davidge, 1738-1740, 1742-1744; Mr. Ingersoll, 1740, 1741; Mr. Merrick, 1741, 1742.

On admission of copy of muster-roll to show that signers of petition were not stationed in the vicinity of this route, of Mr. Bliss, 2351, 2352, 2355-2359; Mr. Merrick, 2353; Mr. Ingersoll, 2354; Mr. Henkle, 2355, 2356; Mr. Davidge, 2359, 2360.

Of W. W. Ker, for the prosecution, relating to this route, 4621-4626.

Of Jeremiah M. Wilson, for the defense, relating to this route, 5167-5172.

Certificates of E. M. Wilson, postmaster at The Dalles, that John Hailey has performed temporary service from July 1 to July 24, 1878, at \$15,500 per annum (6 L), 1667; and from July 25 to August 17, 1878, at \$14,000 per annum (7 L), 1667.

Contract of John M. Peck with the United States, dated March 15, 1878, \$8,288 per annum; sureties, S. N. Hoyt and D. W. C. Wheeler; executed by Peck, May 11, 1878; witnessed by George P. Fall and A. E. Boone (1 L), 546, 1664.

Contract of John Haley with E. M. Wilson, postmaster at The Dalles, dated July 1, 1878, for temporary service, at \$15,500 per annum (4 L), 1665, 1666.

Decisions of the court:

That as the indictment charges that the conspiracy was to be carried out, first, by means of forged petitions; second, by the use of fictitious names; third, by the use of the real names of persons not residing upon the route, that the prosecution may prove any one petition to be fraudulent in either one of these respects, 1731.

That the mere use by one man of the name of another in signing a petition, is not evidence against the defendants, unless it be further proved that it was fraudulently used, or that there was no authority to use it, 1732; excluding papers the signatures to which are admitted to be genuine, offered by the defense on cross-examination simply for the purpose of allowing the jury to compare the signatures with those already in evidence, the genuineness of which is disputed by the prosecution, 1744, 1745.

Excluding copy of muster-roll on the ground that it is a report made by a third party and is in regard to facts with which none of the defendants had anything to do, as the original is not competent evidence the is also excluded, 2360, 2361.

Drafts drawn by John M. Peck, contractor, on the Sixth Auditor, in favor of:

Vaile, H. M., witnessed by M. C. Rerdell and H. A. Barnaclaugh, November 1, 1878, fourth quarter 1878 (28 L), 1757; witnessed by Rerdell and Harvey G. Gray, November 1, 1878, first quarter 1879 (29 L), 1757; November 1, 1878, second quarter 1879 (30 L), 1757; witnessed by Rerdell and Leary, April 1, 1879, first quarter 1880 (35 L), 1758; April 1, 1879, second quarter 1880 (37 L), 1758; April 1, 1879, third quarter 1880 (38 L), 1758; July 30, 1881, second quarter 1881 (42 L), 1758; witnessed by Bacon and Gray, April 1, 1880, third quarter 1881 (44 L), 1758.

Exceptions to rulings admitting:

Letter of E. M. Wilson, July 1, 1878 (3 L), that it antedates the statute of limitations, and that the signature is not proven, 1644; letter of E. M. Wilson, July 26, 1878 (5 L), 1667; subcontract of H. M. Vaile, dated July 1, 1878 (9 L), on account of its date, and that the signature is not proven, 1668.

Questions as to what witness (Fisk) told Moore, 1679; as to what Moore said by way of inducing parties to enter into a contract, 1680; as to whether witness observed any increase in the number of horses over what he used when he was carrying the mail, 1686; as to what Moore said to witness (Schutz) with reference to petitions, 1709; witness (Schutz) statement as to doctoring petitions, 1710; question as to men and animals, 1711; as to the date on which they began to run on faster time, that the register is the best evidence, 1711; as to the average quantity of mail, 1723, 1724; as to whether the name "E. Hall, P. M.," is genuine, that the paper shown to witness is not a paper which has been produced in evidence, 1732; to ruling excluding papers marked W. E. W., 1 to 9, inclusive, 1747; to ruling refusing to exclude all papers antecedent to the time laid in the indictment, 1758.

Fines and deductions, statement of, 735, 736.

(L.) Route 44155. *The Dalles to Baker City, Oreg.*—Continued.

Indictment setting out as overt acts the making and filing of fraudulent petitions, as of June 27, 1879, and the orders of Brady of June 27, 1879, to increase 4 trips, April 17, 1880, to reduce 1 trip, and of July 16, 1880, to increase to 7 trips, 1663, 1664.

Jacket dated October, 1878, inclosing petitions and stating the revenues and cost of increase and expedition, indorsed, "Do this, Brady" (13 L), 1670.

Journal of the Postmaster-General, extract from, showing entry of order of June 27, 1879 (27 L, 1676-1677), signed D. M. Key, 4327; and of order of April 17, 1880 (48 L, defense, 3304-3305), signed by D. M. Key, 4326; and order of July 16, 1880 (19 L, 1673), signed Thos. J. Brady, acting Postmaster-General, 4326.

Letters of:

Freeman, A. A., Assistant Attorney-General, to Second Assistant, July 8, 1881, subcontractor, is entitled to a *pro rata* amount of one month's extra pay (11 L), 1669.

Lyman, H. D., acting Second Assistant, to Freeman, requesting opinion as to whether subcontractor is entitled to one month's extra pay (10 L), 1669.

Peck, John M., M. to Brady, October 2, 1878, proposing to carry the mail 3 trips on a schedule of 72 hours for \$18,648 per annum *for increased speed* (15 L), 1671.

Wilson, E. M., postmaster, The Dalles, to Postmaster-General, July 1, 1878, has made a temporary contract for \$15,500 per annum (13 L), 1665; July 26, 1887, has made a temporary contract for \$14,000 per annum (5 L), 1666.

Mail registers showing arrivals and departures of the mail at:

Baker City for January, 1879 (54 L, defense), 3318; March, 1879 (56 L, defense), 3319; May, 1879 (59 L, defense), 3321; June, 1879 (60 L, defense), 3321; August, 1879 (62 L, defense), 3322; September, 1879 (64 L, defense), 3323; October, 1879 (66 L, defense), 3324.

The Dalles, January, 1879 (55 L, defense), 3319; February, 1879 (50 L, defense), 3315; March, 1879 (57 L, defense), 3320; April, 1879 (58 L, defense), 3320; June 1879 (61 L, defense), 3322; September, 1879 (63 L, defense), 3323; October, 1879 (65 L, defense), 3324.

Memorandum indorsed, "Turner, restore this route to a daily, Brady" (30 L), 1673.

Oath of John M. Peck, contractor, sworn to September 18, 1878, original schedule, 8 men and 10 animals; schedule of 72 hours, 26 men and 66 animals (trips not stated) (14 L), 1670.

Orders of:

Brady, October 1, 1878, filing subcontract of H. M. Vaile (8 L), 1667; October 29, 1878, from November 15, 1878, *increase one trip, allow \$4,144, expedite to 72 hours, allow \$18,648* (12 L), 1669; January 17, 1879, to increase pay of subcontractor (18 L), 1673; June 27, 1879, from July 14, 1879, *increase 4 trips, allow \$41,440 (overt act, 27 L)*, 1676, 1677; July 16, 1880, from August 1, 1880, *increase to 7 trips, allow \$10,360 (overt act, 19 L)*, 1673.

French, September 27, 1878, to suspend pay (45 L, defense), 3303-3304; September 27, 1878, contractor presents receipt for temporary service, remove suspension of pay, special (46 L, defense), 3304; April 17, 1880, from May 1, 1880, reduce one trip, deduct \$10,360 (48 L, defense), 3304-3305.

Payments, statement showing, to H. M. Vaile, subcontractor, J. A. J. Creswell, Thomas C. Pearsall, and W. N. Roach, assignees, 735, 736.

Petitions: (Overt act, averred as of June 27, 1879).

For 6 times a week and 72 hours, names printed in full, indorsed by John H. Mitchell, filed October 23, 1878 (16 L), 1671, 1672; for 6 trips and 72 hours, names printed in full (17 L), 1672, 1673; for daily service and 72 hours, indorsed by John H. Mitchell, filed November 13, 1878 (21 L), 1674, 1675; from The Dalles, for daily service, dated December 19, 1878, filed April 10, 1879 (22 L), 1675; for daily service, filed June 27, 1879 (23 L), 1675; for daily mail, filed April 10, 1879 (24 L), 1675, 1676; for daily service, filed April 23, 1879 (25 L), 1676; for daily mail, dated December, 1878, filed April 10, 1879, indorsed by J. H. Slat r and John Whiteaker (26 L), 1676.

Proposal of John M. Peck, sworn to before A. E. Boone, December 27, 1877, witnessed by A. E. Boone and John R. Miner, sureties John O. Evans and John M. Van Buskirk (2 L), 552, 1664.

Remissions, statement of, 736.

Reports, Auditor's, certifying balances due on this route, second, third, and fourth quarters, 1879, and first, second, and third quarters, 1880, and first, second, and third quarters, 1881, showing payments for expedition, 1757-1758.

Revenues, certified transcript of 2770-2773.

Subcontract of H. M. Vaile, dated July 1, 1878, full pay, signed John M. Peck, by John R. Miner, attorney (9 L), 1668.

Warrant in favor of H. M. Vaile, May 9, 1881 (40 L), 1758.

(L.) *Route 44155. The Dalles to Baker City, Oreg.*—Continued.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route:

Witness noticed that the bid on The Dalles and Baker City route had been reduced by \$3,000; Miner stated that he was not responsible for the low figures, and that he was going to keep the book to show who made part of the figures, 1522-1523, 1595; when the circulars were returned witness noted the information in the bidding-book, upon which he made his estimates, remembers his estimate on this route was reduced by \$3,000, 1585-1586; handwriting in the bidding-book was part John R. Miner's and part witness's, and part Stephen W. Dorsey's, 1595; the reduced estimate on this route was in the handwriting of S. W. Dorsey, 1595.

Handwriting:

14 L. Oath of Peck (1670), all except the signatures written by Miner; signature of Peck not in Miner's handwriting, 2698.

15 L. Letter of Peck, M. (1671), signature and all by Miner.

25 L. Petition (1676) is in a handwriting similar to that of S. W. Dorsey, 2698.

2 L. Proposal (552, 1664), oath was not administered by witness on the day it purports to have been, same as other proposals, 2698.

Brady, Thomas J., one of the defendants, testimony of, relating to this route; without seeing the papers he cannot remember circumstances connected with order (12 L, 1669) for reduction of time, nor that he examined the petition upon that route, or whether when he made the order he ascertained whether the service upon the route had actually commenced or not, 3549-3550; the reason he ordered three trips and expedition, and allowed \$16,000 more than it would have cost for six trips, was the same as on the other routes—it seems ridiculous to think that a slow six times a week service would be better than a three times a week upon a fast schedule, especially if the people wanted it that way, 3423; referring to jacket (13 L, 1670) and order (12 L, 1669), witness cannot tell, without seeing Turner's figuring on the expedition, how much less than pro rata the amount allowed for expedition was, 3472.

Cowne, W. B., mail-contractor, testimony of, 1754-1757; when the service was 2 trips it took 2½ days to go from The Dalles to South Fork, 1755; from The Dalles to Canyon City, 3 trips, they had 3 drivers and from 34 to 36 horses, 1755; there was no change in the speed from September, 1878, to July, 1879, 1755; he commenced with 30 horses and afterwards increased to 36 horses, 1755; and there was from 4 to 6 extras, 1756; carried passengers and packages, 1756; when the service was 2 trips, they sometimes ran extra trips to carry passengers, and used the same horses for the extra trips, 1756.

Dorsey, Stephen W., one of the defendants, testimony of, relating to this route: Has no doubt that the reduced price on this route was in his handwriting as testified to by Boone (1585, 1586, 1595), 3877, 3875; the reason he suggested this reduction was that this route runs through one of the best counties of Eastern Oregon, and he knew it was almost certain to be settled up in the next two or three years, and the result would be a large amount of express and cheap living, 3876; he thought the mail could be carried at the figures he had named, but it turned out he was mistaken, 3877.

Fisk, John M., mail-carrier, testimony of, 1678-1699, 1759; was employed by A. W. Moore August 28, 1878, to carry the mail from Baker City to Canyon City; Moore said that he had purchased the stock from Mr. Schutz, as soon as witness could get the papers to Washington the route would be increased, 1679; witness said that had been tried before, Moore replied "You never had a Senatorial route before," struck out, 1679; there had been no service on the route up to that time, 1680; commenced service September 5, 1878, and continued until April 15, 1879, 1680; 2 trips took 2 days from Baker City to Canyon City, 1681; afterwards carried the mail to South Fork, about 35 miles west of Canyon City, until November 15, 1878, when the service was increased to 3 trips, 1681; time was not reduced then, 1682; used 10 horses to Baker City and 4 more only went to South Fork, the number was not increased when the service was made 3 trips, 1682; mail was carried in two-horse buckboards, from Baker City it averaged 80 or 90 pounds, 1682; the other way not over 20 pounds, 1683; population, 1683; does not recognize names to petition (25 L, 1676), 1683; no soldiers on the route nearer than Camp Harney, 1683; mail was carried by Granite about June 1, 1879, 1685; acquaintance with people along the route, 1686-1691; recognizes names to petitions (17 L, 1672-1673; 23 L., 1675; 24 L, 1675-1676; 26 L, 1676) as those of reputable citizens, 1691-1692; L. P. Williamson gave witness petition (17 L, 1672-1673), after he circulated it returned it to him, 1697; petitions are true,

(L.) Route 44155. *The Dalles to Baker City, Oreg.*—Continued.

Witnesses—Continued.

Fisk, John M.—Continued.

1692; exaggerated a very little, 1698; connecting mail routes, 1693; Indian troubles, 1694; there were 2 carriers between Canyon City and Baker City and 5 station keepers, 1694-1695; the horses used were furnished by Moore and Williamson, 1697; carried passengers, 1695; military, 1695-1696; witness signed the names of Samuel Williams, James Small, and Henry Williams to petition (17 L, 1672-1673), 1759.

Hall, Edwin, postmaster, Canyon City, testimony of, 1723-1750; has been postmaster over five years, 1723; all the mail passing over the route was opened in his office, 1723; when the service was 2 trips there was never more than 2 canvas pouches and 2 lock pouches received from The Dalles, that received from Baker City consisted of 1 lock pouch and 2 or 3 canvas bags, 1724; the through mails from The Dalles and *vice versa* went over the other route via Pendleton, 1724-1725; postmasters are instructed by the superintendents of the R. M. S. over which routes to send the mail, 1750; connecting routes, 1749-1752; does not recognize any names on petition (25 L., 6176) as those persons living on or near this route, 1733; signatures to petition (25 L. (?) 24 L., 1675-1676) are genuine, 1733; his own name and that of W. C. Allred and Robinson on petition (24 L.) are genuine, 1747-1748.

Masterson, Joseph P., mail-carrier, testimony of, 1699-1702; carried the mail from The Dalles to Canyon City, about 200 miles, 3 trips, from November, 1878, to July, 1879, 1699. Between those points there were 3 drivers and 34 horses; in the spring of 1879 2 more horses were added, 1700. It took 3 days to make the trip; left The Dalles at 4 a. m., arrived at Canyon City on the evening of the third day; left Canyon City between 5 and 6 a. m. and arrived at The Dalles about 6 p. m. on the third day, 1699-1700; service increased to 7 trips in July, 1879, 1699. Witness then drove from The Dalles to Cross Hollows; left The Dalles at 4 a. m. and arrived at Cross Hollows at 6 p. m., where the mail laid over night; left Cross Hollows at 5 or 6 a. m., and arrived at The Dalles at 6 p. m., 1700; expedition was not put on until fall or winter of 1879, 1700; used 14 horses from The Dalles to Cross Hollows, and 2 drivers, 1700; circulated a petition which he got at the office of Vaile, Miner & Co., at The Dalles, 1701; carried freight and passengers, 1702; the route he came here, 1701-1702.

McBean, Frank, subcontractor on 44160, testimony of, 1702-1704; has lived at Canyon City 20 years, does not recognize any names to petition (25 L., 1676) as those of persons living in that vicinity, recognizes the signatures, including his own, to petition (24 L., 1675-1676), 1703; does not know that he read the petition, would sign one to blow a horn, 1703.

Miner, John R., one of the defendants, testimony of, relating to this route; witness and Vaile took this route in the division, 4207; Rerdell's testimony (2215), as to the reduced amounts in the bidding book is correct as to this route, 4176; witness had marked it \$11,288, and it would have just taken the contract; S. W. Morsey marked it down to \$8,288, and they lost \$3,000 by his judgment, 4177; 14 L, oath of Peck (1670), all in witness' handwriting except the signatures and date of jurat, 4188-4189, 4252.

Moore, A. W., agent; testimony of, relating to this route; sublet this route to Hutchinson, who threw it up, 1367-1368; returned to Oregon to sublet the route, 1374. Telegraphed to Miner for funds to stock the route; received cipher telegram in reply, in consequence of which he bought stock for the route; paid part down, and if the balance was not paid the stock was to be forfeited, 1380. No funds coming, he telegraphed again and got a reply from Vaile, 1381; one R. P. or L. P. Williamson came there, representing Vaile; witness would not recognize Williamson's authority, and returned to Washington, 1382; witness was to have one-fourth interest in this route, 1422; it was a Peck route, 1428.

Pierce, Clark S., mail carrier, testimony of, 1752-1754; commenced to carry he mail July 8, 1878, for Mr. Schutz, carried it for about 2 months, 1753; then carried it for Miner, Peck & Co. about 2 months, then again from February, 1880, to March, 1881, 1753. When he drove for Miner, Peck & Co., in September, 1878, made 2 trips a week; there were 4 drivers and 14 horses from South Fork to Baker City; in October there were 6 more horses put on the route, 1753; carried the mail in 2-horse buckboards, also passengers and freight, 1754.

Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2344, 2345.

(L.) *Route 44155. The Dalles to Baker City, Oreg.*—Continued.

Witnesses—Continued.

Rerdell, M. C.—Continued.

9 L. Subcontract of Vaile (1668), all written by Miner except signature of Vaile, which is genuine, 2344.

14 L. Oath of Peck (1670), all except signature and words "notary public," by Miner, signature of Peck genuine, 2344.

15 L. Letter of Peck, M. (1671), signature and all by Miner, 2345.

25 L. Petition (1676), written by Miner, 234.

Schutz, Emil, storekeeper, testimony of, 1704-1721: ran the route prior to 1878; about August 26 or 27, 1878, sold 10 horses and harness to A. W. Moore, who appointed witness agent to stock the route between Canyon and Baker City, 1704-105. Moore stated that he represented a powerful contracting company who would hereafter control all the contracts in the far Northwest; he wanted witness to get up petitions and stated that any petitions he would get up they would get granted, 1709; because they owned the Department (stricken out), 1709; he said that if witness would get one or two original petitions they would doctor them up and get as many as they wanted, 1709; put 10 horses on between Canyon and Baker City, afterwards added 2 more, 1710; they commenced to run about 7 trips about July 4, 1879, and on faster time in November or December 1879, 1711; when they ran 7 trips, witness kept 2 drivers and 4 horses over night at Camp Watson, 1711; has lived on the route since the year 1862, but does not recognize a single name on petition (25 L., 1676), 1711; acquaintance along the route, 1711-1716; identifies signatures to petitions (16 L, 17 L, 21 L, 22 L, 23 L, 26 L, and 28 L) as reputable people, 1716-1718; Miners, 1718; stock-raising, 1718-1720; as to whom he had talked with about Moore, 1720-1721; the route he came here, 1721.

Sleman, John B., Chief Pay Division, testimony of, 1350; produces reports, drafts, and warrant, 1350.

Stone, George F., clerk Inspection Division, testimony of, for the defense, 3314-3317, 3324-3326; identifies files from the inspection division, 3314-3317, 3324-3326.

Sweeney, Geo. M., Chief Inspection Division, testimony of, 1220-1221, 1223-1227; identifies files, 1220-1221; custody of files, 1223-1227.

Vaile, Harvey M., one of the defendants, testimony of, relating to this route; this route fell to witness and Miner in the division, 4020; does not recall anything about the subcontract on this route, referred to in the agreement (85 X defense 4013-4014), being made to protect the company, 4056; at the time he signed the agreement in October this route was an unprofitable one; when he telegraphed Brady in August had no idea that he would find it so, 4059.

(H.) *Route 44160. Canyon City to Camp McDermitt, Oreg.*

Advertisement of November 1, 1877, 243 miles, once a week, 130 hours, 524.

Argument, opening, of Mr. Bliss, referring specifically to this route, 250 267, 282, 326-329.

Of W. W. Ker for the prosecution, relating to this route, 4635-4650.

Of Jeremiah M. Wilson for the defense, relating to this route, 5173-5174.

Calculation relating to failures (56 H, defense), 3311.

Contract of John M. Peck with the United States, dated March 15, 1878, \$2,888, executed by Peck, May 11, 1878, sureties S. N. Hoyt and D. W. C. Wheeler, witnessed by George P. Fall and A. E. Boone (1 H), 546, 1241.

Decision of the court:

Excluding examination of Frank McBean, as to statements made to him by A. W. Moore, in regard to the means of bringing about expedition and increase of service, on the ground that they were not within the proved power of the agency, and that the authority of an agent to bind his principal under a general authority does not extend to criminal cases where the representations which were made by the agent, at the time of the making of the contract, involved a criminal charge against his principal, 1609.

Drafts drawn by John M. Peck, contractor, on the Sixth Auditor, in:

Vaile, H. M., witnessed by M. C. Rerdell and Harvey G. Gray, November 1, 1878, fourth quarter 1878 (33 H), 1328; November 1, 1878, first quarter 1879 (35 H), 1329; November 1, 1878, second quarter 1879 (36 H), 1329; witnessed by M. C. Rerdell and James C. Leary, November 1, 1878, fourth quarter 1879 (38 H), 1329; November 1, 1878, third quarter 1879 (37 H), 1329; April 1, 1879, first

(H.) Route 44160. *Canyon City to Camp McDermitt, Oreg.*—Continued.

Drafts—Continued.

Vaile, H. M.—Continued.

quarter 1880 (39 H), 1329; April 1, 1879, second quarter 1880 (40 H), 1329; April 1, 1879, third quarter 1880 (41 H), 1329; witnessed by Harvey G. Gray and L. R. Bacon, April 1, 1879, fourth quarter 1881 (42 H), 1329.

Exceptions to rulings admitting: proposal of John M. Peck, for irrelevancy and want of proof 1242; letter of E. Hall (2 H), on account of its date, 1242; order of Brady (7 H), and oath of Peck (8 H), that they antedate the period of limitations, 1244; subcontract of H. M. Vaile, for want of proof and that it is barred by the statute of limitations, 1249; letter of Miner (30 H), as immaterial, 1309; subcontract of Carey (31 H), that the authority of Williamson and signature of Vaile are not proven, 1311, 1312; all papers from the Auditor's office prior to 1879, 1328; to questions, as to men and animals, 1303, 1309, 1314, 1317; as to weight of the mail, 1303; under what arrangements witness (Brown) carried the mail, 1303; as to contract with Williamson, that the authority of Williamson is not shown, 1304; as to subcontract pay, 1305; as to subcontract of John Carey, 1311; as to the time in which the mail was carried, that the mail bills are the best evidence, 1313; as to how much witness (McBean) was paid by the quartermaster for carrying the mail, 1325; questions as to what representations A. W. Moore made in reference to his having authority to make the contract, 1606; as to what Moore told witness (McBean) as to the process by which expedition was to be had, 1606.

Expedition, calculation for, not read (16 H), 1249.

Fines and deductions, statement of, 736, 737.

Indictments setting out as overt acts fraudulent petitions, as filed July 16, 1880, and order of Brady, July 16, 1880, to increase four trips from August 1, 1880 (19 H), 1240, 1241.

Jacket inclosing petitions and stating cost of expedition (9 H), 1244.

Journal of the Postmaster-General, extract from, showing entry of order of July 16, 1880, (19 H 1250), 4326.

Letters of:

Brady, July 18, 1878, and answer of postmaster, Camp McDermitt, July 29, 1878, contractor has not yet reported, no arrangements have been made for the service (3 H), 1242, 1243.

Brougham, P. P., postmaster, McDermitt, to Second Assistant, August 2, 1878, has made several reports to the Superintendent Railway Mail Service, San Francisco, that owing to Indian troubles it is impossible to forward mail without military escort (47 H, defense), 3308.

Brown, James F., by J. S. C. Brown, to Mr. ———, lock box 714, inclosing petitions for daily service (26 H), 1252.

Hall, E., postmaster, Canyon City, to Brady, July 4, 1878, contractor has failed to appear, route is impassable on account of Indian outbreak (2 H), 1242; no date, received November 22, 1878; service was commenced November 3, 1878, from Canyon City to Camp Harney and not farther (5 H), 1243.

Hall, W., postmaster, and assistant, to G. A. Steel, special agent, October 24, 1878, received at Post-Office Department November 19, 1878; contractor has failed to appear in person or by agent to carry the mail (4 H), 1243.

Metchan, Phil., to J. H. Mitchell, September 21, 1878, asking daily mail and faster service (13 H), 1247.

Military officers at Camp Harney, to J. H. Mitchell, United States Senator, July 15, 1878, received at Post-Office Department December 9, 1878; no mail for 36 days; the routes and roads are open, passengers and express are carried, but not the mail (11 H), 1245.

Miner, John R., agent, to James F. Brown, February 20, 1880; by general order, service will be reduced to one trip from March 1, 1880; send petitions to your member of Congress (30 H), 1309; to John Carey, April 15, 1881, one S. H. Abbott, who is postmaster at Alvord, is writing to the department that there is no need of anything more than weekly service, see him and satisfy him, pay him what is reasonable (32 H), 1314.

Mitchell, J. H., to Brady, United States Senate Chamber, November 16, 1878, recommending the establishment of service and inclosing letters (12 H), 1246, 1247.

Peck, John M., M, to Brady, December 23, 1878, will carry the mail in 96 hours for \$18,612 (10 H), 1244.

Mail registers, showing arrivals and departures of the mail at—

Canyon City, July, 1878, no service, road blocked on account of Indian war; E. Hall, postmaster (50 H, defense), 3309; August, 1878, no service, indorsed by E. Hall, road blocked on account of Indian war (49 H, defense),

(H.) Route 44160. Canyon City to Fort McDermitt, Oreg.—Continued.

Mail registers—Continued.

Canyon City, &c.—Continued.

3309; September, 1878, no service; indorsed by F. Hall, postmaster, that he knows of no reason why the mails should not have been carried that month (48 H, defense), 3308; for October, 1878, total failure (55 H, defense), 3311; November, 1878, distance run, 75 miles; cause of failure to carry the mails through unknown (54 H, defense), 3310–3311; December, 1879 (? 8) to Camp Harney only; cause of failure to run whole distance unknown (53 H, defense), 3310.

Camp McDermitt, July, 1878, no arrivals or departures; failure on account of Indian depredations still continues (51 H, defense), 3309; August, 1878, same (61 H, defense), 3312; September, 1878 (60 H, defense), 3312; October, 1878, same (59 H, defense), 3312; November, 1878, no arrivals or departures; cause of failure unknown (58 H, defense), 3311; December, 1878, same (57 H, defense), 3311.

Oath of John M. Peck, contractor, sworn to September 18, 1878, original schedule is 5 (eight stricken out) men and 8 animals, schedule of 96 hours, 12 men and 22 animals (8 H), 1244.

Orders of Brady, December 23, 1878, from January 16, 1879, *increase 2 trips, expedite to 96 hours, allow \$18,612, less than pro rata* (7 H), 1243; December 28, 1878, filing subcontract of H. M. Vaile (17 H), 1249; July 16, 1880, *to increase 4 trips from August 1, 1880, and allow \$28,666.66 (overt act)* (19 H), 1250; to deduct \$574.25 for no service in October, and service omitted between Camp Harney and Camp McDermitt, in November and December (52 H, defense), 3309.

French, September 17, 1878, to suspend pay (44 H, defense), 3303; to deduct \$722, no service during third quarter, 1878 (46 H, defense), 3307.

Payments, tabulated statement showing, to H. M. Vaile, subcontractor, and J. A. J. Creswell, W. N. Roach, T. C. Pearsall, and John R. Miner, assignees, 736, 737.

Petitions: (Overt act, averred as of July 16, 1880.)

From Canyon City, September 23, 1878, for daily mail and expedition to (96) *ninety-six* hours, indorsed by John H. Mitchell, December, 1878 (14 H), 1247.

From Camp Harney, September 23, 1878, for daily mail and expedition to (96) *ninety-six* hours (15 H), 1248.

For daily mail and summer schedule of 60 hours, indorsed by J. H. Slater, L. F. Grover and John Whiteaker, filed May 7, 1879 (20 H), 1250.

For daily service (21 H), 1250, 1251; (22 H), 1251; (27 H), 1252; (28 H), 1252; and (29 H), 1253; excluded, 1261–1265; admitted, 2675–2679; printed in full, 2683–2684; (25 H), 1251, 1252.

For daily mail, presented by John Whiteaker, December 13, 1879 (23 H), 1251.

For daily service, indorsed by J. H. Slater and Whiteaker (24 H), 1251.

Proposal of John M. Peck, bidder, sworn to by Peck before A. E. Boone, December 27, 1877, sureties, John O. Evans and W. B. Moses, witnessed by A. E. Boone and John R. Miner, 552, 553, 1241, 1242.

Remissions, statement of, 736, 737.

Reports of the Auditor, not read, 1328–1330.

Revenues, certified transcript of, 2774–2775.

Subcontracts of:

Carey, John, with H. M. Vaile, dated August 2, 1880, to carry the mail from Camp McDermitt to Doc. Anderson's, 7 trips, 48 hours, \$10,000, signed H. M. Vaile, by R. C. Williamson (31 H), 1311.

McBean Frank, dated September 21, 1878, to carry the mail from Canyon City to Doc. Anderson's Ranch, once a week, \$1,488; signed J. M. Peck, by A. W. Moore, attorney (6 x), 1425.

Vaile, H. M., dated April 1, 1878; full pay; signed by John M. Peck, by John R. Miner, attorney; witnessed by M. C. Rerdell; filed December 28, 1878 (18 H) 1249.

Telegram from Charles Bowling, assistant postmaster, Camp McDermitt, to Brady, December 14, 1878; received December 16, 1878; contractor has not reported; no reason why service should not commence (6 H), 1243; from F. B. Brigham, postmaster, Camp McDermitt, to Brady, July 23, 1878, owing to Indian troubles no service has yet commenced (45 H, defense), 3303.

Warrants, not read, 1328–1330.

Witnesses:

Boone, A. E., mail contractor, testimony of, relating to this route, 2695–2696.

Handwriting:

8 H. Oath of Peck (1244), all except the signature was written by Miner, 2695.

14 H. Petition (1247), figure "9," and the word "six," written by Miner, 2695.

(H.) *Route 44160. Canyon City to Fort McDermitt, Oreg.*—Continued.

Witnesses—Continued.

Boone, A. E.—Continued.

Independently of the circumstances, witness could not say that it was written by Miner, 2710.

20 H. Petition (1250), written by Miner, 2695.

21 H. Petition (1250-1251), written by Miner, 2695.

29 H. Petition (1253, 2683-2684), written by Miner, 2695.

32 H. Letter of John R. Miner, agent (1314), written and signed by Miner, 2695.

"Proposal 5" (552-553, 1241-1242), first page except the signatures was written by Miner, except the figures "2888," which is by Rerdell; the other page was written by Miner except the signatures, the words "bidder," and "J. M. Peck," as similar to the handwriting of S. W. Dorsey, 2695-2696.

Brady, Thomas J., one of the defendants, testimony of, relating to this route; does not remember telegram (6 H, 1243) received December 16, 1878, stating that contractor has not reported; with that dispatch in the Department, witness cannot tell without the papers how it happened that on December 22 he made an order to add 2 trips and reduce the time from 130 to 96 hours, and allow \$18,612 upon a route where the original service had not then been commenced, 3464; presumes it was the practice in making such orders to consider the question as to whether the service already under contract was being performed, 3464; referring to indorsement upon jacket (19 H, 1244), inclosing petitions and stating cost of increase and expedition, that there was "no report of commencement of service from postmaster at Camp McDermitt, Nev.;" does not recollect that his attention was called to this indorsement when he made the order; service had evidently commenced on one end of the route, 3469; the Waddell-Money investigation of 1878 was the one referred to by witness as an excuse for contractors not commencing service upon this route, 3465; does not know that the investigation closed as early as May 14, and, so far as it related to the Miner, Peck, and Dorsey bids, as early as April 10, 1878, 3465-3466; witness would not know whether the service commenced until July 1, and then it would be better to give the contractor one or even two months' time rather than declare him a failing contractor and go upon the black list; to declare him a failing contractor would place him on the black list; it would cost more and would not put the service on any quicker, 3466-3467; order (7 H, 1243) does not specify what amount of the increase is applicable to trips and what to expedition, but the whole order is less than pro rata, 3471; pro rata for both trips and expedition would have been \$19,711.69, while the contractor was supposed to do the whole thing for \$18,600, 3471.

Brown, James F., subcontractor, testimony of, 1302-1310; carried the mail from January 16, 1879, until August, 1880, over half the route from Fort McDermitt to Doc. Anderson's ranch, 1302; Alvord, the only post-office, about 70 miles from McDermitt, 1302; made 3 trips on a schedule of 96 hours for entire route, 1302; carried the mail in 36 hours over his half; Frank McBean carried it over the other half, 1302; used 16 horses, of 2 were extras, 1303; also carried passengers and freight, 1303; to carry the mail alone 3 trips would have used 8 horses in summer and 9 in winter, and 3 men, 1309; carried it that way about 6 weeks, and used that number, 1310; mail weighed from 5 to 10 pounds; largest mail weighed 150 pounds, which was principally dry goods, shoes, &c., 1303; from 1 to 5 letters went to Alvord; James G. Abbott was postmaster there, and was succeeded by S. H. Abbott, 1308; made a subcontract with L. P. Williamson, 1304; subcontract pay was \$5,500 per annum, less fines, 1307; did not file his subcontract, 1310; received his pay by check sent by John R. Miner, 1304; Indian troubles were all over in September, 1878, 1303; circulated petitions, afterwards sent them to lock-box 714, 1307; identifies letter (26 H, 1252) and petition (25 H, 1251, 1252), as written by his brother, J. S. C. Brown, 1307; circulated petition (21 H, 1250-1251, and 28 H, 1252), and thinks they were all inclosed in letter 26 H, 1308; identifies petition (24 H, 1251), 1308; does not recognize any of the names on (Utah) petition (20 H, 1250), 1310; identifies letter of Miner (30 H), 1309.

Carey, John, subcontractor, testimony of, 1310-1316. Identifies subcontract (31 H) made with R. C. Williamson, 1310; carried the mail about 2 or 3 weeks from Camp McDermitt to Doc. Anderson's, 1310; received his pay from Miner, 1310; afterwards subcontracted with a Mr. Blackwell, 1311; carried the mail 7 trips on a 48-hour schedule, 1312; used 5 men and 15 horses, 1315; 15 horses was not enough, 1316; identifies letter of Miner (32 H), 1314.

Hall, Edwin, postmaster, Canyon City, testimony of, 1726, 1733, 1748-1750. Does not recognize any names to petition (20 H, 1250), but is not acquainted on the

(H.) *Route 44160. Canyon City to Fort McDermitt, Oreg.*—Continued.

Witnesses—Continued.

Hall, Edwin—Continued.

lower end of the route, 1733; recognizes his signature and most of the others to petitions (14 H, 1247, and 23 H, 1251), 1726; the names on petition (29 H, 1253, 2683-2684), below the first three on each column are genuine, believes the signatures of Max Metschau to 14 H (1247), and 23 H (1251), are genuine, and that of James F. Clearer to 14 H (1247), and 27 H (1252) are genuine, 1748; identifies his own signature to 27 H (1252), 1749; did not sign that petition understandingly, 1750; cannot say as to the name of D. F. Clifford, 1748-1749. E. Hall—the name E. Hall, p. m., signed to petition 29 H is not his signature, nor was it authorized by him, and the signatures of James Robinson and William C. Allred are not their signatures, 1732-1733.

Johnson, Nephi, subcontractor, route 41119, testimony of, 1256-1258. Recognizes quite a number of signatures to petition, 20 H (1250), on the second and third sheets as residents to Southern Utah, they live about a thousand miles from the southern line of Oregon; some of the signers are sons of witness and have never been in Oregon, 1258.

Johnson, W. D., merchant, Kanab, Utah, testimony of, 1258-1260. Recognizes twenty names on the second, third, and fourth sheets of petition (20 H, 1250) as residents of Kanab, Johnson, and Pahreah, Utah, 1258-1259.

McBean, Frank, subcontractor, testimony of, 1316-1326, 1605-1614; commenced to carry the mail November 1, 1878, one trip from Canyon City to Camp Harney, 1316; and from Canyon City to Doc. Anderson's, 3 trips from January 16, 1879, and 7 trips from August 1, 1880, 1316; distances, 1317; used 2 men and 10 horses to carry the mail one trip, 130-hour schedule, over whole route, 1317; from Canyon City to Doc. Anderson's used 4 carriers and from 8 to 12 horses to carry the mail 2 trips, 1318; 7 trips used 8 men and 26 horses, 1318; to carry the mail 3 trips, 96-hour schedule, entire route, would require 8 men and from 24 to 26 horses; 7 trips, 52 horses, 1720; carried passengers and express in summer, 1320; Indian trouble was from June to September, 1878, between Alvord and Camp Harney; there was no trouble between Canyon City and Camp Harney, 1317; carried the mail regularly 3 trips from Canyon City to Camp Harney, 1 trip for Miner, Vaile, & Co., and 2 trips for the military, 1317; when witness carried the mail from Canyon City to Camp Harney in July, 1878, it was not under any arrangement with post-office authorities, 1325; the quartermaster paid him \$270 a month 3 trips, Canyon City to Camp Harney, 1325; does not recognize any names on (Utah) petition (20 H, 1250), 1321; made his first contract with A. W. Moore, 1318; identifies the subcontract (6 X, 1425), 1318, 1605; Moore claimed to have a power of attorney and produced papers that satisfied witness, 1319; received his pay from Miner, 1320; Camps Harney and Alvord were the only intermediate post-offices; Camp Harney was discontinued as a military post in the fall of 1880, 1321; Moore told witness that if he would take the contract he would make him know that it would be increased and expedited, by papers and documents he had with him, 1606; that they had influence in the Senate and in the Post-Office Department, struck out, 1606; Moore promised that the service would be increased and afterwards expedited, but they both came at once, 1611; does not think Williamson was present when he made his representations, 1613.

Miner, John R., one of the defendants, testimony of, relating to this route; witness and Vaile took this route in the division 4207.

8 H. Oath of Peck (1244), all in witness' handwriting except the signature and date of jurat; appearance of paper indicates that it was written at different times, 4188, 4252, 4272.

10 H. Letter of Peck (1244), in witness' handwriting, 4252.

14 H. Petition (1247), words "ninety-six" are not in witness' handwriting, 4189-4190, 4273.

20 H. Petition (1250), body of petition is in witness' handwriting; witness did not file it or attach the Utah names, 4192, 4273.

21 H. Petition (1250-1251), is in witness' handwriting, 4273.

29 H. "Hall" petition (1253, 2683-2684), body is in witness' handwriting; is in doubt as to the first six names, they very much resemble his handwriting; if they are the petition came to him and he copied the names, 4190-4191, 4273-4274, 4282; cannot give any reason why he feigned the hand, 4274.

32 H. Letter of Miner (1314), explains circumstances connected with writing the letter, 4205-4206, 4282-4283.

Moore, A. W., agent, testimony of, relating to this route, 1367-1368, 1374-1379, 1397-1398, 14171-418, 1422, 1428; sublet this route to Hutchinson, who threw

(H.) *Route 44160. Canyon City to Fort McDermitt, Oreg.*—Continued.

Witnesses—Continued.

Moore, A. W.—Continued.

it up, 1367–1368; afterwards returned to Oregon and sublet the route to McBean, 1367–1368, 1374; identifies subcontract (6 x 1425) as the one made with McBean, 1375, 1423; McBean refused at first to take the subcontract for once a week; witness told him that when the route was made daily he would pay him a certain amount for daily service and expedition, 1375; McBean said it was impossible to get daily service and expedition; that he could carry the mail through in his pocket; struck out, 1376; witness told McBean that J. M. Peck and John W. Dorsey were simply bidders; that the contracts belonged to Senator Dorsey; struck out, 1378; that they could get daily service and expedition which would run the service up to \$50,000, 1379; told McBean what his instructions were as to getting up petitions, but he did not agree to get them up that way, 1397–1398; witness was to have a one-fourth interest in this route, 1422; made a subcontract with McBean in Canyon City, Oreg., 1417–1418; this was a Peck route, 1428.

Powers, A. S., subcontractor on 44140, testimony of; is very little acquainted with the people living at Canyon City; does not recognize any of the signatures to petition (20 H, 1250, 2683, 2684), 1345.

Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2339.

Handwriting:

“Proposal 5” (552, 1241, 1242), body was written by Miner, except the words “twenty-eight hundred and eighty-eight”; the signature of J. M. Peck in three places and the word “bidder” was written by S. W. Dorsey, 2340.

8 H. Oath of Peck (1244), body was written by Miner; thinks signature of J. M. Peck is genuine, 2339, 2559.

10 H. Letter of Peck (1244) signature and all by Miner, 2339.

14 H. Petition (1247), words “ninety-six” were written by Miner, 2339.

20 H. Petition (1250), body was written by Miner, 2339.

21 H. Petition (1250–1251) was written by Miner, 2339.

29 H. Petition (1253), body and the names James F. Clearer were written by Miner, 2339.

32 H. Letter of Miner (1314) written and signed by Miner, 2339.

Sleman, John B., Chief Pay Division, testimony of, 1326–1328. Produces reports, drafts, and warrants, 1326. Explains tabulated statement of payments (725–738), 1326–1328.

Schutz, Emil, stock-keeper, testimony of, 1722–1723. Recognizes two names on the last sheet of petition (20 H, 1250) as residents of Grant County, Oregon, 1722. (Petitions 20 H and 25 L submitted to the jury, 1722.)

Sweeney, George M., Chief Inspection Division, testimony of, 1220–1221; 1223–1227. Identifies files, 1220–1221; custody of files, 1223–1227.

Vaile, Harvey M., one of the defendants, testimony of, relating to this route. This route fell to witness and Miner in the division, 4020. Service was not put on the entire route up to January, 1879, 4052. When he signed the agreement in October, 1878, this route was an unprofitable one, but when he telegraphed Brady in August, had no idea that he would find it so, 4059. Does not know that this route was expedited before service was commenced. Service on one end, from Camp Harney to McDermitt, did not commence until about January 1, 1879, 4060. Thinks this route made a profit of about \$20,000 after expedition, 4071.

Waugh, James E., Washington, D. C., testimony of, for defense, 4304. Knows John R. Miner's handwriting. Thinks the first six signatures to petition (29 H, 1253) are in the handwriting of Miner, 4304.

Woodward, P. H., P. O. inspector, testimony of, 2675–2676. Identifies petition, (29 H, 1253, 2683–2684), 2675–2676.

(P.) *Route 46132. Julian to Colton, Cal.*

Advertisement of November 1, 1877, 120 miles, once a week, 54 hours one way and 52 hours the other, 524.

Argument, opening, of Mr. Bliss, referring specifically to this route, 250, 336; of W. W. Ker, for the prosecution, relating to this route, 4680–4691; of Jeremiah M. Wilson, for the defense, relating to this route, 5194–5196.

(P.) *Route 46132. Julian to Colton, Cal.*—Continued.

- Certificate of postmasters received September 2, 1879, that recent increase of service on route 46132 amply supplies the needed mail facilities; that any service on a parallel route is a useless and unnecessary expenditure (47 P, defense), 3299.
- Contract of John M. Peck with the United States, dated March 15, 1878, \$1,188 per annum, sureties Samuel N. Hoyt and D. W. C. Wheeler, sworn to by Peck, May 11, 1878, witnessed by George P. Fall and A. E. Boone (1 P), 546-547, 1811-1812.
- Drafts drawn by John M. Peck, contractor, on the Sixth Auditor in favor of:
- Austin, S. F., witnessed by R. S. Lewis, John L. Woodward, —, 1878, third quarter 1878 (36 P), 1849.
 - Miner, John R., witnessed by M. C. Rerdell and H. A. Barnaclaugh, and indorsed by Miner and Vaile, October 1, 1878, first quarter 1878 (37 P), 1850.
 - Vaile, H. M., witnessed by M. C. Rerdell and Harvey G. Gray, November 1, 1878, first quarter 1879 (39 P), 1850; November 1, 1878, fourth quarter 1879 (42 P), 1850; witnessed by L. R. Bacon and Gray, April 15, 1879, second quarter 1879 (40 P), 1850; witnessed by Rerdell and James C. Leary, November 1, 1878, third quarter 1879 (41 P), 1850; April 1, 1879, first quarter 1880 (43 P), 1850; April 1, 1879, second quarter 1880 (44 P), 1851; April 1, 1879, third quarter 1880 (45 P), 1851.
- Exceptions to rulings admitting oath of Peck (7 P), that it is not proven that Peck is not on trial, and on account of its date, 1813; contractor's drafts and warrants, that the indorsements of Vaile are not proven, 1850, 1851; questions as to the result of the 26-hour schedule on the connections with the other mail routes, 1817; as to men and animals, 1821; as to subcontract pay, 1826.
- Expedition, calculation for (not read 12 P), 1815.
- Fines and deductions, statement of, 737.
- Indictment, setting out as overt acts the filing of the oath of John M. Peck as of June 24, 1879, and the subcontract of H. M. Vaile as of June 24, 1879, and the order of Brady June 24, 1879, for increase and expedition, 1810-1811.
- Journal of the Postmaster-General, extract from, showing entry of order of June 3, 1879 (30 P. 1796-1797), signed D. M. Key, 4326; and order of June 24, 1879 (5 P, 1812-1813), signed D. M. Key, 4325.
- Letters of:
- Booth, Newton, and J. T. Farley, U. S. S., to D. M. Key, April 10, 1877 (?), asking favorable consideration of inclosed petitions (10 P), 1814.
 - Brady, Thomas J., circular of, to J. C. Hays, October 1, 1878, notifying him that his subcontract has been filed (30 P), 1827.
 - Craig, Scipio, P. M. Colton, to Brady, April 1, 1879, recommending increase to 3 trips, and making suggestions as to other service (11 P), 1814.
 - To Brady, September 9, 1878; returns schedule and incloses petitions for increase to three trips (48 P, defense), 3300.
 - Farley, J. T., U. S. S., and Newton Booth, to D. M. Key, asking favorable consideration of inclosed petitions (10 P), 1814.
 - Hayes, J. C., and John M. Peck, to Brady, November 2, 1878, requesting withdrawal of subcontract (32 P), 1836.
 - Miner, John R., to J. C. Hayes, July 25, 1879, the telegraph got his message mixed; have tried hard to have the schedule made 36 hours, as petitioned for, instead of 26; will pay \$4,000 for 3-trip service, 26-hour schedule (28 P).
 - Secretary to same, November 11, 187-; petitions not acted upon; fears that Hayes' friends' influence with Tom Brady is not strong enough; strong pressure and influence of California Congressmen and Senators necessary to get increases (25 P), 1823; December 5, 1878, inclosing forms of petitions; have all the influential people you know write to your Representatives and Senators (26 P), 1823-1824.
 - Miner, Peck & Co. to J. C. Hayes, Denver, Colo., July 9, 1878, in regard to increase; our contract specifies rate of pay; we do not care to go on making new bargains for four years (20 P), 1822; Washington, August 3, 1878, increases can only be obtained by our joint effort; they are based upon petitions, but require active work to consummate them, therefore the benefits are to be shared; you are not known to the department, and it is necessary to correspond with us (21 P), 1822; September 19, 1878, increased speed is very seldom ordered, and never without special labor here, and considerable expense; it is quite a mistake to fancy everything done on the route and nothing here (22 P), 1822-1823. October 9, 1878, increase of service increases pay pro rata; expedition is paid for in proportion to the number of men and animals employed; expedition is not ordered except on important routes (23 P), 1823.
 - Peck, John M., to Brady, December 30, 1878, proposing to carry the mail, 3 trips, 36-hour schedule, for \$7,772 per annum, additional (6 P), 1813.

(P.) Route 46132. Julian to Colton, Cal.—Continued.

Letters of—Continued.

- Peck & Co. to J. C. Hayes, November 2, 1878, paying direct makes extra work and delays settlement (24 P), 1823.
- Peck, J. M., and J. C. Hayes, to Brady, November 2, 1878, requesting withdrawal of subcontract (32 P), 1836.
- Vaile, Miner & Co., to J. C. Hayes, January 27, 1879, inclosing draft (27 P), 1824.
- Oath of John M. Peck, contractor, sworn to December 30, 1878, "*3 times a week on present schedule*," 4 men and 5 animals, schedule of 26 hours, 3 trips, 9 men and 18 animals (overt act, averred as of June 24, 1879, 7 P), 1813.
- Orders of Brady, May 24, 1879, filing subcontract of H. M. Vaile (3 P), 1812; June 24, 1879, from July 14, 1879, *increase 2 trips, allow \$2,376; expedite to 26 hours, allow \$5,346* (overt act, 5 P), 1812-1813.
- Payments, statement showing, to S. F. Austin, H. M. Vaile, assignees, and J. C. Hayes and H. M. Vaile, subcontractors, 737.
- Petitions from citizens of California for tri-weekly service and schedule of 36 hours (8 P), 1814; from citizens of Southern California for schedule of 36 hours (9 P), 1814; of residents along the route for tri-weekly mail and schedule of 38 hours, filed September 19, 1878 (13 P), 1815; two similar (14 and 16 P), 1815; two similar, filed January 29, 1879 (17 and 18 P), 1816; similar (19 P), 1816; of postmasters on route 46130 and 46132 for tri-weekly mail and schedule 38 hours on the latter route (14 P), 1815.
- Proposal of John M. Peck, sworn to January 9, 1878, before A. E. Boone; sureties, John O. Evans and W. B. Moses; witnessed by A. E. Boone and John R. Miner (2 P), 553, 1812.
- Reports of the Auditor (not read), 1849-1851.
- Revenues, certified transcript of, 2776-2777.
- Subcontract of H. M. Vaile, dated April 1, 1878, full pay, signed John M. Peck, by John R. Miner, attorney; witnessed by M. C. Rerdell (overt act, averred as of June 24, 1879, 4 P), 1812.
- Telegram of J. C. Miner to J. C. Hayes, June 23, 1879: "Start Julian Colton, 3 trips, 36 hours, July 14" (29 P), 1825.
- Warrant, dated February 6, 1879, in favor of H. M. Vaile, 1850.
- Witnesses:
- Bergman, Jacob, sub-subcontractor, testimony of, 1816-1820, 1842-1845; carried the mail from November 14, 1878, to June 30, 1882, 1816; began carrying it one trip 54 hours one way and 52 hours the other, 1817; recognizes the names of the signers to petitions (8 P, 9 P, 13 P, 14 P, 15 P, 16 P, 17 P, 18 P, and 19 P, 1814-1816), 1817; never knew of a petition asking for a 26-hour schedule; 4 petitions asked for 36 hours and 4 for 38 hours, 1817; 26-hour schedule did not make connections, 1817; for one trip, 54-hour schedule, witness used 1 man and 3 horses 3 times a week, on 26-hour schedule, 3 men, 10 horses, and 2 extra horses, 1817; for 3 trips, 26-hour schedule, 10 horses and 2 extras would be necessary, 1843; men and animals, 1843-1845; commenced on July 14, 1879, and carried the mail 3 weeks on 36 hours' time, in pursuance of an order from Miner, Peck & Co., through Hayes, 1818.
- Boone, A. E., mail contractor, testimony of, relating to this route:
- 6 P. Letter of Peck (1813), signature and all by Miner, 2699.
- 7 P. Oath of Peck (1813), all written by Miner except signature of Peck, which is not one of the New Mexico signatures, 2699.
- 20 P, 21 P, 22 P, and 23 P (1822-1823), were all written by Miner, 2700.
- 24 P. Letter of Peck (1823), signature and all written by Miner, 2700.
- 25 P and 26 P, letters of John R. Miner, secretary, (1823-1824), both written by Miner, 2700.
- 27 P. Letter of Vaile, Miner & Co. (1824), written by Miner, 2700.
- 28 P. Letter of Miner (1824), written by Miner, 2700.
- 32 P. Letter of Hayes and Peck (1836), all written by Miner, except signature of J. Chauncey Hayes, 2700.
- Brady, Thomas J., one of the defendants, testimony of, relating to this route; made the order (5 P, 1812-1813) to expedite the time from 54 to 26, hours; that made it about 5 miles an hour; Mr. Wigginton, M. C., Senators Booth and Farley, and others, recommended increase and expedition; they may not have recommended 26 hours; he does not care whether it is 36 or 26; if he was going to expedite at all he would expedite properly, and that would be 26 hours, 3436; has not found any paper which asked for 26 hours, 3437; there were probably special reasons why it was necessary to have 5 miles an hour, 3437; all the papers on file specifying 36 or 38 hours, and the order having been made on June 24, 1879, for 26 hours, he cannot tell how it happened that John M. Peck in New Mexico, December 30, 1878, knew that

(P.) *Route 46132. Julian to Colton, Cal.*—Continued.

Witnesses—Continued.

Brady, Thomas J.—Continued.

an affidavit was wanted, 3437; witness made the order for 26 hours upon that affidavit, 3437; does not remember that his attention was directed to the changes and interlineations in the affidavit (7 P, 1813); they were very natural interlineations; "3 times a week on present schedulde" is interlined, and the alteration of from 36 to 26 hours; presumes it was a mere clerical error in writing 30 instead of 20; it would take more men and animals to carry the mail in 26 than 36 hours, 3434; witness did not examine the affidavits with any care as to their appearance; they generally came through the regular channels, and he did not assume that a man was a scoundrel simply because he was a contractor; witness accepted their statements as conclusive, with his own rule besides as a guide, 3434.

Hayes, J. C., subcontractor, testimony of, 1820-1842, 1873, 1874, 1875. Made his subcontract in May, 1878, with J. M. Peck, through correspondence with Miner, Peck & Co., to carry the mail for full contract term, also corresponded with A. E. Boone, 1820-1821; operated under that subcontract until he made another one with H. M. Vaile, through St. Clair Denver, his attorney, 1830; carried the mail until November 14, 1878, when he employed Beyman to carry it, the schedule was 52 hours one way and 54 the other, 1 trip a week, used 1 man and 3 horses and 1 extra horse in winter, 1821; 3 trips, schedule 26 hours, never used more than 4 men and 12 horses, 1821-1874; men and animals, 1837-1842; was not inquired of by defendants as to number of men and animals necessary, 1828; carried passengers and express, 1836; carried the mail a month and a half on a 56-hour schedule, 1837; there were some deductions for failures, 1837; was paid \$1,069 for 1 trip; for 3 trips short schedule, \$4,455, 1825-1826; 26-hour schedule did not make close connection with any route, 1826; schedule was arranged between himself and the postmaster, 1833; mail connections, 1834; going south the mail weighed from 30 to 60 pounds, mostly newspapers, 1826; the other way there was probably 30 pounds as far as Warner's ranch, 1827; identifies letters recived from Miner, Peck & Co. (20 P to 28 P), 1821; telegram of Miner (29 P, 1825), 1825, and circular of Brady (30 P), 1827, and letter of Peck and himself (32 P), 1836; wrote letters to Miner, Peck & Co. in relation to increase of service in consequence of letters received from A. E. Boone, 1831; his friend referred to in letter of Miner (25 P, 1823), as having influence with Brady was Scipio Craig, postmaster at Colton, who had been a schoolmate of Brady, 1832; letters written to Members of Congress and Senators, 1832-1833; received draft of petition inclosed in letter of Miner (26 P), 1828; population of post-offices, 1828-1829, 1837; received one quarter's pay direct from the department, 1828; stated facts in petition truthfully, 1828-1829. Corrects his testimony, 1874, 1875.

Miner, John R., one of the defendants, testimony of, relating to this route.

Witness and Vaile took this route in the division, 4207.

6 P. Letter of Peck (1813), witness wrote the letter and signed Peck's name, 4235-4236.

7 P. Oath of Peck (1813), all except signature in witness' handwriting, as far as witness remembers; it was filled up before it was signed, 4189, 4232-4234.

21 P and 22 P. Letters of Miner, Peck & Co. (1822-1823), are in witness' handwriting, 4274; his explanation of letters, 4275.

Rerdell, M. C. One of the defendants, testimony of, relating to this route.

2 P. Proposal of Peck (553, 1812), mostly written by Miner; a few words by John W. Dorsey; amount "1188" filled in by witness; signatures of J. M. Peck in three places were written by S. W. Dorsey, 2346.

4 P. Subcontract of Vaile (1812), written by Miner, except signatures of Vaile, which are genuine, 2346.

6 P. Letter of Peck (1813), signature and all by Miner, 2346.

7 P. Oath of Peck (1813), all written by Miner, except signatures of Peck and the notary, 2346, 2581-2582, 2610.

20 P, 21 P, and 22 P. Letters of Miner, Peck & Co. (1822-1823), written by Miner, 2347.

23 P. Letter Miner, Peck & Co. (1823), written by Miner on United States Senate paper, heading cut off, 2347.

24 P. Letter of Peck (1823), signature and all by Miner, 2347.

25 P. Letter of Miner (1823) was written by him on United States Senate paper, 2347.

26 P and 28 P. Letter of Miner (1823-1824), was all written by Miner, 2347.

27 P. Letter of Vaile, Miner & Co. (1824), all written by Miner, 2347.

(P.) *Route 46132. Julian to Colton, Cal.*—Continued.

Witnesses—Continued.

Rerdell, M. C.—Continued.

32 P. Letter of Peck and J. C. Hayes (1836), letter, and signature of Peck by Miner, 2347.

Sleman, John B., Chief Pay Division, testimony of, 1816. Produces reports, drafts, and warrants, 1816.

Sweeney, George M., Chief Inspection Division, testimony of, 1760-1763; identifies files, 1760-1763.

Vaile, Harvey M., one of the defendants, testimony of, relating to this route. This route fell to witness and Miner in the division, 4020; the subcontract on this route was antedated to April 1, 1878, 4073; the object in antedating the subcontract was the same as on the other routes, 4071; has no knowledge how it happened, that having no communication with the Dorsey combination, expedition was obtained in June, 1879, upon an affidavit for expedition made by one of that combination, 4069.

(G.) *Route 46247. Redding to Alturas, Cal.*

Advertisement of November 1, 1877, 179 miles, twice a week, 108 hours, 524.

Argument, opening of Mr. Bliss, referring specifically to this route, 250, 259, 260, 284, 335, 336.

Argument on the admission of the question as to the time in which the mail was carried, of Mr. Bliss, 1267, 1268, 1270; of Mr. Ingersoll, 1268, 1272.

On the admission of question as to what was said between witness (Major) and A. W. Moore, of Mr. Merrick, 1431-1433; Mr. Ingersoll, 1431, 1433, 1434; Mr. Wilson, 1434, 1435.

Of W. W. Ker for the prosecution, relating to this route, 4691-4697.

Of Jeremiah M. Wilson for the defense, relating to this route, 5196-5200.

Calculation for expedition (86 G, defense), 3298-3299.

Contract of John M. Peck with the United States, dated March 15, 1878, \$5,988, executed by Peck May 11, 1878; sureties, D. W. C. Wheeler and S. N. Hoyt; witnessed by George P. Fall and A. E. Boone (1 G), 547, 1229.

Decision of the court:

Admitting evidence to show that the mail was carried by the subcontractor before the order for expedition in less time than it was expedited to, 1272-1274.

Admitting testimony of J. N. Major as to conversations with A. W. Moore, 1435 1436.

Drafts drawn by John M. Peck, contractor, on the Sixth Auditor, in favor of:

Bosler, J. W., no date, second quarter 1880 (47 G), 1299; October 7, 1879, fourth quarter 1879 (51 G?), 1300; no date, second quarter 1880 (53 G?), 1300; February 19, 1881, first quarter 1881 (57 G), 1300; June 30, 1880, second quarter 1881 (63 G), 1301; October 1, 1880, fourth quarter 1880 (66 G), 1301; June 6, 1881, third quarter 1881 (69 G), 1301.

Dorsey, S. W., witnessed by L. R. Bacon and Harvey G. Gray, May 19, 1879, third quarter 1879 (41 G), 1299; May 19, 1879, second quarter 1879 (60 G), 1300; no date, first quarter 1880 (44 G), 1299.

German-American National Bank, witnessed by R. S. Lewis and J. L. Woodward, —, 1878, third quarter 1878 (32 G), 1297, 1298.

Miner, John R., witnessed by M. C. Rerdell and H. A. Barnaclaugh, October 1, 1878, fourth quarter 1878 (35 G), 1298.

Vaile, H. M., witnessed by M. C. Rerdell and Harvey G. Gray, November 1, 1878, first quarter, 1879 (38 G), 1299.

Exceptions to rulings, admitting:

Order of Brady (7 G), that it is not complained of in the indictment and on account of its date, 1232; subcontract made with Miner, Peck, & Co., through A. W. Moore (6 G), 1266; blank form of mail bills and monthly report (2 x), 1293; of questions as to passengers and express, 1267; as to the time in which the mail was carried, as immaterial, 1267, 1289; to remark of the court, 1274, 1275; questions as to how witness received his pay, 1275; as to whether Mr. Moore produced anything claiming to be an authority to make a subcontract, 1275; as to how many horses were used, that it is not complained of in the indictment, 1277; answer of witness (Major), that he circulated petitions at the request of Moore, 1283; as to whether mail bills were put on at the time the order was made reducing the schedule to seventy-two hours, 1293; to

(G.) *Route 46247. Redding to Alturas, Cal.*—Continued.

Exceptions to rulings, admitting—Continued.

Order of Brady, &c.—Continued.

ruling excluding letters from a third party not on the stand, 1289; a decision admitting conversation of Major with Moore, 1436; witness' statement as to what was done by himself and Moore in consequence of the latter's representations, 1442; to ruling refusing to entertain the motion that the court instruct the jury that the testimony of the witness (Major) has no application to Vaile, 1452, excluding offer to prove that witness (Page) went on at least fifty occasions to recommend increase or expedition on other routes, 3664.

Fines and deductions, statement of, 737, 738.

Indictment setting out as overt acts, petitions filed as of July 26, 1879, and order of Brady, February 11, 1881, to increase to 7 trips, from February 20, 1881 (28 G), 1229, 1266, 1267.

Jacket route 46247, 1879, inclosing petition for one additional trip and expedition of schedule to 40 hours in summer and 60 hours in winter; refers to sworn statement for 45 hours, and states cost of one trip as \$5,988 and as of expedition \$65,868; that Governor Wm. Irwin and J. T. Farley, U. S. S., J. K. Luttrell, and P. D. Wigginton, recommended it (83 G, defense), 3297.

Journal of the Postmaster-General, extract from, showing entry of order of February 11, 1881 (28 G), 1238-1239, signed Horace Maynard, 4327.

Letters of:

Bieber, M., to Brady, May 7, 1880, protests against reduction to 3 trips and asks restoration of the old service (74 G, defense), 3231.

Bush, C. C., postmaster, Redding to Postmaster-General, August 17, 1878, increase to 6 trips would be proper (10 G), 1233.

Postmaster transmitting schedule, not read (4 G), 1230.

Culverhouse, Jerry, to J. K. Luttrell, April 23, 1879, incloses petition signed by postmasters for increase of service, indorsed "Senator Farley, please endorse and file with P. M. Gen'l, and oblige Luttrell" (73 G, defense), 3230.

Kendrick, A. L., to Maynard, July 23, 1880, stating reasons why they should have daily service (76 G, defense) 3232.

Irwin, Wm., and J. T. Farley to Key, June 12, 1879, asking increase to a daily line and 2 days' schedule; concurred in by J. K. Luttrell, third district and P. D. Wigginton, fourth district (72 G, defense), 3230.

McKusick, H. J., superintendent railway mail service, to Brady, August 16, 1880, knows of no reason why service should be reduced; recommends increase to 6 times a week August 24, 1880; indorsed "Restore Alturas to Redding to 7 t. a. w., Brady" (78 G, defense), 3233.

Peck, John M., to Brady, December 3, 1878, inclosing proposition for expedition (8 G), 1232.

Representatives of California and Oregon to Brady, H. R. — 188—, requests that the service be restored to 6 trips instead of tri-weekly; signed James H. Slater, J. T. Farley, Newton Booth, R. Pacheco, C. P. Berry, John Whiteaker, H. F. Page, Horace Davis (71 G, defense), 3229, 3230.

Rine, N. B., postmaster, Redding, Cal., to Second Assistant, August 12, 1878, 6 trips and 72-hour schedule is imperatively demanded (23 G), 1237, 1238.

Mail bills, blank form of (2 x), 1294, 1295.

Oath of John M. Peck, contractor, sworn to September 18, 1878, original schedule, 3 men and 8 animals, schedule of 72 hours, 6 men and 18 animals (figures as to men and animals written over erasures) (9 G), 1232-1233.

Orders of:

Brady, June 3, 1878, increase one trip from July 1, 1878, allow \$2,994 (13 G), 1236; July 31, 1878, to change schedule (29 G), 1230; October 1, 1878, filing subcontract of Major and Culverhouse (5 G), 1230; December 3, 1878, increase three trips and expedite to 72 hours, allow contractor \$26,946, from December 16, 1878 (7 G), 1231-1232; February 11, 1881, increase to 7 trips, from February 20, 1881, allow contractor \$5,988, subcontractor \$2,000 (overt act 28 G), 1238-1239.

French, April 17, 1880, from May 1, 1880, reduce to 3 trips; deduct \$17,964 from contractor, and \$10,500 from subcontractor, one month's extra pay (84 G, defense), 3297-3298; August 26, 1880, from September 1, 1880, increase 3 trips; allow contractor \$17,964, subcontractor \$10,500 (85 G, defense), 3298.

Hazen, August 6, 1879, to amend order of October 1, 1878, fixing the pay of the subcontractor (26 G), 1238.

Payments, tabulated statement showing, to B. U. Keyser, receiver, H. M. Vaile, S. W. Dorsey, and J. W. Bosler, assignees, and Major and Culverhouse, subcontractors, 737-738.

(G.) *Route 46247. Redding to Alturas, Cal.*—Continued.

Petitions (overt act, averred as of July 26, 1879):

For 6 trips, indorsed by J. K. Luttrell, M. C. (11 G), 1234.

For expedition to 72 hours, indorsed by J. K. Luttrell, M. C. (12 G), 1234.

For 6 trips and 72 hours, filed April 12, 1878 (14 G), 1236, 1237; similar (15 G), 1237; nine similar, signed with 736 names (16 to 24 G), 1237.

For 7 trips, indorsed by C. P. Berry, January 3, 1881 (29 G), 1239.

From Goose Lake Valley, protesting against reduction of service, indorsed and recommended by John Whiteaker and C. P. Berry (75 G, defense), 3231-3232; of postmasters and others, Redding, May 1, 1880, for retention of six times a week service (77 G, defense), 3232-3233; of postmasters for increase from 6 to 7 trips, indorsed by J. K. Luttrell and J. T. Farley (79 G, defense), 3233-3234; for increase from 6 to 7 trips and reduction of schedule to 40 hours in summer and 60 hours in winter; indorsed and recommended by J. K. Luttrell, J. T. Farley, and P. D. Wigganton (80 G, defense), 3238; for increase from 3 to 6 trips (81 G, defense), 3238; protesting against reduction of service to 3 trips (82 G, defense), 3239.

Reports of the Auditor certifying balances due and to whom payable, third quarter 1878 (31 G), 1297, 1298; fourth quarter 1878 (34 G), 1298; first quarter 1879 (37 G), 1299; second quarter 1879 (39 G), 1300; third quarter 1879 (40 G), 1299; fourth quarter 1879 (50 G), 1300; first quarter 1880 (43 G), 1299; second quarter 1880, J. M. Peck, care of M. C. Rerdell (52 G?), 1300; third quarter 1880, J. M. Peck, care of M. C. Rerdell (46 G), 1299; fourth quarter 1880 (65 G), 1301; first quarter 1881 (56 G), 1300; second quarter 1881 (62 G), 1300; third quarter 1881 (68 G), 1301.

Revenues, certified transcript of, 2778-2781.

Schedule of arrivals and departures (3 G), 1230.

Subcontracts of:

Major & Culverhouse, dated May 1, 1878, filed October 1, 1878; two trips, \$5,500; three trips, \$7,500; six trips, \$15,000; seven trips, \$17,000, and 40 per cent. of expedition; signed, J. M. Peck, by A. W. Moore, attorney (6 G), 1231. Second, dated May 20, 1879; six trips, \$21,000; seven trips, \$23,000; signed, J. M. Peck, by M. C. Rerdell, attorney; filed August 6, 1879 (27 G), 1238. Third, filed June 16, 1879; two trips, \$5,500; three trips, \$7,500; six trips, \$15,000; seven trips, \$17,000; signed, John M. Peck, by John W. Dorsey, guaranteed by S. W. Dorsey, May 5, 1879 (30 G), 1239, 1240.

Warrants signed by the Postmaster-General and the Sixth Auditor in favor of—

Bosler, J. W., assignee, May 17, 1880 (45 G), 1292; November 29, 1880 (48 G), 1299; January 24, 1880 (51 G?), 1300; August 2, 1880 (54 G), 1300; May 21, 1881 (58 G), 1300; August 1, 1881 (64 G), 1300; January 7, 1881 (67 G), 1301; November 28, 1881 (70 G), 1301.

Creswell, J. A. J., president, April 26, 1879 (39 G), 1299.

Donnell, Lawson & Co., November 6, 1879 (42 G), 1299.

Keyser, B. U., receiver, December 7, 1878 (30 G), 1298.

Middleton & Co., July 21, 1879 (61 G), 1300.

Peck, J. M., October 29, 1880 (49 G), 1299; August 2, 1880 (55 G), 1300.

Vaile, H. M., assignee, February 6, 1879 (36 G), 1298.

Witnesses:

Boone, Albert E., mail contractor, testimony of, relating to this route; 1523-1525. Witness prepared and had printed blank form of subcontract 1523; S. W. Dorsey told witness to change the blanks so as to provide for a special clause for expedition and for 1, 2, 3, and 7 trips a week. Witness had never seen such a clause in any subcontract, 1524; identifies subcontract (6 G) as one of the forms prepared by him, 1524; after the blanks were printed, clause for expedition written by witness was not satisfactory, 1524; S. W. Dorsey wrote a new clause, 1525; clause as prepared by witness, 1524; as prepared by Dorsey, 1525.

Handwriting:

9 G. Oath of Peck, 1232-1233; all except the signatures of Peck and the notary was written by Miner, 2695.

30 G. Subcontract of Major and Culverhouse (1239-1240); the signatures "John M. Peck, by John W. Dorsey, contractor," was written by John W. Dorsey; the words "S. W. Dorsey May 5, 1879," indorsed on the back, were written by S. W. Dorsey, 2695.

Brady, Thomas J., one of the defendants, testimony of, relating to this route; did not know at the time that he made the order for expedition that the mail was being carried by the carrier in a shorter time than the schedule in the contract called for; had no means of knowing unless he sent a man out there to ascertain, 3398, 3423, or whether the schedule of arrivals and departures

(G.) *Route 46247. Redding to Alturas, Cal.*—Continued.

Witnesses—Continued.

Brady, Thomas J.—Continued.

would have shown the time; they would have gone to the inspection division in the manner he has described; there was a monthly report made by terminal postmasters that would simply show that the mail departed on a certain day from one point and arrived on a certain day at another, but it would not show that the mail got through in a certain time; that was the reason for getting up the mail bills; could have ascertained the time by correspondence with postmasters, 3424-3425; if they wanted the mail to go on fast time they could not depend upon their doing it for nothing, 3425; does not remember why he paid them some \$15,000 or \$20,000 more for performing the service as they were then performing it, when the contractors had raised no question as to their willingness to continue to carry it in the same time, 3425; or that they had refused to carry it in the same time, 3426; or that when he got the petitions for increase he sought to obtain the time in which the mail was being carried, 3426; without any investigation as far as he recollects he made an order for \$17,964 for expedition, when the order required the mail to be carried in a longer time than it was in fact actually being carried in, but he knew nothing of the evidence in this case at that time; possibly if he had he might have driven a better bargain for the government at that time, 3427-3428; does not remember why, instead of expediting the route, he did not make it 6 trips and save \$17,964, 3423; referring to order (7 G, 1231-1232), the total increase for trips and expedition at pro rata would have been \$29,820.24; the contractor's proposition was for \$26,946, and the order does not indicate whether the saving was on the expedition or the trips, 3472.

Hooper, Chas. H., clerk, banking house Donnell, Lawson & Co., New York, 2652; warrant (55 G. 1300) was deposited by T. W. Torrey, August 19, 1880, to the credit of S. W. Dorsey's account; when deposited the warrant had the indorsement of John M. Peck, 2652; produces deposit-slip, 2652.

McCormick, James, postmaster Redding, Cal.; testimony of, 1289-1295; mail was carried July, 1878, to June 30, 1882, in from 42 to 60 hours, 1289; is enabled to tell the time from the mail bills and from the schedule of departure at the other office and arrival at Redding, 1289-1290; mail bills put on about 2 years ago; marked exact time of arrival on the mail-bill and sent it to department each day, 1292; thinks that he signed petition for increase, 1295.

Major, John N., subcontractor, testimony of, 1265-1288, 1431-1451, 1677-1678; made a subcontract (6 G., 1239-1240) with A. W. Moore as agent for Miner, Peck & Co., at Shasta, Cal., 1275; Moore proposed to sublet the route for four years; witness said he did not want it at the price paid by government; that it would not pay horse-feed, 1438; Moore assured witness that he could get the trips increased, and that he was authorized to make that statement by Miner, Peck & Co. and Senator Dorsey, 1439; Moore showed witness power of attorney signed by Miner, Peck, and Dorsey, 1438, and some passes in the name of John W. Dorsey, 1439, and said there would be an increased trip before the service commenced, 1441; and by circulating petitions they could get trips and expedition, 1442; in consequence of Moore's representations, witness made the contract, 1442; as represented by Moore, one trip was added before the service commenced, then three trips, and expedition, and then another trip was added, 1442; circulated petitions for increase and expedition, 1280; forwarded them direct to Second Assistant, 1280, 1444; did not agree to write petitions so that they could be cut off and others pasted on, 1444; nor did Moore instruct him to do so, 1445; Moore was there about the last of April or first of May, 1445; does not remember circulating any petitions before July 1, 1878, 1451; identifies subcontract (30 G, 1239-1240); carried the mail under it, 1266; identifies subcontract (27 G, 1238-1266); carried the mail in stages; also carried passengers and express, 1266; from July 1, 1878, to 1881 carried the mail in 42 hours in summer and 60 in winter; filed his subcontract, 1275; 3 trips used 31 horses, 1277; 6 trips 43 horses, and the same number for 7 trips, 1278; had 6 drivers and 9 hostlers, 1278; used this number in carrying the mail, passengers, and express, 1278; mail connections at Redding and Alturas, 1278-1279; did not report to department the time in which he carried the mail, 1279; applied to Mr. Berry, Mr. Luttrell, and Newton Booth, U. S. S., for assistance in getting expedition, 1281; Moore first requested witness to circulate petitions, 1281; identifies 25 letters submitted by defense as written by his partner, Culverhouse and himself, 1285; corrects his testimony, 1677-1678.

(G.) *Route 46247. Redding to Alturas, Cal.*—Continued.

Witnesses—Continued.

Miner, John R., one of the defendants, testimony of, relating to this route.

9 G. Oath of Peck (1232-1233); body is in witness' handwriting; believes the signature of Peck is genuine; appearance indicates it was not all written at one time; witness did not fill it up after it was signed as far as he remembers; does not remember what words he erased in order to write "three" and "eight," 4188-4189, 4248, or how he came to date it at Chico Springs, on the 18th September, the date of the jurat, 4250.

Moore, A. W., agent, testimony of, relating to this route, 1367-1370, 1394, 1396-1397, 1422; witness started west about the middle of April, 1878, 1367; sublet this route to Major and Culverhouse; identifies the subcontract (6 G, 1239-1240), 1368-1370; told Major that if he would take the subcontract he would guarantee the 3 trips before July 1, and a daily mail and expedition as soon as he would send on petitions, 1368; that Senator Dorsey was the head man of the institution, 1368; struck out, 1369; witness was to have a one-fourth interest in this route, 1394, 1422; witness told Major to leave a space between the petition and the names, so that they could be cut off, but does not know that Major agreed to it, 1396-1397.

Page, Horace F., M. C., California, testimony of, for defense, 3660-3664; has represented the Second District of California for ten years, 3660; this route is not in his district, 3661; went to see Mr. Brady at the request of his colleague, Mr. Berry; urged increase of service and expedition; recognizes the signatures of the Senators and Members of Congress from California and Oregon to letter (71 G, defense, 3229-3230), 3661-3662. Cross-examined, 3662-3664.

Rerdell, M. C., one of the defendants, testimony of, relating to this route, 2338-2339, 2341-2342, 2559.

Handwriting:

8 G. Letter of Peck (1233); signature and all were written by Miner, 2338.

9 G. Oath of Peck (1332-1233); body was written by Miner; signature of Peck is genuine, 2338, 2559.

30 G. Subcontract of Major and Culverhouse (1239, 1240); the body and the signature of Peck and John W. Dorsey were written by John W. Dorsey; the signature on the back, "May 5, 1879," by S. W. Dorsey, 2339.

55 G. Warrant in favor of Peck (1300); indorsement of Peck was written by S. W. Dorsey; witness gave it to S. W. Dorsey August 16 or 17, 1880; at that time it had no indorsement on the back; S. W. Dorsey said he would send it out to the ranch for Peck's indorsement; it was stamped as passing the clearing-house August 19, 1880, and is paid by the assistant treasurer New York August 25, 1880, 2341-2342, 2559.

Sleman, John B., Chief Pay Division, testimony of, 1297; produces reports drafts, and warrants, 1297.

Sweeney, George M., Chief Inspection Division, testimony of, 1218, 1223-1127; identifies files, 1218; custody of files, 1223-1227.

Turner, Wm. H., testimony of, for defense; when the witness left the department there were petitions on file asking for a second expedition, which was refused by General Brady, 3375; identifies one of the petitions (80 G, defense, 3238), 3375; witness did not know the fact that the mail was then being carried about forty hours in summer and about sixty hours in winter, 3376; referring to jacket (83 G, defense, 3297), there must have been an affidavit among the papers, 3376, 3377.

Papers marked X relating to general testimony.

1 X. Letter of Brady to D. M. Key, December 6, 1879, asking that he recommend to Congress a deficiency appropriation of \$2,000,000 for star-route service, and letter of D. M. Key to the Speaker, House of Representatives, inclosing letter of Brady, and that the sum of \$2,000,000 be reappropriated out of unexpended balances, 555.

2 X. Mail bill, blank form of, 1294-1295.

3 X. Receipt of A. W. Moore, to Miner, Peck & Co., Denver, Colorado, July 24, 1878, for \$166, balance of salary and expenses in full to July 11, 1878, 1417.

4 X. Check for \$166, drawn by Miner, Peck & Co., July 24, 1878, on the German-American National Bank in favor of A. W. Moore, 1419.

5 X. Receipt of A. W. Moore, to Miner, Peck & Co., July 24, 1878, for \$3,000, to pay expenses and stock routes in Oregon, 1419.

6 X. Subcontract of Frank McBean, dated September 21, 1878, route 44160, signed J. M. Peck, by A. W. Moore, att'y, 1425.

Papers marked X relating to general testimony—Continued.

- 7 X. Check for \$500, drawn by Miner, Peck & Co., July 24, 1878, on the German-American National Bank, in favor of A. W. Moore, 1425-1426.
- 8 X. Check for \$500, drawn by Miner, Peck & Co., July 24, 1878, on the German-American National Bank in favor of A. W. Moore, 1426.
- 9 X. Check for \$200, drawn by Miner, Peck & Co., July 24, 1878, on the German-American National Bank in favor of A. W. Moore, 1426.
- 10 X. Check for \$300, drawn by Miner, Peck & Co., July 24, 1878, on the German American National Bank, in favor of A. W. Moore, 1426.
- 11 X. Check for \$500, drawn by Miner, Peck & Co., July 24, 1878, on the German American National Bank, in favor of A. W. Moore, 1426-1427.
- 12 X. Check for \$500, drawn by Miner, Peck & Co., July 24, 1878, on the German American National Bank, in favor of A. W. Moore, 1427.
- 13 X. Check for \$500, drawn by Miner, Peck & Co., July 24, 1878, on the German American National Bank, in favor of A. W. Moore, 1427.
- 14 X. Receipt of A. W. Moore to John R. Miner, November 20, 1878, for \$682, in full of all demands against John R. Miner, John M. Peck, or Miner, Peck & Co., 1430.
- 15 X. Proposal, form of, sent to J. H. Clendenning, Fort Smith, Ark, in December, 1877, 1502-1504.
- 16 X. Note of instructions attached to 15 X, as to how the bonds were to be made, certified, and approved, headed U. S. Senate Chamber, 187-. Signed "D," 1504.
- 17 X. Letter of S. W. Dorsey to George Haycock, United States Senate Chamber, December 9, 1877, sending a bundle of bonds to be filled up and certified for an intimate friend, "*Under no circumstances allow anybody to know that I have written on this subject,*" 1504.
- 18 X. Letter of S. W. Dorsey to J. H. Clendenning, United States Senate Chamber, December 9, 1877, "knows as well as anybody who his friends are and whom to trust; Clendenning can rely upon his aid, which has saved him more than once, and sending some bonds to be made for a friend, "*Under no possible circumstances allow any one to know from whom they come;*" keep clear of Roots or Kerens, 1504.
- 19 X. Circular, blank form of, prepared by A. E. Boone, to send to postmasters asking for information as to post-routes, 1548.
- 20 X. Circular letter, to postmasters, form of, prepared by A. E. Boone, dated December 1, 1879 (?7) signed James H. Ketner & Co., lock box 714, 1548.
- 21 X. Copartnership agreement between John W. Dorsey and Albert E. Boone, dated January 15, 1878, giving Dorsey two-thirds and Boone one-third interest in the star mail service in Arkansas, Louisiana, and Texas, 1561.
- 22 X. Assignment, dated September 12, 1878, by John W. Dorsey to Albert E. Boone, of Dorsey's interest in the mail contracts in the name of Boone, in Texas, Louisiana, Arkansas, Kansas, and Nebraska, and in the name of Dorsey, in Texas, Louisiana, and Arkansas, 1562.
- 23 X. Agreement of John R. Miner, dated August 8, 1878, that John W. Dorsey shall assign his interest in the mail routes in certain States to A. E. Boone, 1569.
- 24 X. Note of John A. Walsh to Brady, December 28, 1878, asking Brady to meet him at Sheridan's office, at 1 p. m.; endorsed, "will be there at 12.30," 2206.
- 25 X. Envelope put in evidence in connection with 24 X, 2207.
- 26 X. Letter of J. W. Dorsey to S. W. Dorsey, *Bismarck, Dak.*, December 25, 1878, incloses blank draft for instructions, and states he returned there Monday after a trip of 800 miles by stage; acknowledges his letter of the 9th; is glad that Mr. V. has bought out, and has no doubt that that route alone will pay him \$100,000 clear. Thanks S. W. D. for his offer, 2239.
- 27 X. Letter of J. W. Dorsey to M. C. Rerdell, Washington, September 27, 1878; has just telegraphed him for money to pay off the men, complains that Rerdell has not written anything about the prospect for increase, and asking if he has written S. W. about Black Hills route, 2239.
- 28 X. Declaration, Rerdell vs. Vaile and Miner, sworn to May 29, 1879, for 4 months' services from December 1, 1878, to April 1, 1879, at \$1,000 per annum, \$333 $\frac{1}{3}$, 2245, 2245.
- 29 X. Plea, Rerdell vs. Vaile and Miner, and accompanying affidavit of Vaile sworn to June 24, 1879, and of Miner, sworn to June 27, 1879, 2245-2246.
- 30 X. Letter of H. M. Vaile to S. W. Dorsey, Washington, May 29, 1879, complaining that Rerdell has sued Vaile, Miner & Co., alleging the firm to be only Vaile and Miner; if it goes on it will expose their private affairs in which S. W. D. is interested, and will draw forth who are the real parties of Vaile, Miner & Co., asking Dorsey to advise him to dismiss his action at once, stating that Dorsey's judgment will suggest many embarrassments not occurring to Rerdell, 2246-2247.

Papers marked X relating to general testimony—Continued.

- 31 X. Memorandum headed U. S. Senate Chamber, Washington, —, 187—, under the head of accounts, S. W. D. Cr., cash loaned, \$10,500; Dors, \$10,000; Peck, \$10,000; expense, cash, profit, and loss, J. H. Mitchell, J. W. D., and M. C. R. —; William Smith, \$18,000; John Smith, \$600 erased; Samuel Jones, \$600, 2250.
- 32 X. Letter of S. W. Dorsey to Mr. Rerdell, Chico Springs, April 3, 1878, asking him to get fullest information, in regard to all post-office lettings, and to keep posted as to the schemes going on in the department; there are certain routes they want advertised and others they do not; will be in Washington by the 12th, 2275.
- 32 Xa. Envelope containing letter addressed to Rerdell, 2513.
- 33 X. Letter of J. W. Dorsey to J. L. Routt, Denver, Washington, April 14, 1879, introduces M. C. Rerdell, and states that he together with Colonel Peck have a great many mail routes in his State, 2275.
- 34 X. Letter of S. W. Dorsey to M. S. Paddock, Denver, Washington, April 16, 1879, introduces M. C. Rerdell as a friend having large interests in Colorado, "*anything you do for him you do for me,*" 2276.
- 35 X. Telegram, *copy of*, sent by M. C. Rerdell, Jersey City, to S. W. Dorsey, Albemarle Hotel, New York. "The affidavit story is a lie, but confidence between us is gone; I resign my position and will turn everything over to any one you designate," 2284.
- 36 X. Affidavit of M. C. Rerdell, *copy of*, sworn to June 20, 1881, addressed to the President referring to his interview with Clayton, James, MacVeagh, and Woodward in regard to Dorsey's connection with Star Route matters, 2289-2292.
- 37 X. Letter of S. W. Dorsey to George Haycock, United States Senate Chamber, December 9, 1877; states before he receives this he will be confirmed; sends a bundle of bonds to be made for an intimate friend; "Under no circumstance allow anybody to know that I have written on this subject," 2367, 2368.
- 38 X. Envelope postmarked December 10, addressed to George Haycock, esq., Pine Bluff, Ark., 2368.
- 39 X, defense. Affidavit of M. C. Rerdell, sworn to July 13, 1882, denying the truth of certain statements affecting J. W. and S. W. Dorsey, J. W. Bosler, and Brady 2373, 2374.
- 40 X, defense. Newspaperclippings containing letter of M. C. Rerdell to editor of the Evening Star, December 27, 1882, denying the statement that he has ever met or conferred with Messrs. Merrick, Bliss, or Ker on the subject of the Star, Route cases, or anything else, 2534.
- 41 X, defense. Letter of M. C. Rerdell to L. P. Williamson, February 10, 1883, requesting him to ask Vaile to leave \$140 for Rerdell, 2536.
- 42 X. Defense. Newspaper clipping headed, "Rerdell and his co-defendants," referring to the possibility of Rerdell's appearing for the government, 2536.
- 43 X. Letter of M. C. Rerdell to J. W. Bosler, *letter-press copy of* May 22, —0, acknowledges receipt of letter inclosing \$500 for Steele to start West; states he has been subpoenaed by the Appropriation Committee "to bring all books and papers relating to star mail route contracts belonging to S. W. Dorsey"; "we all here" think the books should not be produced, for the reasons that they would show very large profits; that there are several entries giving D. credit for large cash payments made to John Smith and Sam'l Jones; that the committee will try to show that he had an interest in mail routes before last April. "Gen'l B. is much alarmed, and he and I had a long conversation to-day, during which he made several valuable suggestions which I shall follow," 2622.
- 44 X. Memorandum "Donnell, Lawson & Co. Deposited by S. W. Dorsey August 19, 1880, checks \$1,496.90," 2653.
- 45 X, defense. Telegram of Thomas J. Brady, to H. M. Vaile, August 20, 1878, asking what service of Miner, Peck, Dorsey, and Watts he expects to put in operation; the postmaster at the Dalles reports mails lying in office; this can not be permitted longer, 3389.
- 46 X. Letter of Brady to John A. Walsh: states he is in need of "Ginger," asking Walsh to loan him his "Chatt," for which he will give him his obligation and account to him for any profits; states that his means are in "Am. U. Tel.," the bonds and stock of which will give him \$120,000 or \$130,000; his telephone bonds already up his collateral; with buying newspapers, a mine, and running a lumber business he is a little cramped, and asking him to help him if he can, 3563-3564.
- 47 X. Envelope, addressed to "Mr. Jno. Walsh, present" (inclosing 46 X), 3564.
- 48 X. Note, "Rerdell, Please let Col. Hill have five dollars, S. W. D.," 3687.

Papers marked X relating to general testimony—Continued.

- 49 X, defense. Letter of M. C. Rerdell to S. W. Dorsey, July 5, 1882: at the time he started to put himself in accord with government, had no thought of being included in a prosecution or indictment; if he had, nothing could have changed his mind, anxious as he was to benefit Dorsey; the consequence was he listened to Bosler, and did what he will ever regret. Had he continued acting with the government his reputation would have been clear, and he, no doubt, would have been appointed to a good position; realizes that all Dorsey and Bosler desired was to use him, and when no longer needed he could go to the devil, 3733-3734.
- 50 X, defense. Check No. 130, drawn by S. W. Dorsey upon Middleton & Co., June 9, 1879, payable to A. Jones, or order, for \$400, 3739.
- 51 X, defense. Check No. 131, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to J. S. Taylor, or order, for \$1,500, 3739-3740.
- 52 X, defense. Check No. 144, drawn by S. W. Dorsey upon Middleton & Co., June 18, 1879, to Griswold and Scudder, or bearer, for \$200, 3740.
- 53 X, defense. Check No. 142, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to First Nat. Bank, Trinidad, or order, for \$150, 3740.
- 54 X, defense. Check No. 141, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to First Nat. Bank, Trinidad, or order, for \$200, 3740.
- 55 X, defense. Check No. 140, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to First Nat. Bank, Trinidad, or order, \$1,000, 3740.
- 56 X, defense. Check No. 132, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to H. Bassett, or order, \$23, 3740.
- 57 X, defense. Check No. 133, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to Brown and Manzanares, or order, \$180, 3741.
- 58 X, defense. Check No. 136, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to L. R. Bacon, or order, \$200, 3741.
- 59 X, defense. Check No. 134, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to R. Moore and Bennett, or order, \$500, 3741.
- 60 X, defense. Check No. 137, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to L. R. Bacon, or order, \$300, 3741.
- 61 X, defense. Check No. 139, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to D. L. Hoyt, or order, \$200, 3741.
- 62 X, defense. Check No. 138, drawn by S. W. Dorsey upon Middleton & Co., June 16, 1879, to E. J. Post, or order, \$250, 3742.
- 63 X, defense. Check No. 143, drawn by S. W. Dorsey upon Middleton & Co., June 18, 1879, to W. H. Bliss, or order, \$50, 3742.
- 64 X, defense. Check No. 501, drawn by S. W. Dorsey upon Middleton & Co., June 21, 1879, to order of M. C. Rerdell, \$100, 3742.
- 65 X, defense. Check No. 502, drawn by S. W. Dorsey upon Middleton & Co., June 21, 1879, to order of Dora E. Peck, \$400, 3742.
- 66 X, defense. Check No. 503, drawn by S. W. Dorsey upon Middleton & Co., June 22, 1879, to order of Mrs. E. Dorsey, \$50, 3742.
- 67 X, defense. Check No. 507, drawn by S. W. Dorsey upon Middleton & Co., June 27, 1879, to order of E. H. King, \$5, 3742.
- 68 X, defense. Check No. 506, drawn by S. W. Dorsey upon Middleton & Co., June 27, 1879, to order of M. C. Rerdell, \$100, 3742.
- 69 X, defense. Check No. 511, drawn by S. W. Dorsey upon Middleton & Co., June 27, 1879, to J. E. Reeside, \$170, 3743.
- 70 X, defense. Check No. 508, drawn by S. W. Dorsey upon Middleton & Co., June 27, 1879, to order of M. C. Rerdell, \$300, 3743.
- 71 X, defense. Check No. 114, drawn by S. W. Dorsey upon Middleton & Co., June 27, 1879, to order of Mrs. J. W. Dorsey, \$114, 3743.
- 72 X, defense. Check No. 504, drawn by S. W. Dorsey upon Middleton & Co., June 23, 1879, to order of Rerdell, \$50, 3743.
- 73 X, defense. Check No. 510, drawn by S. W. Dorsey upon Middleton & Co., June 27, 1879, to order of himself, \$500, 3743.
- 74 X, defense. Check No. 505, drawn by S. W. Dorsey upon Middleton & Co., June 23, 1879, to bearer, \$10, 3743.
- 75 X, defense. Check No. 509, drawn by S. W. Dorsey upon Middleton & Co., June 27, 1879, to order of M. C. Rerdell, \$7,500, 3743.
- 76 X, defense. Check No. 513, drawn by S. W. Dorsey upon Middleton & Co., June 30, 1879, to order of J. W. Steele, \$400, 3743.
- 77 X, defense. No. 258, drawn by S. W. Dorsey upon the German-American National bank, April 8, 1878, to John Miner, or order, \$50, indorsed by A. W. Moore, 3761.
- 78 X, defense. No. 261, drawn by S. W. Dorsey upon the German-American National bank April 8, 1878, to John R. Miner, or order, \$50, indorsed by A. W. Moore, 3761.

Papers marked X relating to general testimony—Continued.

- X. Defense. No. 260, drawn by S. W. Dorsey upon the German-American National bank, April 8, 1878, to John R. Miner, or order, \$50, indorsed by A. W. Moore, 3761.
- 80 X. Defense. No. 259, drawn by S. W. Dorsey on the German-American National bank, April 8, 1878, to John R. Miner, or order, \$50, indorsed by A. W. Moore, 3761.
- 81 X. Defense. Check No. 262, drawn by S. W. Dorsey on the German American National Bank, April 8, 1878, to John R. Miner or order, \$50; indorsed by A. W. Moore, 3761.
- 82 X. Defense. Check No. 383, drawn by S. W. Dorsey upon the German American National Bank, July 12, 1878, to A. W. Moore, \$250, 3763.
- 83 X. Defense. Letter of S. W. Dorsey to J. H. Clendening, United States Senate Chamber, December 23, 1877; has received his of the 18th instant; asked him to make the bonds as a favor to Boone; has shown his letter to Boone, who says he need not sign the certificate, only make out the bonds and have a notary's certificate attached; if he does not wish to do it, Boone says to send them to Samuel B. Adams, at Little Rock; has shown his letter to the postmaster here, who says that he certifies these bonds by the ten thousand, without knowing a thing of either the bidder or the bondsmen; has said this to show him that men that hold as responsible places as he does do not agree with him; that in certifying to these bonds they are committing a crime, 3865, 3866.
- 84 X. Letter of S. W. Dorsey for John M. Peck and John W. Dorsey to Brady, March 4, 1879, being empowered to act for Peck and Dorsey, enters his protest against the acknowledgement of any subcontract, or power of attorney, filed in the department in the name of H. M. Vaile, as they were made and filed without the knowledge and consent of said Peck and Dorsey, and demands that they be cancelled on the first day of April, and that no other subcontracts shall be accepted upon any mail routes in the name of said Peck and Dorsey, except those in Indian Territory, 3892.
- 85 X. Defense. Copartnership agreement between Vaile, Miner, Peck, and John W. Dorsey, dated August 16, 1878: 1st. Agreement is for the purpose of managing all the routes awarded to him, Peck and Dorsey. 2d. Vaile is made treasurer, collect, pay, and after paying subcontractors and expenses, to divide profits. 3d. Miner is made secretary. 4th. Vaile to have one-third, Miner one-sixth, Peck one-sixth, and J. W. Dorsey one-third on certain routes, and Vaile one-third, Miner one-third, and Peck one-third on certain routes. 5th. Moneys theretofore advanced to be repaid. 6th. Subcontracts between Miner and Vaile, on 32020 and 32021 are bona fide, subcontract on 32018 is to stand, subcontracts on 35051, 35053, 44155, and the extra subcontract on 32018 are made to enable the company to discharge their obligations for the third-quarter, 1878, 4013, 4014.
- 86 X. Defense. Letter of John R. Miner to J. W. Dorsey, Washington, D. C., July 29, 1878. The Second Assistant Postmaster-General advises them that certain routes have failed, and unless the postmaster at the head of the route reports on August 15 that they have begun service and paid for the temporary service, they will be declared failing contractors and the routes re-let at their expense, 4087, 4088.
- 87 X. Defense. Memorandum of J. W. Dorsey, in account with S. W. Dorsey, May, June, and July, showing a debit to J. W. Dorsey for cash, in amount \$1,044, and a credit by traveling expenses and salary of \$904, 4098.
- 88 X. Letter of J. W. Dorsey to Rerdell, December 9, 1882. Thinks Rerdell's reasons for desiring an immediate trial are not the real ones; if he knows of his doing anything intentional to injure the defendants in the coming trial, he will prosecute him for forgery and another crime which he will not mention, 4150.
- 89 X. Envelope, post-marked "Baltimore, Md., December 9, 9 p. m.," addressed to "M. C. Rerdell, esq., box 706, Washington, D. C.," 4150.
- 90 X. Agreement between Vaile, Miner & Co., by John R. Miner and M. C. Rerdell, dated Washington, D. C., February 8, 1878, that should route 38113 be increased to three trips and expedition ordered at an increased compensation, at 150 per cent., Rerdell is to have \$2,000 per year from said route; Rerdell agrees to devote his time to the interest of Vaile, Miner & Co., at a salary at \$1,000, 4288.
- 91 X. Defense. Form of mail contract in use by the Post-Office Department from 1860 to 1869, inclusive, printed in full, 4335-4337.
- 92 X. Defense. Form of mail contract used from 1870 to 1879, inclusive, 4337-4340.
- 93 X. Defense. Form of mail contract used from 1880 to 188—, 4340-4343.
- 94 X. Memorandum to charge S. W. D., and credit bills payable. "You will find this entered on page 52 of the journal, except interest and note," 4389.

Witnesses for the prosecution.

- Adams, John G., county clerk, Rawlins, Wyo. (38113), 2006-2008.
 Barnes, Wilbur A., Wickes, Mont., mail carrier (35051), 2171-2173.
 Bergman, Jacob, San Diego County, subcontractor (46132), 1816-1820, 1842-1845.
 Bergner, Wm. C., Trinidad, Colo., subcontractor (38140), 1050-1056.
 Boone, Albert E., mail contractor, 1473-1597, 2684-2702, 2704-2710.
 Bosler, James W., Carlisle, Pa., 2611-2613.
 Brewer, George J., corresponding clerk, contract office, detail of business, 515-518, 528, routes (34149), 555-564, 581-582, 751-752, (35015), 1879-1881, 1928-1933 (35051), 2082-2083, 2679-2681.
 Brown, James F., Jordan Valley, Oreg., subcontractor, (44160), 1302-1310.
 Burbank, D. N., chief of division, Sixth Auditor's Office, 2713-2717, 2723-2724.
 Cable, Isaac, Bismarck, Dak., teamster (35051), 2666-2672.
 Callegahan, John T., inspection clerk, Post-Office Department, routes (38145), 1192-1197; (38152), 1763-1765; (38156), 1893-1894; (40104), 1614-1619, 1655; (44140), 2094-2102, 2120, 2133-2135.
 Calvert, George A., janitor, Corcoran Building, 2672-2674.
 Chamberlin, George B., clerk, Sixth Auditor's Office, 2722-2723.
 Carey, John, Grant County, Oregon, subcontractor (44160), 1310-1316.
 Cole, John W., Miles City, Mont., mail carrier (35051), 2182-2188.
 Cornell, Clarence W., Durango Colo., mail carrier (38156), 1875-1879.
 Cowne, W. B., Mitchell, Oreg., mail carrier (44155), 1754-1757.
 Cushman, Mrs. Alice, Washington, D. C., 2633-2635.
 Dalton, George B. Meeker, Colo., subcontractor (38113), 2077-2081.
 Davis, Madison, chief clerk, Third Assistant Postmaster-General's Office, 754-755.
 Davis, John C., Rawlins, Wyo., agent stage line (38113), 1989-1990.
 DeBusk, S. W., postmaster, Raton, Colo. (38140), 1027-1028, 1035-1050, 1061-1068.
 Donnely, James W., clerk General Land Office, 2636-2643.
 Dunbar, A. G., postmaster, Ouray, Colo. (38152), 1766-1771.
 Erwin, Charles H., assistant superintendent Western Union Telegraph Company, New York, 2613-2615.
 Falconer, John H., statistician Post-Office Department, 467-471.
 Farish, William B., Pueblo, Colo., mail-carrier (38135), 834-836.
 Fisk, John M., Canyon City, Oreg., mail-carrier (44155), 1678-1699, 1759.
 France, D. Walker, clerk post-office Rawlins, Wyo. (38113), 2058-2069.
 French, C. H., Loup City, Nebr., subcontractor (34149), 597-615, 646-658, 747-748.
 Gibbs, Charles E., cashier, Ebbitt House, 2643-2649.
 Gooch, James A., postmaster, Rosita, Colo. (38134), 894-902.
 Gould, A. M., clerk, Post-Office Department, 2721-2722.
 Grimes, R. M., postmaster, Kearney, Nebr. (34149), 609-704, 759-741, 752-754, 808, 812, 822-823.
 Hall, Edwin, postmaster, Canyon City (44140), 1733; (44155), 1723-1750.
 Haycock, George, postmaster, Pine Bluff, Ark., 2367-2368.
 Hayes, J. C., San Luis Rey, Cal., subcontractor (46132), 1820-1842, 1873.
 Higgason, William H., Greenhorn, Colo., subcontractor (38135), 839-840.
 Hooper, Chas. H., clerk, banking house, Donnell, Lanson & Co., New York, 2652.
 Howard, H. N., Post-Office Department (34149), 806-808.
 Hull, Alvah A., subcontractor (38134), 871-881.
 James, Thomas L., ex-Postmaster-General, 2029-2042.
 Jaramillo, Pedro J., El Rito, N. Mex., subcontract (38145), 1163-1177; 1252-1254.
 Joseph Anthony, P. M., Ojo Caliente, N. Mex., subcontractor (38145), 1097-1163; 1254-1255.
 Johnson, Nephi, Johnson, Utah, subcontractor (41119) 966-1009; (44160), 1256-1258.
 Johnson, W. D., merchant, Kanab, Utah (41119) 1009-1014; (44160), 1258-1260.
 Kirby, Thos. B., clerk Post-Office Department, 464-467, 528.
 Krider, W. M., P. M., Mineral Park, Ariz (40104), 1597-1605.
 Laird, Chas. H., clerk finance division, Post-Office Department (34149) 722-723; (41119), 1018; (38134), 902; (38150), 1794.
 Lambert, Howard T., Stillwater, Mont., mail-carrier (35051), 2173-2182.
 Lawrenson, James, notary public, Post-Office Department, 464.
 Leech, Wm. A., subcontractor (35015), 1909-1917.
 Loundsberry, C. A., P. M., Bismarck, Dak. (35051), 2188-2202, 2681-2683.
 McBean, Frank, Canyon City, Oreg., subcontractor (44160), 1316-1326, 1605-1614; (44155), 1702-1704.
 McCormick, James, P. M., Redding, Cal. (46247), 1289-1295.
 McDaniel, J. H., Greenhorn, Colo., subcontractor (38135), 837-839.
 McLellan, Coll, Glendive, Mont., mail-carrier (35051), 2655-2665.
 McVeagh, Wayne, ex-Attorney-General, 2010-2029.

Witnesses for the prosecution—Continued.

- Major, John Newton, Redding, Cal., subcontractor (46247), 1265-1288, 1431-1451, 1677-1678.
- Mark, Cyrus, assistant postmaster, Pueblo, Colo. (38135), 847-849; (38134), 924-933.
- Masterson, Joseph P., Canyon City, Oreg., mail-carrier (44155), 1699-1702.
- Millie, Alexander, Chamberlain, Dak., mail-carrier (35015), 1917-1924.
- Moore, A. W., Missoula, Mont., agent, general testimony, 1354-1431, 1451.
- Morgan, Chas. W., journal clerk, Post-Office Department, 476-487, 492-493.
- Nichols, Adelbert P., Maple Grove, Dak., mail-carrier (35015), 1924-1928.
- Nightingale, Thos. S., attorney at law, Loup City, Nebr. (34149), 698-699.
- Olcott, John H., corresponding clerk, contract office (38145), 1203-1210.
- Pennel, Joseph, Miles City, Mont., contractor (35051), 2154-2171.
- Perkins, Charles F., Dixon, Wyo., subcontractor (38113), 1990-2005, 2071, 2072.
- Pierce, Clark S., Canyon City, Oreg., mail-carrier (44155), 1752-1754.
- Piper, Jahzeel S., postmaster, Agate, Colo. (38135), 841-847.
- Powers, A. S., Eugene City, Oreg., subcontractor (44140), 1342-1353, 1451-1473.
- Powers, Mrs. Rachel H., assistant postmaster, Mackenzie Bridge, Oreg. (44140), 2085-2093.
- Prior, John H., clerk, contract office, (35015), 1933-1936.
- Rankin, James G., sheriff, Rawlins, Wyo., (38113), 2008-2009, 2042-2043, 2054-2058.
- Rerdell, Montfort C., one of the defendants, 2212-2351, 2361-2611, 2616-2633.
- Rerdell, Mrs. Mary C., wife of M. C. Rerdell, 2635-2636.
- Schutz, Emil, The Dalles, Oreg., stock-keeper, (44160), 1722-1723; (44155), 1704, 1724.
- Sears, George, postmaster, Greenhorn, Colo., (38135), 826-834.
- Shaw, Calvin G., postmaster, Vermillion, Dak., (35015), 1928, 1936-1942.
- Sleman, John B. chief pay division, detail of business, 403-499; Miner and Rerdell's visits to Auditor's office, 518-521; routes (34149), 704-709, 715; (35015), 1903; (35051), 2082; (38113), 2082; (38134), 903-904; (38135), 853, 855, 871; (38140), 1056; (38145), 1154-1155, (38150), 1763; (38152), 1763; (38156), 1903; (40104), 1662; (40113), 1816; (41119), 1009; (44140) 1350; (44155), 1350; (44160), 1326-1328; (46132), 1816; (46247), 1297.
- Smith, George C., att'y at law, Rawlins, Wyo., (38113), 1965-1989.
- Smith, James T., chief book-keepers' division, Sixth Auditor's office, 2717-2721, 2723.
- Snyder, Frank M., Vermillion, Dak., mail-carrier, (35015), 1946.
- Spellman, John, Western Union Telegraph Company, New York City, 2615-2616.
- Steele Thos., stock-raiser, Cochise County, Ariz., (40113), 1802-1808, 1810.
- Steinegar, Frederick, Durango, Colo., subcontractor, (38156), 1862-1874.
- Sweeny, George M., chief inspection division contract office, detail of business, 499-515. Routes (38113), 1944-1946; (38134), 863-865; (38135), 755-757; (38140), 1020-1024; (38145), 1068-1074, 1179-1180; (38150), 1761-1763; (38152), 1761, 1776-1778, 1783; (38156), 1846-1849; (40104), 1625-1627; (40113), 759-760, 762-763; (41119), 942-947; (44140), 1219-1220, 1223-1227; (44155), 1220-1221, 1223-1227, (44160), 1223-1227; (46132), 1760-1763; (46247), 1218-1219, 1223-1227.
- Swift, Wilbur H., Miles City, Mont., mail-carrier, (35051), 2653-2655.
- Taylor, Eugene, Ouray, Colo., subcontractor, (38113), 2072-2077.
- Taylor, Thos. S., assistant journal clerk, Post-Office Department.
- Trew, John M., postmaster Animas City, Colo., (38156), 1881-1893 (38145).
- Tullock, Seymour W., clerk city post-office, 471.
- Turpin, Wm. B., clerk city post-office, 472-474.
- Tuttle, Frank A., subcontractor, (38134), 881-890.
- Walsh, John A., New York City, 2203-2212.
- Walters, J. W., postmaster, Greenwood, Colo., (38134), 904-910, 919-921.
- Wilson, Amos M., journal clerk, Post-Office Department, 487-492.
- Withers, Henry C., Pueblo, Colo., subcontractor, (38135), 825-826, 837.
- Woodward, P. Henry, post-office inspector, routes (34149), 582-589; (44160), 2675-2676.
- Wright, Caldwell, Mineral Park, Ariz. (40104), 1619-1625, 1629.

Witnesses for the defense.

- Andrews, Chase, mail contractor, Washington, D. C., 3633, 3634.
- Belford, James B., M. C., Colorado, 2781, 2782, 2784, 2786-2791.
- Belts, Wm. H., Washington, D. C., 4343-4345.
- Blackmar, Charles P., clerk contract office, testimony of, 5068-5079.
- Bowen, Thomas M., U. S. Senator, Colorado, 3125-3128.
- Brady, Thomas J., one of the defendants, 3380-3484, 3538-3566; 3578-3606.
- Dorris, John N., clerk contract office, 4330-4335.
- Dorsey John W., one of the defendants, 4082-4156.
- Dorsey, Stephen W., one of the defendants, 3705-3999.
- Eaton, Ray P., ex-assistant superintendent railway mail service, 3327-3329; 3332-3339.
- Gamble, James, 145 Broadway, New York City, 3664-3667.

Witnesses for the defense—Continued.

Hill, Ezra N., Washington, D. C., 3667-3694.
 Kellogg, Wilbur F., Washington, D. C., 3634-3660.
 Maginnis, Martin, M. C., Montana, 3240-3249.
 Miles, Gen. Nelson A., 2833-2845.
 Miner, John R., one of the defendants, 4157-4292; 4302-4304.
 Morgan, C. W., clerk Post-Office Department, 4322-4330.
 Mullins, Robert F., 145 Broadway, New York City, 3629-3632.
 Norton, Hannibal D., ex-clerk finance division Post-Office Department, 2848-2850.
 Olcott, John H., clerk contract office, 2825, 2829, 3273, 4292-4293.
 Page, Horace F., M. C. California, 3660-3664.
 Pryor, John H., clerk Post-Office Department, 4310-4311.
 Sherman, W. T., General, 3606-3610.
 Spangler, Walter, clerk, Inspection Division, 3339-3341, 3344-3345, 3352.
 Stone, Geo. F., clerk, Inspection Division, 3314-3317, 3324-3326.
 Sweeney, George M., clerk, Contract Office, 2850-2852, 2857-2859, 2908, 2929, 3077, 3169-3170, 3312-3314.
 Teller, Henry M., Secretary of the Interior, 2813-2825.
 Torrey, Theodore W., Boreel Building, New York City, 3611-3629.
 Turner, Wm. H., acquitted at former trial, 3353-3355, 3374, 3379.
 Vaile, Harvey M., one of the defendants, 4000-4082.
 Waugh, James E., Washington, D. C., 4304.

For the prosecution in rebuttal.

Atkinson, Henry L., Western Union Telegraph Company, New York City, 4357-4358.
 Barber, Joseph Carman, New York City, 4358-4361.
 Bissell, J. B., Leadville, Colorado, testimony of, 4428-4437.
 Boone, A. E., mail contractor, testimony of, 4422-4428.
 Brown, Thomas, Western Union Telegraph Company, New York City, 4348-4349.
 Casey, Patrick J., Western Union Telegraph Company, New York City, 4347-4348, 4351-4352.
 Clare, Miss Sarah, Western Union Telegraph Company, New York City, 4350-4351.
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- Requiring defendants to exhaust their right of peremptory challenge as to a particular juror before proceeding to examine the next, 151.
- Refusing peremptory challenge to one of the defendants, the others declining to join in the challenge, 167.
- Allowing the Government to use its peremptory challenges as to the whole jury, 169.
- Allowing the Government to challenge the jurors for cause, they having failed to ask him any questions at the time he was accepted by the defense, 170.
- Refusing to excuse a juror upon his statement that he does not know the English language "good enough to detect all that is said," 178.
- Admitting the original contracts covered by indictment in evidence, 540-542.
- That any fact tending to show association among the defendants in regard to the subject-matter of the indictment is competent, whether it preceded the statute of limitations or followed it, for the reason that the illegal conspiracy may have commenced before that period and been completed afterwards, 1479.
- Admitting blank proposal and letter of Senator Dorsey to show the association of Senator Dorsey with the other defendants, 1498-1499.
- Overruling motion to strike out all evidence as to blank proposals, for the reason that none of the contracts could stand in S. W. Dorsey's name, and at the time of the bidding it was impossible to say who was to have the contracts, evidence to show that there was a general combination at the bidding is competent, 1487-1488.
- Admitting petition (2 A) to show a combination, but not as an overt act, 641-645.
- That it is competent to show a combination between living and dead parties; also to show that a combination was formed in 1878, provided that the conspiracy then formed can be shown to have continued after May 20, 1879, 599, 600.
- That there is sufficient evidence before the court to submit the question of conspiracy to the jury for them to pass upon as a fact, 2052-2053.
- That where the indictment charges the object of a conspiracy to be the commission of a crime, the crime or the means need not be specifically described, 1156-1157.
- That in an indictment to commit a fraud against the United States it is not necessary to specify the particulars, as all frauds against the United States are criminal, 777.
- That proof of overt acts will not be admitted behind the period of limitations, but acts, although in one view overt acts, may be admitted to prove a combination, 775.
- An overt act may have been committed after a paper was filed, 781.
- That it is necessary for one or more overt acts to be proved, 777.
- That as the indictment charges that the conspiracy was to be carried out, first, by means of forged petitions; second, by the use of fictitious names; third, by the use of the real names of persons not residing upon the route, that the prosecution may prove any one petition to be fraudulent in either one of these respects, 1731.
- Overruling motion to exclude letter of Rerdell, dated April 12, 1879 (22 D, 981), asking Johnson to get up petitions upon the ground that, although the efforts of a contractor to get up petitions, if they are fair, are no evidence of fraud, yet it is competent for the prosecution to show in what manner these petitions, that seem to be spontaneous applications, were inspired, who inspired them, and who suggested them, for the purpose of showing that there was an understanding and combination, 986-987.
- That the mere use by one man of the name of another in signing a petition, is not evidence against the defendants, unless it be further proved that it was fraudulently used, or that there was no authority to use it, 1732.
- Excluding papers the signatures to which are admitted to be genuine, offered by the defense on cross-examination simply for the purpose of allowing the jury to compare the signatures with those already in evidence, the genuineness of which is disputed by the prosecution, 1744, 1745.
- Excluding copy of muster-roll on the ground that it is a report made by a third party and is in regard to facts with which none of the defendants had anything to do, as the original is not competent evidence it is also excluded, 2360, 2361.

Decisions of the court—Continued.

- Excluding petition (15 D, 956) of postmasters for extension of schedule, filed March 13, 1880, upon the ground that it was filed long after the contract had been entered into, and the act complained of had been done, 964-965.
- Admitting letters and petitions, asking for increase to six trips, and upon which no order was made, which application was refused by Brady to one of the contractors who was a member of the alleged conspiracy, on the ground that it may throw some light on the motives of the Second Assistant, 3264, 3265.
- Refusing to admit petitions and papers offered by the defense, that they were filed in the Department subsequent to the date of the order as set out in the indictment, and that no action was based upon them, 3257, 3258.
- Requiring the prosecution in proving an order to put in all papers contained in the jacket upon which the order is indorsed, as also any papers shown to have passed through Brady's hands before he made the order, 571, 572, 591.
- Refusing to compel prosecution to show papers to defense before they are offered in evidence, 572, 595, 596.
- That any evidence tending to show impropriety on the part of the Second Assistant Postmaster-General would tend to maintain the issue on the part of the Government, 925.
- That the jury are to draw the line between justifiable extravagance and fraud on the part of a public officer, 925.
- Referring to a jacket in which papers referred to were not produced, states it will presume that the papers inclosed justified the order, 919.
- Excluding letter of Nephi D. Smithson (144 D, 954) stating that expedition is unnecessary, received December 16, 1879, on account of its date, and, that if there was impropriety in the order, it will have to be made out by other and different notice to Brady before the contract was entered into, 965.
- Admitting evidence to show the fraudulent character of an order not set out in the indictment as an overt act under the general charge of means to be used, 1149, 1150.
- That the propriety of an order for expedition is an important question, and that evidence is admissible to show that no public advantage was gained by it, 2065.
- Admitting retroactive order of Brady to allow pay for Pagosa Springs, 1190, 1191.
- That if Brady imposed fines and remitted them it is the same as if he had imposed no fines, 1171-1172.
- Excluding examination of Frank McBean, as to statements made to him by A. W. Moore, in regard to the means of bringing about expedition and increase of service, on the ground that they were not within the proved power of the agency, and that the authority of an agent to bind his principal under a general authority does not extend to criminal cases where the representations which were made by the agent, at the time of the making of the contract, involved a criminal charge against his principal, 1609.
- Admitting testimony of J. N. Major as to conversations with A. W. Moore, 1435, 1436.
- Refusing to admit parol evidence to prove contents of a lost letter, that proof of its loss is not sufficiently established, 821, 822.
- Admitting secondary evidence to prove contents of lost letter, signed by Brady, 1938.
- That the admissions of a defendant that a written paper has been destroyed is not evidence without previous notice to produce, 1515-1516.
- That it is competent to prove by secondary evidence the contents of papers which have been proved to be in the hands of the defense after proper notice to produce has been given, and that such notice need not be given before the commencement of the trial, 2310-2316.
- That what is paid to a sub-subcontractor is *res inter alios acta*, and that that kind of testimony should be stricken out of routes 38140 and 38135, 1038.
- Admitting evidence to show that the mail was carried by the subcontractor before the order for expedition in less time than it was expedited to, 1272-1274.
- Refusing the request of the foreman, that the jury be furnished with a copy of the printed record of the proceedings, 891-892.
- That the admission of one of the defendants, made after the alleged conspiracy had closed, is only admissible in evidence against the party making it, and that he can only speak of the acts of his co-defendants where his own conduct would not be intelligible without speaking of theirs, 2013.
- That the court will take judicial notice that the modern way of taking copies of letters is by letter-press copies which are bound together, and that although a notice may not specify every letter in the book, yet, when it specifies the book, the book ought to be produced in court, and that the question as to whether any particular copy of a letter which is contained in that book is admissible in evidence can then be determined 2266-2267.

Decisions of the court.—Continued.

Overruling motion to exclude testimony of Rerdell, 2330-2331.

That it is competent in anticipation of a cross-examination for the Government to ask their own witness about a paper which he has signed, and which is in conflict with the whole of the evidence he has given in the case, in order to get his explanation in regard to it, and that the evidence is also competent to show the part which one of the defendants is said to have taken in the preparation of that paper and his conduct in his efforts to screen himself from prosecution, 2303-2305.

That the defendants having declined to produce the stub-books upon notice, they may treat the stub-books merely as a basis of cross-examination as to the memory or capacity of the witness, but they will be bound by his answers, and cannot contradict him by producing the stub-books afterwards, because they are examining him upon collateral matter; but if they cross-examine the witness upon a written paper as a material matter in the case, they must produce the paper and let the witness see it, 2396-2399.

Excluding question asked witness (Rerdell) as to statements made to one of the counsel for the defendants, that to permit what passed between the counsel of one of the defendants and his client in confidence to be proved on the trial, because this counsel was not his particular counsel in the case, would be destroying the rule in joint cases, such as conspiracy and the like, 2453-2454.

Excluding offer of the defense to prove by witness that he never received any money or check from one of the defendants on the ground that the evidence sought to be contradicted was affirmative evidence brought out by defense on cross-examination, which, if contradicted at all, should be contradicted by the best evidence in their possession, and that notice having been given to produce the stub of the check-book, and the defense having declined to produce the book or inform the court that no such book existed, the court is bound to presume the book is in their possession, as to the offer to contradict, and as far as the offer does not relate to the stub it is an offer to contradict a mere inference of a witness, 2798-2801.

Excluding question asked witness (Turner) as to whether S. W. Dorsey or any of the defendants had ever paid Turner any money or mining stock to influence his official action as to any of the routes in the indictment, on the ground that the witness is not a party to this proceeding, and has been acquitted by the verdict of the jury, that Rerdell's confession to MacVeagh, which it is proposed to contradict, was a narrative of a past transaction, and only admitted as against himself, 3272-3273.

That strictly the law which provides that the failure of a defendant to request to become a witness on his own behalf shall not create any presumption against him, only applies to remarks made by counsel after the evidence is closed, and it appears the defendant has made no request to be heard, 3371.

Excluding question as to whether witness had any conference or arrangement with any of the defendants as to the preparation of the advertisement as there is no averment in the indictment on the subject, and no evidence given by the prosecution in regard to it, 3332.

Excluding question asked witness (Brady) on cross-examination in regard to two postal drafts given upon a route not included in the indictment, with an offer to show that the drafts, together with a certain sum of money were placed upon witness's desk for a corrupt purpose, on the ground that the evidence offered does not tend to embrace more than one defendant, and he cannot be tried for an individual crime under this indictment, 3536-3538.

Admitting question asked on cross-examination as to the delivery of certain postal drafts to the witness (Brady) for the purpose of affecting the credibility or memory of the witness, although it is not a material matter and there is a direct conflict between the two witnesses in regard to it, 3578.

Excluding evidence offered for the purpose of showing what Rerdell may have said on a certain occasion about his capacity to write, and about what he might have written on a piece of paper, which is not produced; that the evidence is not offered for the purpose of showing that Rerdell made the memorandum (31 X). but that he had the capacity and opportunity to do so, 3677.

Excluding question asked witness (S. W. Dorsey), after having been sworn on his voir dire as to whether he considers an oath binding on his conscience with a view to a state of future rewards and punishments, that under the provision of the act of Congress March 16, 1878, that if a witness is a defendant no other competency is required, 3701.

Admitting question asked defendant, S. W. Dorsey, on direct examination as to the meaning of a certain clause in his letter to Clendening that when a law allows a defendant to be a witness in his own behalf, he is a man that can completely prove his own motive, and that the deficiency of the law in the

Decisions of the court—Continued.

use of other witnesses is supplied in that, that the witness is not asked to interpret the language of the letter, or explain any of its terms or phrases, and if his motive in writing the letter was innocent and he is able to speak, in that respect he is competent under the law to do so, 3750.

Excluding letter purporting to be signed by John W. Dorsey that the rule of evidence has never been extended so that a paper may be produced without any evidence of its genuineness being given, and on that basis alone, the jury allowed to compare it with other papers admitted to be genuine, and so reach a conclusion as to the paper in question, 3831-3833.

That the notice to produce letter-press copy-books containing letters of a certain date but not designating any letters that seem to be relevant to this case is too vague, 3904-3905.

That section 859 R. S., providing that no testimony given by a witness before either House of Congress shall be used as evidence in any criminal proceeding against him in any court, does not apply to case of a defendant who becomes a witness; that when defendant takes the stand he has none of the privileges that belong to a defendant; he stands there as a witness, and is liable to the same extent of cross-examination as any other witness, 4241.

Excluding tabular statement including the nineteen routes, the names of the contractors, the original contract price, and the amount of increase and expedition contained in report of Brady to an investigating committee of Congress that the issue in this case is whether the allowances were made from corrupt motives and in pursuance of a conspiracy, and that that table, if in evidence, would throw no light upon the subject, 4316.

That in putting in the evidence in chief if the party who calls a witness is not satisfied with the evidence he gives, he is at liberty to call some other witness to prove a different state of facts, but he cannot wait and allow the other side to disprove the case as made by that witness, and after that has been disproved call in a different witness in rebuttal, for the purpose of showing that the first witness was mistaken in material matter, 4378.

Excluding evidence offered by the Government in rebuttal, on the ground that the prosecution in a criminal suit is not at liberty to content itself with a *prima facie* case, and then if that case happens to be met by the defense, give other evidence of the same character, as the evidence in chief for the purpose of strengthening the *prima facie* case, and also on the further ground that the witness by whom the existence of the letter is sought to be proved did not know the party's handwriting or his signature, 4393-4394.

Excluding evidence offered in rebuttal to prove contents of telegrams sent by Dorsey to Rerdell, on the ground that the counsel for the Government not having laid the proper foundation, the evidence is not offered for the purpose of contradicting Dorsey, but to strengthen the case made in chief by the Government, and such evidence is not to be received; also, that the dispatches sent by Dorsey might not have been the same dispatches which Rerdell received, or which he read to James; and further, if the dispatch itself has been destroyed, and the party is not able to prove the contents, that is a misfortune, and they cannot manufacture in courts rules of evidence to supply such defects, 4410-4413.

That the mere fact that there is a contradiction of testimony between two witnesses, one on one side and the other on the other, is not sufficient reason for corroborating evidence in rebuttal, in favor of the witness for the prosecution, and also that the evidence now offered is evidence that ought to have been given in chief and the offer is therefore overruled, 4417.

Striking out evidence of Boone commencing on page 1591 as to S. W. Dorsey's having signed Peck's name to temporary contracts, 4427; overruling offer of evidence in rebuttal as to money transactions between Walsh and Brady that it is offered to meet the denial of Brady under oath relating to a matter collateral to the case and that even if Brady had testified untruly he cannot be contradicted because of its collateral character, 4445-4446.

Declaration, Rerdell vs. Vaile and Miner (28 X), 2244-2245; (Rerdell), 2243, 2246-2247 Vaile, 4025-4026, 4041.

Dillon, Sidney, letter of, to Brady, received July 21, 1879, asking daily mail between Pioche and Prescott; indorsed, "Turner, make up case, Pioche to Mineral Park" (23 K), 1641; (Brady), 3547.

Distance circulars, route 35015, (6 R), 1902; route 35051 (211 T, defense), 3303; route 38140 (11 E), 1032; route 38145 (105 F), 1256; (463 F, defense), 3279-3280; (465 F, defense), 3283; route 38156, (17 Q), 1859; (Trew), 1881, 1898.

Donahoe, W., affidavit of, as to failures (67 T, defense), 2870.

Donnell, Lawson and Co., warrants in favor of (42 G), 1299; (85 F), 1212.

Donnelly, James W., clerk General Land Office—

Testimony of, for the prosecution, 2636-2643 ; in rebuttal, 4378-4388.

As to the copies he made of the journal and ledger for Rerdell, 2636-2637 ; accounts contained in the books, 2637 ; accounts transferred to profit and loss, 2638 ; where he bought the books, 2638 ; his pay for keeping the books, 2639 ; identifies foot-note to paper (94 X, 4389) as in his handwriting, 4384-4385 ; this paper was a transcript of the entry in the books, 4385.

Dorris, John N., testimony of, for the defense, 4330-4335.

Identifies forms of contracts used by the Post-Office Department since 1860, 4334-4335.

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Affidavit of, as to the interest of J. W. Bosler in route 40104, 100 K, 1661.

Assignment of, to Albert E. Boone of his interest in certain mail contracts (22 X), 1562.

Copartnership agreements between, and Vaile, Miner, and Peck (85 X, defense), 4013-4014, (Vaile) 4013, 4014, 4044, 4056, 4058, 4059, and A. E. Boone (21 X), 1561, (John W. Dorsey) 4085, (Miner) 4060, 4061.

Contracts of, with the United States (1 R), 547, 1899 ; (1 S), 547-1952 ; (1 F), 547, 1074 ; (1 M), 547, 1766 ; (1 Q), 547-548, 1854 ; (2 K), 548, 1629 ; (1 O), 548, 1796.

Drafts drawn by, on the Sixth Auditor in favor of—

Austin, S. F. (38 Q), 1948, (71 F), 1210-1211.

Brown, A. H. (14 M), 1,776 ;

Bosler, J. W. (50 S), 2085 ; (95 F), 1213 ; (98 F, 101 F, and 104 F), 1214 ; (43 Q), 1951 ; (94 K and 95 K), 1660 ; (27 O), 1852.

Dorsey, S. W. (48 S and 49 S), 2085 ; (81 F, 84 F, 87 F, and 90 F), 1212-1213 ; (39 Q, 40 Q, and 42 Q), 1948, 1951 ; (91 K and 93 K), 1660 ; (23 O to 26 O), 1851, 1852.

Emporia National Bank (92 K), 1660.

Rerdell, M. C., (13 M), 1775-1776 ; (97 K), 1660.

Vaile, H. M. (17 R to 23 R), 1947 ; (46 S and 47 S), 2085 ; (76 F), 1211 ; (7 M, 8 M, 10 M, and 12 M) 1775 ; (20 O and 22 O), 1851 ; (87 K 89 ; K, and 90 K), 1659.

Letters of—

to Brady, November 26, 1878, proposing to carry the mail 3 trips, 60 hour schedule (13 K), 1634 ; (Boone), 2697, 2710 ; (Rerdell), 2343, April 14, 1879, inclosing proposition for expedited schedule (21 F), 1086, 1087, (Boone), 2693 ; (Rerdell), 2337.

April 14, 1879, inclosing proposition to carry the mail on an expedited schedule (26 S), 1960 ; Boone, 2702 (Rerdell), 2350 ; (Perkins), 1993, 1996.

April 23, 1879, inclosing statement of the number of men and animals based on a schedule of 50 hours (19 F), 1085 ; (Boone), 2693 ; (Rerdell) 2337.

April 26, 1879, has not put the number of men and animals necessary as high as he ought to (30 S), 1963 ; (Boone), 2702 ; (Rerdell), 2350.

April 28, 1879, inclosing proposition for expedited schedule (5 E), 1029 ; (Boone), 2691 ; (Rerdell), 2336 ; (Brady), 3453.

May 5, 1879, inclosing proposition to carry the mail on expedited schedule, (5 Q), 1855 ; (Boone), 2700.

May 5, 1879, requesting change of address, care of M. C. Rerdell, box 706 (20 K), 1640 ; (Boone), 2697 ; (Rerdell), 2344.

May 5, 1879, inclosing proposition for an expedited schedule (3 C), 866 ; (Boone), 2687 ; (Rerdell), 2333.

May 5, 1879, requesting change of address to care M. C. Rerdell, box 706 (4 S), 1952 ; (Boone), 2700 ; (Rerdell), 2349.

May 7, 1879, inclosing proposition for increased service on a reduced schedule (6 O), 1797 ; (Boone) 2699 ; (Rerdell), 2345.

May 10, 1879, inclosing two petitions for increased service (7 O), 1798 ; (Boone), 2699 ; (Rerdell), 2345.

May 23, 1879, inclosing petition for increased service (5 O), 1797 ; (Boone), 2698-2699 ; (Rerdell), 2345.

January 7, 1880, requesting withdrawal of subcontract of S. W. Dorsey (23 Q), 1861 ; (Rerdell), 2348.

January 12, 1880, inclosing statements and affidavits relative to failures (32 Q), 1895 ; (Boone), 2700 ; (Rerdell), 2348.

August 16, 1880, asking remission of deductions (31 Q), 1895 ; (Rerdell), 2348.

August 16, 1880, with inclosures asking remission of deductions (65 F), 1198 ; (Boone), 2695 ; (Rerdell), 2338.

to S. W. Dorsey, Bismarck, Dak., Dec. 25, 1878, inclosing blank drafts for instructions ; acknowledges S. W. D.'s letter of the 9th ; is glad Mr. V. has bought out, and has no doubt that that route alone will pay him \$100,000 clear ; thanks S. W. D. for his offer (26 X), 2239 ; (Boone), 2705 ; (S. W. Dorsey), 3885-3887 ; (John W. Dorsey), 4131-4133.

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- to Nephi Johnson, July 9, 1879, refers to an error in subcontract (19 D), 973-97; (Rerdell), 2335; (Nephi Johnson), 973.
- to J. M. McGrew, Aug. 3, 1880, requesting that the remissions be paid to him, he having advanced that amount to subcontractor (struck out), 1948-1949.
- to M. C. Rerdell, Washington, D. C., Sept. 27, 1878, has just telegraphed him for money to pay off the men (27 X), 2239; (Boone), 2705; (J. W. Dorsey), 4146-8.
- Dec. 9, 1882, if he knows of Rerdell's doing anything to injure the defendants in the coming trial he will prosecute him for forgery and another crime (88 X), 4150; (Rerdell), 5250; John W. Dorsey, 4149-4152; envelope (89 X), 4150; (Miner), 4287-4289; (John W. Dorsey), 4150.
- J. W. and S. W. Dorsey to Brady, Dec. 6, 1878 (80), requests withdrawal of subcontract (19 O), 1802; (Hill), 3689, 3692; (Boone), 2699; (Rerdell), 2346; Oct. 19, 1880, requests withdrawal of subcontract (18 S), 1956-1957.
- J. W. Dorsey and Rerdell to Brady, Feb. 6, 1879, requests withdrawal of subcontract (14 S), 1956; (Boone), 2701; (Rerdell), 2349.
- John W. Dorsey & Co. to C. H. French, April 25, 1878, bid is too high (18 A), 612; (Boone), 2685; (Rerdell), 2321, 2555.
- May 6, 1878, making proposition (14 A), 611; (Boone), 2685; (Rerdell), 2321.
- May 24, 1878, inclosing subcontract for execution (16 A), 612; (Boone), 2685; (Rerdell), 2321.
- May 31, 1878, asking him to meet him at Kearney (15 A), 611; (Boone), 2685; (Rerdell), 2321.
- September 25, 1878 (22 A), 613; (Boone), 2685; (Rerdell), 2321.
- Memorandum account of, with S. W. Dorsey (87 X, defense), 4098; (John W. Dorsey), 4098.
- Motions on behalf of, for bill of particulars renewed, 35-38; for leave to file a special plea, 38-39; S. W. and John W., to quash indictment, 26-29.
- Oaths of, as to stock and carriers on the original and expedited schedules:
 - Sworn to March 11, 1879 (20 F), 1085-1086; (Boone), 2693; (Brady), 3586-3587; (J. W. Dorsey), 4141; (Rerdell), 2337.
 - Sworn to April 21, 1879 (4 C and 5 C), 866-867; (Boone), 2687; (Brady), 3432; (J. W. Dorsey), 4133-4136, 4138-4140 (S. W. Dorsey), 3934-3944; (Rerdell), 2333-3334; (6 Q), 1855; (Boone), 2700; (Brady), 3553; (Rerdell), 2348, 2559, 2560; (4 O), 1797; (Boone), 2698; (Rerdell), 2345, 2559.
 - Sworn to November 26, 1878 (12 K), 1634; (Boone), 2697, 2710; (J. W. Dorsey), 4106; (Miner), 4187; (Rerdell), 2343, 2236-2237.
 - Sworn to April 26, 1879 (25 S), 1961; (Boone), 2701; (John W. Dorsey), 4123-4124, 4125-4126; (Rerdell), 2350; subcontractor (6 E), 1029; (Boone), 2692; (Brady), 3432-3433; (John W. Dorsey), 4142-4143; (Rerdell), 2336.
- Payments to, statement showing, 731, 734.
- Proposals of, route 35015 (2 R), 553, 1899; (Rerdell), 2349; route 38113 (2 S), 553, 1952; Rerdell, 2351; route 38135 (proposal 1), 550-552, 758; (Boone), 2686; (Rerdell), 2332; route 38145 (proposal 7), 553; (Rerdell), 2338; route 38152 (proposal 10), 553; (Rerdell), 2345; route 38156 (2 Q), 1854; (Rerdell), 2348, 2349; route 40104 (1 K), 553, 1629; (Boone), 2697-2698; (Rerdell), 2344; route 40113 (2 O), 554; (Boone), 2699; (Rerdell), 2346.
- Receipts for warrant (28 M), 1809; (Boone), 2698; (J. W. Dorsey), 4143; (Rerdell), 2345.
- Reference to, in card of S. W. Dorsey, 91-93.
- Release of, signed by J. W. Steele, attorney, releasing Jaramillo from his subcontract (60 F), 1173; (Jaramillo), 1168.
- Schedule of arrivals and departures (45 S, defense), 2084.
- Subcontracts made by:
 - with S. W. Dorsey (16 S), 1956; (Boone), 2701; (Rerdell), 2349; (21 Q), 1860; (Rerdell), 2348; (17 O), 1801; (Boone), 2699; (Rerdell), 2346.
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 - with William E. Earle (19 Q), 1860; (Rerdell), 2348.
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 - with J. C. McKibbin (39 K), 1651.
 - with Chas. F. Perkins (12 S), 1955; (Perkins), 2001.
 - with M. C. Rerdell (8 S), 1954; (Rerdell), 2349; (Miner), 4181; (34 K), 1652.
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Arrangements with Peck and Miner relative to the bidding, 4082, 4086, 4108-4110; conversation with S. W. Dorsey relative to the mail business, 4084, 4110-4111; as to the money he gave S. W. Dorsey, 4111-4118; as to his contract with Boone (21 X, 1516), 4085; denies entering into any conspiracy with any of his co-defendants, 4085; denies testimony (1383) as to his conversation with Moore, 4086; his whereabouts in 1878 and 1879, 4086, 4100; identifies letter of Miner (86 X, defense, 4087-4088) as received by him, 4087, 4088; identifies exhibit (87 X, defense, 4098) as the memorandum that Rerdell drew up in July, 1879, 4097; corrects his testimony, 4100; as to instructions to his brother to sell out, 4101; conversation with Vaile as to selling out, 4102; as to the letters from S. W. Dorsey of December 7, 1878, 4102-4105, 4107-4108, 4127-4129, and December 9, 1878, 4104-4105, 4107-4108, 4127-4129; sold out to his brother some time in April, 1879, he was to and did pay witness \$10,000, 4149; has no recollection of making any affidavits in blank, would not want to say he had not, 4107; did not help get up any petitions, and never changed, erased, or interlined any petitions, 4107; the capital he put in the mail business, 4108; his arrangement with Miner, 4113; his written contract with Miner, 4114-4115; arrangements with Boone and Miner, 4118-4119; the bonds sent to Arkansas, 4114; as to the division in April, 1879, 4120-4123; Miner's agreement with Vaile, 4120-4121; as to authority given to S. W. Dorsey to represent his interest, 4122-4123; his appointment in the Senate, 4129-4130; does not know Peck's signature, 4144; identifies his letter to Rerdell (88 X, 4150), 4149; circumstances under which he wrote the letter, 4150-4152; as to his affirming when he went on the stand, 4156.

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Dorsey, S. W., one of the defendants.

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Checks drawn by, on Middleton & Co., in June, 1879, Nos. 130 to 134 and 136 to 144, 501 to 511, 513 (50 X to 76 X defense), 3739-3743; checks Nos. 135 and 512 missing, Ingersoll's statement as to, 3744, 3964; testimony of S. W. Dorsey in regard to 59 X, 3965.

drawn by, April 8, 1878, to John R. Miner (77 X to 81 X, defense), 3761.

drawn by, July 12, 1878, to A. W. Moore (82 X, defense), 3763.

Drafts drawn by John W. Dorsey in favor of (48 and 49 S), 2085; (81 F, 84 F) 87 F, and 90 F), 1212-1213; (39 Q, 40 Q, 42 Q), 1948, 1951; (91 K and 93 K), 1660; (23 O, 24 O, 25 O, and 26 O), 1851-1852.

drawn by John R. Miner in favor of (25 C, 28 C, 31 C, and 34 C), 937, 938; Kellogg, 3650; (49 B, 52 B, 55 B, and 58 B), 856, 857; (30 E, 33 E, 36 E, and 39 E), 1038-1039.

drawn by John M. Peck in favor of (42 D, 45 D, 48 D, and 51 D), 1015-1016; (33 I), 1353; (41 G, 44 G, and 60 G), 1299-1300.

Guarantee of, on subcontract of Major and Culverhouse (30 G), 1239-1240, (Boone) 2695, (Rerdell) 2339, (Major) 1266; on subcontract of Nephi Johnson (18 D), 972, (Boone) 2689, (Johnson) 971, (Rerdell) 2335, 2558, (Kellogg) 3651; on subcontract of Frederick Steinegar (25 Q), 1861, (Boone) 2700, (Rerdell) 2348, (Steinegar) 1866, 1867.

Interview with, as published in the New York World December 10, 1882 (affidavit of W. W. Ker), 95-97; interview with, as published in the New York World of December 7, 1882 (affidavit of George Bliss), 94.

Letters of:

To Brady, United States Senate Chamber, June 10, 1878, will be necessary to increase service to seven trips with fast schedule (10 F), 1079; (Boone) 2692, (S. W. Dorsey) 3807, (Rerdell) 2546.

Washington, D. C., April 24, 1879, inclosing petition for increase (23 F) 1087, (Boone) 2694, (Rerdell) 2338.

Washington, D. C., May 23, 1879, asking consideration of letters inclosed, relative to increase of service (9 I), 1333, (Kellogg) 3651.

Washington, D. C., March 4, 1879, enters his protest against the acknowledgment of any subcontract or power of attorney filed in the Department in the name of H. M. Vaile (84 X), 3892, (S. W. Dorsey), 3892, 3894, 3895.

To Clendenning, United States Senate Chamber, Dec. 9, 1877, sending some to bonds be made for a friend (18 X), 1504, (S. W. Dorsey) 3747, 3752, 3855-3857, 3947, (Hill) 3687, 3688; December 23, 1877, relative to Clendenning's refusal to certify bonds (83 X), 3865-3866, (S. W. Dorsey) 3858-3861, 3865-3866.

To Haycock, United States Senate Chamber, Dec. 9, 1877, sending a bundle of bonds to be made for an intimate friend (17 X), 1504, (37 X) 2367-2368. Envelope addressed to George Haycock, esq., Pine Bluff, Ark. 8 X), 2368, (Hill) 3687.

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Letter of—Continued.

to Johnson, Washington, D. C., May 5, 1879, inclosing new subcontracts for execution (20 D), 980, (Kellogg) 3646-3649, 3653, 3654, (Boone) 2689, (Johnson) 974, (Rerdell) 2563-2564.

To Joseph, Kansas City, Missouri, April 9, 1879, to get letters to the Postmaster-General urging a daily line with fast schedule, has taken this route himself on account of Peck's illness, inclosing forms of petitions (39 F), 1102, (Boone) 2694, (Joseph) 1097, (Kellogg) 3648, (Rerdell), 2546.

Washington, D. C., April 30, 1879, service has been increased to 3 trips, schedule fifty hours, thinks it will be made daily July 1, 1879 (42 F), 1103-1104; (Joseph) 1103.

Washington, D. C., June 22, 1879, fifty hours is slow walking time; your statement that it will cost \$12,000 to run this service is absurd; average cost of horseback service is less than \$5 per mile per annum (43 F), 1104-1105; (Joseph) 1104, (Kellogg) 3648.

To Paddock, Washington, D. C., April 16, 1879, introducing Rerdell as a friend having large interests in Colorado (34 X), 2276; (S. W. Dorsey) 3929-3931, (Hill) 3690, (Rerdell) 2274, (Kellogg) 3641, 3642, 3644, 3645.

To Rerdell, Chico Springs, April 3, 1878, there are certain routes they want advertised and others they do not; will be in Washington by the 12th (32 X), 2275, (S. W. Dorsey) 3759, Kellogg 3639, 3641, (Senate Journal) 4309-4310, (Rerdell) 2274, 2502-2515, (Vaile) 3759; envelope containing letter (32 X A), 2513.

To General Rosser, United States Senate Chamber, April 20, 1878, asking him to address a letter to Second Assistant giving the distance from Bismarck to Tongue River (3 T), 2137, (Boone) 2702, (Kellogg) 3650, 3651, (Rerdell) 2361.

To Routt, Washington, D. C., April 14, 1879, introducing M. C. Rerdell, and stating that he, together with Col. Peck, have a great many mail routes in his State (33 X), 2275, (S. W. Dorsey) 3929-3930, (Hill) 3690-3693, (Rerdell) 2274, (Kellogg) 3642, 3643, 3645.

And John W. Dorsey to Brady, October 19, 1880, requesting withdrawal of subcontract (18 S), 1956-1957.

January 7, 1880, requesting withdrawal of subcontract of S. W. Dorsey, and that that of Frederick Steinegar be filed (23 Q), 1861, (Rerdell) 2348.

December 6, 1880, requesting withdrawal of subcontract of S. W. Dorsey (19 O), 1802, (Boone) 2699, (Rerdell) 2346, and John R. Miner to Brady, December 6, 1880, asking withdrawal of subcontract of S. W. Dorsey (17 E), 1029, (Boone) 2692, (Miner) 4209, (Rerdell), 2336 (Kellogg) 3650.

Memoranda—Headed U. S. Senate Chamber, Washington, —, 187—, under the head of accounts, S. W. D. Cr., cash loaned, \$10,500; Dors, \$10,000; Peck, \$10,000; expense, cash, profit and loss, J. H. Mitchell, J. W. D., and M. C. R., —; William Smith, \$18,000; John Smith, \$600, erased; Samuel Jones, \$600 (31 X), 2250; (S. W. Dorsey), 3704, 3774-3776, 3782, 3783; (Rerdell), 2249, 2250, 2306-(31 X), 2308, 2477-2479, 2482, 2483; (Hill), 3672, 3678, 3683, 3684; (Kellogg), 3638, 3649, 3650.

Memorandum.—J. W. Dorsey, in account with, May, June, and July, showing a debit to J. W. Dorsey for cash, in amount \$1,044, and a credit by traveling expenses and salary of \$904 (87 X, *defense*), 4098; (J. W. Dorsey), 4098.

Memorandum.—“Donnell, Lawson & Co., deposited by S. W. Dorsey, Aug. 19, 1880, checks \$1,496.90” (44 X), 2653.

Memorandum.—“Rerdell, please let Col. Hill have five dollars, S. W. D.” (48 X), 3687; (Hill), 3687.

Memorandum.—To charge S. W. D. and credit bills payable (94 X), 4389; (Donnelly), 4384, 4385.

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Petition, forms of, inclosed by, to Anthony Joseph (40 F and 41 F), 1103.

Proposal, form of, sent to J. H. Clendenning, Fort Smith, Ark., in Dec., 1877 (15 X) 1502-1504; (S. W. Dorsey) 3799, 3856-3857, note of instructions attached to 15 X, as to how the bonds were to be made, certified, and approved, headed U. S. Senate Chamber, 187—, signed “D.” (16 X), 1504; (Hill) 3689-3690; (Boone), 1508, 1509, 1553, 1566; (Kellogg), 3643.

Subcontracts of, dated April 1, 1879, full pay; (16 S), 1956 (Boone) 2701; (Rerdell) 2349; (overt act, 18 B), 789; Boone 2686; Rerdell 2333; (overt act, 15 E), 1034; (Rerdell) 2336; overt act (21 Q), 1860; (Rerdell) 2348; (17 O), (Boone) 1801, 2699; (Rerdell) 2346.

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3990; as to pencil memorandum made by Rerdell in imitation of witness' handwriting (Rerdell 2465), 3810-3811; interview with Rerdell at Willard's July 12, 1882, 3727-3728, 3730, 3971; Rerdell's affidavit of July 13, 1882, (39 X, 2373, 2374), 3729, 3793, 3794, 3970, 3971; as to letter of Rerdell (49 X defense, 3733, 3734), 3729, 3967, 3968; Rerdell's letters to Miss Spergeman, 3730, 3972-3974.

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Elliot, Monroe, called as a juror, 184; examined, 184-187; disqualified, 188.

Elmer, R. A., Second Assistant Postmaster-General, letter of, to Assistant Attorney-General, October 10, 1881, as to whether the subcontractor is entitled to one month's extra pay (227 N, defense), 3273.

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- Farish, Wm. B., Pueblo, Colo., mail carrier.
- Testimony of, for the prosecution, route 38135, 834-836.
- Farley, J. T., endorsements of, on petitions (79 G defense), 3234 (80 G defense), 3238; and Newton Booth, letter of, to D. M. Key, asking favorable consideration of inclosed petitions (10 P), 1814.
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- Fisk, John M., Canyon City, Oreg., mail carrier, testimony of, for the prosecution, route 44155, 1678-1699, 1759.
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- Flannery, George P., letter of, to Brady, July 20, 1878; suggests increase to 3 trips and reduction of time to 65 hours (18 T), 2142.
- Fleicher, Thos., letter of, to Brady, April 30, 1880 (135 T, defense), 2910-2911; August 1, 1880 (146 T, defense), relative to failures, 2910.
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- Fort Lewis, order to embrace on route 38156 (47 Q, defense), 3288.
- France, D. Walker, clerk post-office Rawlins, Wyo., route 38113, testimony of for the prosecution, 2058-2069.
- France, James, postmaster, Rawlins, letter of, to Brady, December 7, 1880, relative to change of schedule (39 S), 2068-2069; (France) 2068; September 1, 1879, relative to the delivery of the mail to special carrier (53 S, defense), 3132.
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- French, John L., letters of, to postmaster Pioche, July 23, 1879, service has been increased to 7 trips (192 K, defense), 2959; to postmaster, Eugene City, December 26, 1879, relative to failure to put mail bills on the route (263 I, defense), 3086; to postmaster, Mitchell, December 26, 1879, failure to put mail bills on the route (262 I, defense) 3086.
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- Letter of, to ex-Postmaster-General James, referred to, 89; S. W. Dorsey makes written statement to, 90.
- German American National Bank, draft, drawn by John R. Miner in favor of (41 B), 853-854.
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- Gibbs, Charles E., cashier, Ebbitt House, testimony of, for the prosecution, 2643-2649; as to books copied for Rerdell by Mrs. Gibbs, 2644. What accounts were in the books, 2644.
- Gibson, A. M., appointment of, referred to in the interview of S. W. Dorsey, 94.
- Gibson, John, called as a juror, 1. Examined, 153-154; disqualified, 154.

- Gill, Edward C., summoned as a talesman, 209, examined, 213-216 ; sworn as a juror in the case, 218.
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- Grey, L. B., assistant Postmaster Fitzalon ; letter of, as to the supply of Cedarville, (114 A, defense), 3347.
- Grimes, R. M., postmaster Kearney, Nebr. ; certificate of, as to failures April 18, 1881, (115 A, defense), 3347.
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- Hagan, F. G., letters of, to M. C. Rerdell, April 30, 1880 ; physically impossible to carry the mail on a schedule of 15 hours (33 Q), 1895.
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- Hale and Nightingale, letter of, to Alvin Saunders, April 26, 1878, relative to additional service (99 A, defense), 3259-3260.
 To D. M. Key, May 12, 1879, asking increase of service (101 A, defense), 3260.
- Haley, John, contract of, for temporary service (4 L), 1665-1666.
- Hall, Edwin, postmaster, Canyon City, Oregon, letter of, to Brady, July 4, 1878 ; contractor has failed to appear (2 H), 1242 ; no date, received November 22, 1878 ; service was commenced November 3, 1878, from Canyon City to Camp Harney, and not further (5 H), 1243.
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- Hall, W., postmaster, October 24, 1878 ; contractor has failed to appear in person or by agent, to carry the mail (4 H), 1243.
- Hamilton, John A., called as a juror, 163 ; disqualified, 164.
- Hanley, Edward, called as a juror, 162 ; examined 162-163 ; disqualified, 163.
- Hansom, Eli, subcontract of, dated October 4, 1879 ; signed John R. Miner, by M. C. Rerdell (13 C), 871.
- Hatch, General Edward, letter of, to S. W. Dorsey, April 17, 1879 ; will be thankful for a daily line to Pagosa (464 F, defense), 3282.
- Haycock, George, postmaster, Pine Bluffs, Arkansas, testimony of, for the prosecution, 2367-2368.
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- Hayes, J. C., and John M. Peck, letter of, to Brady, November 2, 1878, requesting withdrawal of subcontract (32 P), 1836 ; (Boone), 2700 ; (Hayes), 1836 ; (Rerdell ;)2347.
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- Hazen, A. D., orders of, to remit deductions (242 I, defense), 3077.
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- Hazen, George S., letters of, relative to change of schedule ; (38 S), 2068 ; (France), 2068 ; to Brady, February 1, 1881, inclosing copy of register of arrivals and departures (160 S, defense), 3167.
- Heiberger, Francis J., jr., erroneously summoned as a talesman, excused, 209.
- Henry, Ex-Marshal, reference to the removal of, in the card of S. W. Dorsey, 93.

- Hernandez, Jesus, certificate of, relative to the performance of service by Anthony Joseph, subcontractor (120 F, defense), 2996-2997.
- Letters of:
- to Brady, July 19, 1879, recommending summer schedule of five days (38 F), 1095; March 14, 1881, mail has been run daily since March 6 (427 F, defense), 3068.
 - to J. L. Sanderson & Co., March 27, 1881, daily service commenced March 8, 1881 (429 F, defense), 3069.
 - to French, February 11, 1879; the new contract thence to Parrott City, made last January, is being fulfilled (468 F, defense), 3286.
- Hickson, W. A., carrier, as to cause of failures (311 I, defense), 3100.
- Higgason, William H., Greenhorn, Colo., testimony of, for the prosecution route 38135, 839-840.
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- Hill, M. G., assistant postmaster, Parrott City, to Second Assistant, December 10, 1880, states increased distance caused by establishment of Fort Lewis (42 Q, defense), 3288-3289; December 29, 1880, states the distance via Fort Lewis to Animas City (51 Q, defense), 3290.
- Hill, N. P., U. S. S., letter of, to Brady, November 8, 1880, inclosing petitions asking extension of schedule from 15 to 24 hours (13 Q), 1857-1858.
- Indorsements of, on letter of George R. Swallow (73 E, defense), 3254.
 - On petitions (7 B.), 783 (Rerdell), 2272, 2333, 2542-2543; (30 F to 34 F), 1092-1094.
- Hindman, S. M. W., postmaster at Camp Pope, certificate of, as to failures (303 I, defense), 3096-3097.
- Hinman, Charles H., late clerk Grand Central Hotel, Denver, Colo., testimony of, in rebuttal, 4421-4422.
- Produces hotel register, showing entry of name of M.C. Rerdell, Washington, D. C., 4421-4422.
- Hooper, Charles H., clerk banking house Donnell, Lawson & Co., New York, testimony of, for the prosecution, route 46247, 2652.
- Horigan, Michael, summoned as a talesman, 209; examined, 210-812; sworn as a juror in the case, 212.
- Howard, H. N., Post-Office Department, testimony of, for the prosecution, route 34149, 806-808.
- Howard, Jackson, colored, called as a juror, 166; accepted by defense, 168; examined by the prosecution and accepted, 182-183; sworn as a juror in the case, 183.
- Hoyt, D. L., check drawn by S. W. Dorsey in favor of (61 X, defense), 3741.
- Hoyt, S. N., surety on contracts of John M. Peck, John R. Miner, and John W. Dorsey, 544, 546-550.
- Hubbard, Frederick, Chemical Paper Company, Holyoke, Mass., testimony of, in rebuttal, 4363-4364.
- Produces receipts for certain bales of the dispatches of the Western Union Telegraph Company, 4363-4364.
- Hughes, John, called as a juror, 1; accepted by defense, 159; by the prosecution, 174; sworn as a juror in the case, 174.
- Hughes, S. H., postmaster, Dixon, letter of, to Brady, September 15, 1879; carriers from White River and Rawlins do not connect (57 S, defense), 3133.
- Hugus, W. B., postmaster White River, letter of, to Eugene Taylor February 9, 1880, relative to the miserable management of the mail service (81 S, defense), 3143; to Brady February 21, 1880, relative to mail bills (101 S, defense), 3150. March 6, 1880, failure of the mails to arrive on time (83 S, defense) 3144-3145.
- Hull, Alvah A., testimony of, for the prosecution, route 38134, 871-881.
- Hunt, R. M., letters of, to Brady, April 27, 1879, relative to failures (72 T, defense), 2871; January 20, 1880, relative to failures (111 T, defense), 2892. July 22, 1880, relative to failures (147 T, defense), 2910.
- Hunt, W. L., Superintendent railway mail service, letter of, July 10, 1880, recommending change of schedule, (78 B, defense), 3288.
- Hyde, W. H., letter of, to D. M. Key, April 28, 1879, requesting daily mail (11 C), 870.
- Ilges, Guido, letter of, June 10, 1880, relative to Indian depredations (119 T, defense), 2895-2897.

- Ingersoll, Robert G., opening argument of, for the defense, 410-460; closing argument of, 5265-5481.
- Ingersoll, Wm., postmaster, Pueblo, to the Second Assistant, December 15, 1877, noting an error in the distance of the route as advertised, 762; excluded, 769. July 18, 1878, mail should be carried from Pueblo (2 B), 722; (Brady), 3414; December, 2, 1880, carrier will not stop at Agate unless pay is increased (25 B), 791.
- Indictment relating specifically to route 35015, 1898; route 35051, 2136; route 38113, 1951-1952; route 38145, 1084-1085; route 38150, 1786; route 38152, 765-766; route 38156, 1852-1853; route 40104, 1627-1628; route 40113, 1795-1796; route 44140, 1330-1331; route 44155, 1663-1664; route 44160, 1240-1241; route 46132, 1810-1811; route 46247, 1229, 1266-1267.
- Irving, John H., called as a juror, 163; examined, 164-166; peremptorily challenged by defense, 166.
- Irwin, William, and J. T. Farley, letter of, to Key, June 12, 1879, asking increase to a daily line and two days' schedule; concurred in by J. K. Luttrell, third district, and P. D. Wigginton, fourth district (72 G, defense), 3230.
- Jaffa Brothers, letter of, to the Postmaster-General, April 21, 1879, asking three times a week service (66 E, defense), 3252.
- James, Thomas L., ex-Postmaster-General, appointment of, as Postmaster-General, 464, referred to in interview of S. W. Dorsey, 89-91, 94.
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- Jaramillo, Pedro J., letters of, to Brady, September 22, 1879, filing his subcontract (58 F), 1165; no date, asking whether Sanderson & Co. were paid for services (231 F, defense), 3025.
 Subcontract of, dated August 7, 1879, signed John W. Dorsey, by M. C. Rerdell (57 F), 1164-1165.
 Testimony of, for the prosecution, route 38145, 1163-1177, 1252-1254.
- Jennings, Isaac, affidavit of, dated April 5, 1880, asking for remissions of deductions (91 K, defense), 2956-2957.
 Letter of, May 10, 1880, asks to withdraw his letter of April 5, 1880, which was drawn by his attorney, Judge Wilshire, and signed when he was angry and out of humor with J. W. Dorsey (109 K, defense), 2956.
 Subcontract of, dated July 1, 1879, signed John W. Dorsey, indorsed "filed with me, March 17, 1881, Thomas J. Brady"; also, "Turner, file this subcontract, to take effect July 1, 1876, and instruct auditor to readjust payment accordingly, Brady," (86 K), 1658.
- Jones, Senator, Nevada, S. W. Dorsey refers to, as to his responsibility (20 D, route 41119), 980; (Boone), 2689; (Hill), 3688, 3602; (N. Johnson), 974.
- Joseph, Anthony, letters of—
 To Brady, April 2, 1879, impossible to carry the mail inside 100 hours (8 F), 1078, 1107; (Joseph), 1106.
 To John W. Dorsey, January 6, 1879, will carry the mail 6 trips for \$14,160 per annum (48 F, defense), 1119-1120; (Joseph), 1119.
 January 15, 1879, commenced service January 1, 1879; will carry the mail once a week for \$23,160 (49 F, defense), 1120; (Joseph), 1120.
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 March 6, 1879, has forwarded petitions and concluded to commence tri-weekly service whether the Department orders it or not (51 F, defense), 1121; (Joseph), 1121.
 February 10, 1879, complaining of the loss of horses and the accumulation of mail matter, service should be increased to either 3 or 6 trips (50 F, defense), 1121; (Joseph), 1120.
 To S. W. Dorsey, January 20, 1879, in compliance with letter of Miner, written at Dorsey's request, has stocked the route, and asking to have service increased to 6 trips (52 F, defense), 1122; (Joseph), 1122.
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- Johnson, Nephi, letter of—
 To Miner, Peck & Co., April 28, 1878, will carry the mail for \$1,635 per annum (27 D), 992; (Nephi Johnson), 991.
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Johnson, W. A., carrier, affidavit of, sworn to March 27, 1880, relative to failures (106 T, defense), 2890.

Johnson, Wm. D., merchant, Kanab, Utah, testimony of, route 41119, 1009-1014; route 44160, 1258-1260.

Jones, A., check drawn by S. W. Dorsey in favor of (50 X, defense), 3739; (S. W. Dorsey), 3965.

Jones, George, reference to, in the interview of S. W. Dorsey, 96.

Journal of the Postmaster-General, extract from, showing certain orders for increase and expedition were entered in the journal and signed by Postmasters-General Key, Maynard, and James, and by Acting Postmasters-General Brady and Tyner, 4322-4329.

Journal of the United States Senate, extracts from, under date of April 3, 1878, showing appointment of S. W. Dorsey on a conference committee, 4309, and under date of April 4, 1878, that Senator Dorsey submitted resolution, 4310.

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Evans, Rees, called as a juror, 1; examined, 151-161; accepted by defense, 161; by prosecution, 175; examined as to his knowledge of the English language, 176-178; sworn as a juror in the case, 179.

Gill, Edward C., summoned as a talesman, 209; examined, 213-216; sworn as a juror in the case, 218.

Green, O. C., called as a juror, 182; accepted by the prosecution, 182; by the defense, 188; sworn as a juror in the case, 190; note of, addressed to the court, 217; examined, 217-218.

Horigan, Michael, summoned as a talesmen, 209; examined, 210-212; sworn as a juror in the case, 212.

Howard, Jackson, colored, called as a juror, 166; accepted by defense, 168; examined by the prosecution and accepted, 182-183; sworn as a juror in the case, 183.

Hughes, John, called as a juror, 1; accepted by defense, 159; by the prosecution, 174; sworn as a juror in the case, 174.

Lowery, Mason, colored, called as a juror, 183; examined, 183; accepted by the prosecution, 183; sworn as a juror in the case, 188.

Renshaw, Frank, called as a juror, 162; accepted by defense, 162; by the prosecution, 181; sworn as a juror in the case, 181.

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Kendrick, A. L., letter of, to Maynard, July 23, 1880, stating reasons why they should have daily service (76 G, defense), 3232.

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Keyser, Benjamin U., receiver German-American National Bank, testimony of, in rebuttal, 3909-3910.

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Kidder, J. P., Delegate, indorsements of, on letter of A. Boynton (13 R), 1906; (Brady), 3555-3556; on letter of John H. Charles (22 T), 2143; on letter of J. W. Raymond (13 T), 2140.

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Kirby, Thomas B., clerk Post-Office Department, testimony of, for the prosecution, 464-467, 528.

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Kountze Bros., bankers, S. W. Dorsey refers to, as to his responsibility (20 D), 980;

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Krider, W. M., postmaster Mineral Park, letters of—

September 3, 1880, mail dispatched will average about 3 letters and from 3 to 5 papers; mail received, about 10 letters and from 6 to 8 papers (84 K), 1657.

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To Brady the same letter as 84 K, 1657 (153 K, defense), 2943.

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Laird, Charles H., clerk Post-Office Department, testimony of, for the prosecution route 34149, 722-723; route 41119, 1018; route 38134, 902; route 38150, 1794.

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Lewis Johnson & Co., draft drawn by John M. Peck in favor of, October 28, 1878 (32 I), 1353; warrants in favor of, April 15, 1879 (49 A), 709; July 29, 1879 (12 M), 1775.

- Lithgon, William, affidavit of, sworn to January 17, 1880 (54 S, defense), 3132.
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- Loundsberry, C. A., postmaster, Bismarck, letters of—
 To Brady, July 19, 1878, when the route is established time should be reduced to at least 65 hours (17 T), 2141-2142.
 To superintendent, R. M. S., Chicago, October 18, 1878, all mail from points east of the Mississippi for Tongue River and the Yellowstone should be sent by Bismarck (26 T), 2145.
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- Lowry, Mason, colored, called as a juror, 183; examined, 183; accepted by the prosecution, 183; sworn as a juror in the case, 188.
- Lucky, S. P., S. W. Dorsey refers to, as to his responsibility (20 D), 980.
- Luttrell, J. K., M. C., indorsements of, on letter of Culverhouse (73 G, defense), 3230; on petition for six trips (11 G), 1234; on petition for expedition to 72 hours (12 G), 1234; on petition for 7 trips and expedition to 40 hours in summer and 60 hours in winter (80 G, defense), 3238; (Turner), 3375.
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- Lyman, H. D., acting Second Assistant Postmaster-General, to Freeman, requesting opinion as to whether subcontractor is entitled to one month's extra pay (10 L), 1669.
- McBean, Frank, subcontractor:
 Subcontract of, dated September 21, 1878, signed J. M. Peck, by A. W. Moore, attorney (6 X), 1425; (McBean), 1318, 1605, 1320; (Moore) 1375, 1423.
 Testimony of, for the prosecution, route 44155, 1702-1704; route 44160, 1316-1326, 1605-1614.
- McCormick, James, postmaster, Redding, Cal., testimony of, for the prosecution, route 46247, 1289-1295.
- McCrary, G. W., Secretary of War, to the Postmaster-General, December 12, 1878, inclosing copy of letter of General Miles (28 T), 2146; duplicate of 28 T (33 T), 2148.
- McDaniel, J. H., subcontractor, testimony of, for the prosecution, route 38135, 837-839.
- McDermott, John, summoned as a talesman, 209.
- McDonald, A., letter of, to Brady, April 24, 1879, urging daily and fast line (7 Q), 1856.
- McDonald, A. J., postmaster, Los Pinos, Col., letter of, to Sanderson, January 27, 1879, has notified the Department that no trips were made in November and December (23 M), 1782-1783; to contract office, March 18, 1879, daily mail having been established between Ouray and Lake City, makes route 38152 quite superfluous (2 M), 1773-1774.
- McKibbon, Joseph C., and John W. Dorsey, letter of, to Brady, August 12, 1880, requesting withdrawal of subcontract (41 K), 1651; (Boone), 2697; (Rerdell), 2344.
 Subcontract of, dated June 29, 1880, signed John W. Dorsey by M. C. Rerdell, attorney (39 K), 1651.
- McKusick, H. J., superintendent Railway Mail Service, letters of—
 To Brady, August 16, 1880, recommends increase of service to 6 times a week (78 G, defense), 3233.
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- McLellan, Coll., Glendive, Mont., mail carrier, testimony of, for the prosecution, route 35051, 2655-2665.
- McMichael, Marshal, reference to, in the interview of S. W. Dorsey, 97.
- McVeagh, Wayne, ex-Attorney-General, referred to in interview of S. W. Dorsey, 89-91, 94, 97.
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Maginnis, Martin, Delegate :

Indorsements of, on letter of J. P. Kidder (35 T), 2150; Boone (2702); (Maginnis) 3243, 3249; (Rerdell), 2362.

Letter of, to Brady, July 23, 1878, tri-weekly service on a 65-hour schedule should be put on at once (14 T), 2141; (Maginnis), 3243.

Testimony of, for the defense, route 35051, 3240, 3249.

Major & Culverhouse, subcontracts of, dated May 1, 1878, signed J. M. Peck by A. W. Moore, attorney (6 G), 1231; (Boone), 1524-1525; (Major), 1275, 1438-1439; (Moore), 1368-1370. Second, dated May 20, 1879, signed J. M. Peck by M. C. Rerdell, attorney (27 G), 1238; (Major), 1266. Third, signed John M. Peck by John W. Dorsey, guaranteed by S. W. Dorsey, May 5, 1879 (30 G), 1239-1240; (Boone), 2695; (Major), 1266; (Rerdell), 2339.

Major, John Newton, Redding, California, subcontractor, testimony of, for the prosecution, route 46247, 1265-1288; 1431-1451; 1677-1678.

Mangan, Jerome, affidavit of, as to failures (80 R, defense), 3184.

Mann, Josiah, letter of, to T. M. Paterson, May 30, 1878, inclosing petition for a post-office at Pagosa Springs (107 F, defense), 2833.

Mark, Cyrus, assistant postmaster, Pueblo, Colo., testimony of, for the prosecution, route 38135, 847-849; route 38134, 924-933.

Masterson, Joseph P., Canyon City, Oreg., mail carrier, testimony of, for the prosecution, route 44155, 1699-1702.

Maxwell, W. S., letter of, to Whiteaker, 1879, asking for daily service and fast time, indorsed by Whiteaker (16 I), 1335; (Brady), 3584.

May, William H., New York City, testimony of, in rebuttal, 4361-4362, as to the packing of certain dispatches from the Western Union Telegraph Company, 4361-4362.

Maynard, Horace, date appointed Postmaster General, 464.

Meeker, N. C., Indian agent, letter of, to Key, August 17, 1879, calling attention to the unsatisfactory mail service (56 S, defense), 3133.

Megrue, N. M., letter of, to Brady, August 30, 1878, refers to a petition for a daily mail, and says it is not to accommodate the people, but for the increased pay (1 C), 865.

Merrick, Richard T., Special Assistant Attorney-General, closing argument of, for the prosecution, 5483-5769.

Notice of, to produce the stubs of the checks upon which the entries charged to William Smith were based, 2308.

Verbal notice of, to produce letter-press copy-books, 2264.

Notice signed by, to T. J. Brady, February 13, 1883, to produce papers, books, checks, and drafts, 2255.

Metchan, Phil., letter of, to J. H. Mitchell, September 21, 1878, asking for daily mail and faster service (13 H), 1247.

Middleton & Co., bankers, S. W. Dorsey refers to, as to his responsibility (20 D), 980.

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Miles, General Nelson A., indorsement of, on petition for daily mail (36 T), 2150.

Letters of, to Postmaster-General, July 28, 1878, recommends increase to three or six trips (25 T), 2144; (Miles), 2842, 2845; (Rerdell), 2362.

Copy of letter to Postmaster-General, December 4, 1878, requesting increase to tri-weekly or daily mail, indorsed and recommended by General Alfred H. Terry (30 T), 2146, 2147; (Miles), 2847.

Testimony of, for the defense, route 35051, 2833-2845.

Military officers at Camp Harney, letter of, to J. H. Mitchell, United States Senator, July 15, 1878, received at Post-Office Department, December 9, 1878; no mail for 36 days; the routes and roads are open (11 H), 1245.

Miller, D. J., letter of, to M. C. Rerdell, February 21, 1880, asking for statement of deductions (67 F), 1199; (Jaramillo), 1177.

Millican George, postmaster, Mackenzie Bridge, certificate of, October 5, 1880, as to failures (312 I, defense), 3100-3101.

Millie, Alexander, Chamberlain, Dak., mail carrier, testimony of, for the prosecution, route 35015, 1917-1924.

Miner, John R., one of the defendants:

Agreement of, that John W. Dorsey shall assign his interest in certain contracts to A. E. Boone (23 X), 1569; (John W. Dorsey), 4131-4133; (Hill), 3691.

Checks drawn by S. W. Dorsey in favor of, indorsed by A. W. Moore (76 X to 81 X, defense), 3761; drawn by, in favor of A. W. Moore (4 X), 1419; (Moore), 1418.

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Contracts of, with the United States, route 35051 (1 T), 548, 2136; route 38134549; route 38135, 549, 758; route 38140 (1 E), 546, 1026; route 38150 (1 N), 549, 1786.

Copartnership agreement of, with H. M. Vaile, J. M. Peck, and John W. Dorsey (85 X, defense), 4013-4014 (Vaile), 4013-4014, 4044, 4056, 4058-4059.

Drafts drawn by, on the Sixth Auditor, in favor of—

Bosler, J. W. (37 C, 40 C, and 43 C), 939; (46 C, 49 C, and 51 C), 940; (Miner), 4111 (61 B), 857-858; (64 B, 67 B, 70 B), 858; (73 B), 859; (75 B), 863; (Miner), 4211; (42 E), 1059; (45 E, 48 E, 51 E), 1060; (54 E, 56 E), 1061; (Miner), 4210-4211; Dorsey, S. W., (25 C and 28 C), 937; (31 C and 34 C), 938; (Miner), 4211 (49 B), 856; (52 B, 55 B, and 58 B), 857; (Miner), 4211; (30 E, 33 E, and 36 E), 1058; (39 E), 1059; (Miner), 4211; German American National Bank, (41 B) 853-854:

Vaile, H. M. (54 T, 55 T, and 56 T), 2650; (Miner), 4257-4258; (57 T, 58 T, 59 T, 59 T?), 2651; (Miner), 4257-4258; (17 C), 935; (20 C), 936; (23 C), 939; (21 E, 24 E, and 27 E), 1057; (Miner), 4210-4211.

Drafts in favor of, drawn by John M. Peck (35 G), 1298 (37 P), 1850.

Letters of,

To William Bergner, February 8, 1881, inclosing draft, 1054-1055; July 30, 1881, inclosing draft, 1056.

To Brady, May 10, 1879, filing petition (63 E, defense), 3251; (Miner), 4207; no date asking discontinuance of route (5 T), 2137-2138; (Rerdell), 2361.

October 4, 1878, making proposition to carry the mail two additional trips on a schedule of 65 hours (11 T), 2139; (Boone), 2702; (Rerdell), 2361, and Vaile February 3, 1879, refiling subcontract (47 T), 2153.

January 29, 1879, requesting withdrawal of subcontract (41 T), 2152.

April 16, 1879, inclosing proposition to carry the mail on expedited schedule (6 B), 779; (Boone), 2386; (Miner), 4209; (Rerdell), 2572.

May 5, 1879, asking change of address to care of M. C. Rerdell, box 706 (16 B), 788.

May 8, 1879, inclosing petition (9 B), 784-785; (Miner), 4209.

To James F. Brown, February 20, 1880, by general order service will be reduced to one trip (30 H), 1309; (Brown), 1309.

To John Carey, April 15, 1881, one S. H. Abbott, who is postmaster at Alvord, is writing to the Department that there is no need of anything more than weekly service; see him and satisfy him (32 H), 1314; (Boone), 2695; (Carey), 1314; (Miner), 4205-4206, 4282-4283; (Rerdell), 2339.

To J. W. Dorsey, July 29, 1878, Second Assistant Postmaster-General advises him that unless service is put on by August 15, and the temporary service paid for they will be declared failing contractors (86 X, defense), 4087-4088; (John W. Dorsey), 4087-4088.

To C. H. French, subcontractor, October 19, 1878, requesting return of schedule (33 A), 667; (Boone), 2685; (Rerdell), 2324, 2331.

November 6, 1878, inclosing draft (39 A), 696; (Rerdell), 2331, 2562.

February 1, 1879, inclosing draft (40 A), 695; (Rerdell), 2332, 2561.

May 1, 1879, inclosing draft (41 A), 696; (Rerdell), 2332, 2562.

July 10, 1879, notifying French of increase of pay (20 A), 612; (Boone), 2709; (Rerdell), 2321.

August 1, 1879, inclosing draft (23 A), 662-663; (Rerdell), 2322.

November 1, 1879, inclosing draft (24 A), 663; (Rerdell), 2322.

January 10, 1880, "either supply Cedarville with three mails a week or see that the postmaster sends no more registers" (35 A), 668-669; (Miner), 4279.

January 31, 1880, inclosing draft (25 A), 663-664.

February 20, 1880, Postmaster-General has directed that all mail service be reduced to one trip (38 A), 669-670; (Rerdell), 2331.

May 1, 1880, inclosing draft (26 A), 664.

July 30, 1880, inclosing draft (30 A), 666.

February 1, 1881, inclosing draft (28 A), 665.

May 4, 1881, inclosing draft, less deductions (29 A), 665.

August 1, 1881, inclosing draft (31 A), 666.

No date, inclosing draft (32 A), 667.

June 16, 1881, omit Douglas Grove (36 A), 669.

November 19, 1881, correcting distance and reducing pay (37 A), 669.

To J. C. Hayes, Denver, Colorado, July 9, 1878, we do not care to go on making new bargains every four years (20 P), 1822; (Boone), 2700; (Hayes), 1821; (Rerdell), 2347.

Miner, John R.—Continued.

Letters of—Continued.

Washington, August 3, 1878, increases can only be obtained by our joint effort; they are based upon petitions, but require active work to consummate them (21 P), 1822; (Boone), 2700; (Miner), 4274-4275; (Rerdell), 2347.

September 19, 1878, increased speed is very seldom ordered, and never without special labor here and considerable expense (22 P), 1822-1823; (Boone), 2700; (Hayes), 1821; (Miner), 4274-4275; (Rerdell), 2347.

October 9, 1878, expedition is paid for in proportion to the number of men and animals employed (23 P), 1823; (Boone), 2700; (Hayes), 1821; (Rerdell), 2347.

July 25, 1879, the telegraph got his message mixed; have tried hard to have the schedule made 36 hours as petitioned for, instead of 26 (28 P), 1824; (Boone), 2700; (Hayes), 1821; (Rerdell), 2347.

November 11, 187—, petitions not acted upon; fears that Hayes's friends' influence with Tom Brady is not strong enough (25 P), 1823; (Boone), 2700; (Hayes), 1821; (Rerdell), 2347.

December 5, 1878, inclosing forms of petitions (26 P), 1823-1824; (Boone), 2700; (Hayes), 1821; (Rerdell), 2347.

To Frank A. Tuttle, August 19, 1878, "we make no boast of being solid with anybody, but can get what is reasonable (14 C), 885; (Boone), 2687; (Rerdell), 2334; (Tuttle), 884.

September 3, 1878, chance for increase not promising (15 C), 886; (Rerdell), 2334; (Tuttle), 885.

Oaths of as to stock and carriers on the original and expedited schedule.

Sworn to September 30, 1878 (12 T), 2140; (Boone), 2702; (Brady), 3440, 3430, 3442, 3469, 3471; (Miner), 4192-4193, 4196-4198, 4289; (Rerdell), 2361; (Vaile), 4070,

Sworn to April 17, 1879 (5 B), 778; (Boone), 2686; (Miner), 4184, 4187; 4236-4237, 4242-4243 (Rerdell), 2332, 2572.

Plea in the suit of Rerdell *vs.* Vaile and Miner, and accompanying affidavit of Miner sworn to June 27, 1879 (29 X), 2245-2246; (Vaile), 4025-4026, 4041; (Rerdell); 2243, 2246-2247.

Proposals of, route 35051 (2 T), 2136; (Rerdell), 2362; route 38135, 550-552; (Boone), 2686; (Rerdell), 2332.

Receipts for warrants (83 A, and 84 A), 723; (85 A, 86 A, and 87 A), 723-724; (88 A), 724.

Referred to in card of S. W. Dorsey, 91-93.

Telegram of, to J. C. Hayes, June 23, 1879, start Julian Colton, 3 trips, 36 hours, July 14, (29 P), 1825; (Hayes), 1825.

Warrant in favor of, indorsed by John R. Miner and S. W. Dorsey (63 B), 858.

Receipts of A. W. Moore, to Miner, Peck & Co., July 24, 1878, for \$3,000 to pay expenses and stock routes in Oregon (5 X), 1419; same date for \$166, balance of salary and expenses (3 X), 1417; (Miner), 4173; (Moore), 1375, 1423.

Motions on behalf of, for bill of particulars renewed, 36; to quash indictment, 35.

Testimony of, in his own behalf, 4157-4292, 4302-4304; acquaintance with his co-defendants, 4157-4158, 4215, 4253-4254; arrangements for the bidding, 4159-4160, 4217-4219; amount of money he put in, 4219; fails to get bondsmen, 4259; as to Rerdell's filling up bids, 4219-4220; his conversation with Boone in regard to the bidding book, 4219-4220; as to Peck's signature to proposals, 4220; as to spoiled bid of Peck, 4220-4221; as to Peck's signature to temporary contract on route 32018, 4222-4223; after the awards Boone and John W. Dorsey take certain territory, and witness and Peck certain territory, 4161; witness and Peck constituted one firm, and John W. Dorsey and Boone the other firm, 4161; as to contract between Boone and J. W. Dorsey, 4264; witness goes to Denver to sublet the routes, 4161, 4254; Boone left in charge of the business, 4255; as to taking the papers away from Boone, 4256; employment of J. W. Anderson, 4256; witness offers Vaile all the service, 4162; Vaile gets an extension from Brady, 4162; Vaile leaves offers with witness to take the service, 4163; Vaile assumes service, 4163; witness sends to J. W. Dorsey and Peck for drafts on their mail pay, makes those on his own routes himself, 4163-4164; Vaile learns of the drafts held by the bank, 4164; witness gives Vaile subcontracts which are antedated, 4166; Vaile files the subcontracts and cuts out the drafts, 4167-4168; as to execution of subcontracts mentioned in letter of S. W. Dorsey to Brady (84 X, 3892), 4225; out of those subcontracts grew the quarrel which ended in the division, 4225; as to the division of the routes, 4169-4170, 4225-4228; as to the affidavits made after the separation, 4184, 4231; does not remember that they divided any blank affidavits, 4223; orders for pay given in blank at the time of separation, 4213; subcontracts given to Dorsey and Vaile on the routes that went to each, respectively, 4213-4214; witness signed Peck's and J. W. Dorsey's name on the routes in which they were contractors, and Dorsey's agent was

Miner, John R., testimony of—Continued.

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Morgan, Charles W., clerk P. O. Dept, testimony of, for the prosecution, 476-487, 492-493; for the defense, 4322-4330; had charge of the journal containing the orders for increase and expedition, 476; frequency with which the journal was signed by the Postmaster-General, 477, 481, 482; manner of signing, 477, 479; orders certified to the Sixth Auditor when the journal had not been signed, 479, 482-483; abstract of orders certified by the Second Assistant Postmaster-General, 480, 483; produces journal of 1882, 492; excluded, 493; produces Postmaster-General's journals for the defense, 4322-4330.

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On behalf of J. W. Dorsey for leave to file a special plea, 38-39; for a bill of particulars, 35-38.

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Mullins, Robert F., Brooklyn, N. Y.:

Testimony of, for the defense, 3629-3632; occupied office with Torrey, as to Rerdell's visit to the office in June, 1881, 3629; denies having seen any books bound in red leather, marked journal and ledger, 3629.

Munsie, Newman, carrier, letters of, to Brady:

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August 2, 1880, as to failures (144 T, defense), 2914.

Murray, Eli H., governor, and John A. Hunter, chief justice of Utah, letter of, to Brady, October 15, 1880, recommending daily mail (322 K, defense), 3296-3297.

Myers, Charles F., postmaster, Pioche, letters of, to Second Assistant:

July 27, 1878, service not yet commenced (4 K), 1631.

July 31, 1878, contractor has failed to appear (5 K), 1632.

September 3, 1878, service commenced August 31, 1878 (6 K), 1632.

August 5, 1879, 7-trip service not yet commenced (23 K), 1641.

September 18, 1880, mail dispatched will average 5 pounds, mainly papers and packages; mail received, 4 ounces, mainly letters (85 K), 1658; same letter as 85 K, 1658 (154 K, defense), 2943-2944.

To Brady, March 2, 1879, tri-weekly service commenced February 22 (104 K, defense), 2930.

January 25, 1879, extra service should have started January 16; none yet put on (105 K, defense), 2930.

August 20, 1879, 7-trip service was commenced. August, 1879 (323 K, defense), 3297.

October 30, 1880, contractor carried the mail regularly to September 30, 1880 (293 K, defense), 2986.

To Jennings, March 15, 1880, it is impossible to carry the mail within 60 hours; has received no instructions as to any prescribed schedule (189 K, defense), 2956.

Newcomb, Louis A., post-office inspector:

Testimony of, in rebuttal, 4364-4365, 4376-4378; as to meeting Postmaster-General James and Rerdell in the Jersey City depot, 4365; offer of evidence overruled, 4378.

Nichols, Adelbert P., carrier, affidavit of, sworn to July 14, 1882, that it was impossible to make schedule time during the storms and bad roads (78 R, defense), 3183-3184.

Testimony of, for the prosecution, route 35015, 1924-1928.

Nightingale, Thomas S., attorney at law, Loup City, Nebr., testimony of, for the prosecution, route 34149, 698-699.

Norton, Hannibal D., late clerk finance division, Post-Office Department:

Testimony of, for the defense, 2848-2850; course of business in case of remissions of fines or deductions, 2848; in case there is a subcontract filed, 2849; as to orders for increase and expedition, 2849-2850.

Notice to S. W. Dorsey:

Dated March 31, 1883, to produce letter-press copy books containing letters written by him May 13, 1879, and December 9, 1878, signed R. T. Merrick, 3898.

Dated February 19, 1883, to produce ledgers, journals, checks, and check-books, 2308-2309.

Verbal notice to produce letter-press copy books, 2264.

Dated February 13, 1883, to T. J. Brady, to produce papers, books, checks, and drafts, signed by Merrick and Ker, 2255.

Oaths, as to the stock and carriers necessary and required on the original and expedited schedules:

Dorsey, John W., sworn to March 11, 1879, route 38145 (20 F), 10-5-1086; (Boone) 2693; (Brady), 3586-3587; (John W. Dorsey), 4141; (Rerdell), 2337.

Sworn to April 21, 1879, route 38134; (4 C and 5 C), 866-867; (Boone), 26-7; (Brady), 3432; (John W. Dorsey), 4133-4136, 4138-4140; (S. W. Dorsey), 3943-3944; (Rerdell), 2333-2334. Route 38156 (6 Q), 1855; (Boone), 2700; (Brady), 3553; (Rerdell), 2348, 2559-2560. Route 40113 (4 O), 1797; (Boone), 2698; (Rerdell), 2345, 2559.

Sworn to November 26, 1879, route 40104 (12 K), 1634; (Boone), 2697, 2710; (John W. Dorsey), 4106; (Miner), 4187; (Rerdell), 2343, 2236-2237.

Sworn to April 26, 1879, route 38113 (25 S), 1961; (Boone), 3701; (John W. Dorsey), 4123-4124, 4125-4126; (Rerdell), 2350, *subcontractor* route 38140 (6 E), 1029; (Boone), 2692; (Brady), 3432-3433; (John W. Dorsey), 4142-4143; (Rerdell), 2336.

Miner, John R., sworn to September, 30, 1878, route 35051 (12 T), 2140; (Boone), 2702; (Brady), 3440, 3430, 3442, 346J, 3471; (Miner), 4192-4193, 4196-4198, 4289; (Rerdell), 2361; Vaile, 4070.

Sworn to April 17, 1879, route 38135 (5 B), 778; (Boone), 2686; (Miner), 4184, 4187, 4236-4237, 4242-4243; (Rerdell), 2332, 2572.

Peck, John M., sworn to September, 18, 1878, route 44155 (14 L), 1670; (Boone), 2698; (Miner), 4188-4189, 4252; (Rerdell), 2344. Route 44160 (8 H), 1244; (Boone), 2695; (Miner), 4188, 4252, 4272; (Rerdell), 2339, 2559. Route 46247 (9 G), 1232-1233; (Boone), 2695; (Miner), 4188-4189, 4248, 4250; (Rerdell), 2338, 2559.

Sworn to December 30, 1878, route 46132 (7 P), 1813; (Boone), 2699; (Brady), 3434, 3437; (Miner), 4189, 4232-4234; (Rerdell), 3346, 2581-2582, 2610; (Vaile), 4069.

Sworn to January 22, 1879, route 41119, (6 D), 951; (Boone), 2688; (Brady), 3555, 3435-3436; (S. W. Dorsey), 3773, 3945-3946; (Miner), 4244-4246; (Rerdell), 2241-2242, 2557-2558, 2278, 2334-2335, 2342, 2361. Route 44140 (8 I), 1333; (Boone), 2696; (Miner), 4248; (Rerdell), 2340.

Sworn to February 1, 1879, route 34149 (3 A), 571; (Boone), 2684; (Brady), 3550; (Miner), 4229-4230; (Rerdell), 2320.

Perkins, Charles F., *subcontractor*, route 38113 (24 S), 1960-1961; (Boone), 2701; (Brady), 3438, 3542-3543; (Miner), 4182; (Perkins), 1990-1991; (Rerdell), 2350; (Smith), 1965, 1980, 1982; (Vaile), 4023-4025.

Sanderson, J. L., *carrier*, route 38150 (4 N), 1787.

Vaile, H. M., *subcontractor*, route 35015 (8 R), 1905; (Boone), 2700; (Rerdell), 2349; (Vaile), 4030.

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Olcott, John H., corresponding clerk, Post-Office Department:

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To change address care M. C. Rerdell, box 706 (3 S), 1952; (15 B), 787-788; (3 I), 1331; (19 K), 1640.

To change schedule, of Brady (42 T), 2152; (44 T), 2152-2153; (19 B), 789; (13 E), 1033; to forty hours in summer and sixty in winter (24 I), 1338.

To change the dates upon which the flexible schedule is to take effect (27 I), 1342; (29 G), 1230.

Of French to change schedule (45 S, defense), 2084; (10 C), 869; (77 B, defense), 3287-3288.

To discontinue service on route 38152, of Brady (6 M), 1775; entered in Postmaster-General's Journal, 4327.

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- To curtail route 33145, to end at Animas City, of French (3 F), 1075.
 Route 38150 to end at Barnum, of Brady (3 N), 1787.
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 To embrace Animas City, route 38156, of French (3 Q), 1854.
 To embrace Barnum, on route 38146, of Brady (18 M), 1779-1780.
 To embrace Brighton, of Brady (3 R), 1901; of French to allow pay for embracing (5 R), 1901.
 To embrace Fitzalon, of Brady (10 A) 589; (Brady), 3551; to allow pay for (11 A), 589, 590.
 To embrace Fort Lewis, of French (47 Q, defense), 3288.
 To embrace Pagosa Springs, retroactive, of Brady (63 F), 1192.
 To embrace Pueblo, on route 38135, of French (1 B), 771.
 To embrace Raton, on route 38140, of Brady (3 E), 1028; to allow pay for, of French (10 E), 1031.
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 Filing subcontracts of S. W. Dorsey (15 S), 1956; (17 B), 788; (14 E), 1034; (16 O), 1801; (20 Q), 1860.
 Filing subcontract of William E. Earle (18 Q), 1860.
 Filing subcontract of Eli Hanson (12 C), 870-871.
 Filing subcontract of Pedro J. Jaramillo (56 F), 1164.
 Filing subcontract of J. C. McKibbin (38 K), 1650, 1651.
 Filing subcontract of Major and Culverhouse (5 G), 1230.
 Filing subcontract of Charles F. Perkins (11 S), 1955.
 Filing subcontracts of M. C. Rerdell (7 S), 1954; (32 K), 1648, 1649; (11 D), 954.)
 Filing subcontract of M. Salisbury (42 K), 1652.
 Filing subcontract of J. L. Sanderson (61 F), 1182.
 Filing subcontract Frederick Steinegar (24 Q), 1861.
 Filing subcontract of Eugene Taylor (19 S), 1957.
 Filing subcontracts of H. M. Vaile (5 A), 577; (14 R), 1906; (8 T), 2138; (28 K), 1647; (7 D), 951; (8 L), 1667; (17 H), 1249; (3 P), 1812.
 Filing subcontract of J. A. Wright (5 S), 1953, 1954.
 To amend order fixing pay of subcontractor (26 G), 1238; (18 L), 1673.
 To increase trips or expedite the schedule—
 Route 34149; French, July 10, 1879, upon jacket indorsed, "Do this, Brady;" from August 1, 1879, increase to 3 trips; Kearney to Loup City, allow \$1,122.41, expedite to 13 hours, allow \$2,200, less than pro rata (overt act, 1 A), 566-567; entry of, in the journal of the Postmaster General, 4322-4328; (Brady), 3405.
 35015. Brady, December 23, 1878, from January 1, 1879, increase to 2 trips; allow \$408.90 (81 R, defense), 3305; French, July 10, 1879, upon jacket indorsed "Do this, Brady;" from August 1, 1879, *increase to 6 trips; allow \$1,635.60; expedite to 10 hours; allow \$3,628.10* (overt act, 7 R.), 1904; entry of, in the journal of the Postmaster-General, 4328-4329; (Brady), 3557.
 32051. Brady, October 4, 1878, increase to 3 trips; allow \$4,700; expedite to 65 hours; allow \$27,950, less than pro rata (10 T), 2139; (Brady), 3453, 3469; French, August 2, 1879, in accordance with instructions of Brady, indorsed on letter of Billings (32 T, 2148), from August 11, 1879, *increase 3 trips; allow \$35,000 additional* (39 T, overt act), 2151; entry of, in the journal of the Postmaster-General, 4323.
 46247. Brady, June 3, 1878, increase 1 trip from July 1, 1878; allow \$2,994 (13 G), 1236; Brady, December 3, 1878, increase 3 trips, expedite to 77 hours, allow contractor \$26,946 from December 16, 1878 (7 G), 1231; (Brady) 3427, 3472; French, August 26, 1880, from September 1, 1880, increase 3 trips, allow \$17,964; subcontractor, \$10,500 (85 G, defense), 3298; Brady, February 11, 1881, increase to 7 trips from February 20, 1881, allow contractor \$5,988; subcontractor, \$2,000 (overt act, 28 G), 1238-1239.
 44155. Brady, October 29, 1878, from November 15, 1878, increase one trip; allow \$4,144; expedite to 27 hours; allow \$18,648 (12 L), 1669; (Brady), 3423, 3472, 3549, 3550; Brady, June 27, 1879, from July 14, 1879, increase 4 trips; allow \$41,440 (overt act, 27 L), 1676, 1677; entry of, in the journal of the Postmaster-General, 4327; Brady, July 16, 1880, from August 1, 1880, increase to 7 trips; allow \$10,360 (overt act, 19 L), 1673; entry of, in the journal of the Postmaster-General, 4326.

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44160. Brady, December 23, 1878, from January 16, 1879, increase 2 trips; expedite to 96 hours; allow \$18,612, less than pro rata (7 H), 1243; (Brady), 3471; Brady, July 16, 1880, from August 1, 1880, increase 4 trips; allow \$28,666.66 (overt act, 19 H), 1250; entry of, in the journal of the Postmaster-General, 4326; (Brady), 3469.
46132. Brady, June 24, 1879, from July 14, 1879, increase 2 trips; allow \$2,376; expedite to 24 hours, \$5,346 (overt act, 5 P), 1812-1813; (Brady), 3436-3437.
40113. Brady, June 3, 1879, from June 16, 1879, increase 2 trips; allow \$3,136; expedite to 40 hours; allow \$9,408 (overt act, 30 O), 1796, 1797; (S. W. Dorsey), 3940; Brady, February 11, 1881, from February 20, 1881, increase 4 trips; allow \$15,950.62 (36 O, defense, overt act), 3295; entry of, in journal of the Postmaster-General, 3295.
41119. French, October 10, 1878, from November 1, 1878, increase 2 trips; allow \$2,336 (68 D, defense), 3290; Brady, July 8, 1879, increase 4 trips from August 1, 1879; allow \$4,672; expedite to 33 hours; allow \$12,718.22 (2 D, overt act), 949; entry of, in the journal of the Postmaster-General, 4322; (Brady), 3555, 3434-3435; (S. W. Dorsey), 3940, 3946.
44140. Brady, June 26, 1879, from July 14, 1879, increase 2 trips; allow contractor \$4,649.86; expedite to 50 hours; allow contractor \$14,486.10; allow subcontractor \$6,971.02 for 3 trips, 50-hours schedule (overt act, 5 I), 1332; entry of, in the journal of the Postmaster-General, 4325; (Brady), 3584, 3422; amended, by order of French, October 24, 1879, so as to pay subcontractor \$7,400 (21 I), 1337.
38145. Brady, April 29, 1879, from May 12, 1879, increase two trips; allow \$3,316.80; expedite to 50 hours; allow \$8,457.84 (18 F), 1084; (Brady), 3586; Brady, February 26, 1881, from January 15, 1881, increase to 7 trips; allow contractor \$17,910.72; subcontractor, \$10,666.64; retroactive (overt act, 11 F), 1079-1080.
38150. Brady, September 20, 1878, from October 1, 1878, increase 4 trips; allow \$4,568; expedite to 24 hours; allow \$15,437.12 (2 N), 1786-1787; Brady, August 24, 1880, from September 1, 1880; increase to 7 trips; Powder Horn to Barnum, 7 miles; allow \$986.57 (overt act, 8 N), 1793; entry of, in the journal of the Postmaster-General, 1793.
38156. Brady, June 12, 1879, upon jacket indorsed "Do this, July 1, Brady"; from July 1, 1879, increase 5 trips; allow \$4,259.12; expedite to 15 hours; allow \$10,549.51; additional (overt act, 4 Q), 1855; entry of, in the journal of the Postmaster-General, 4325; (Brady), 3552-3553.
40104. Brady, December 24, 1878, from January 16, 1879, increase 2 trips and expedite to 60 hours; allow contractor \$19,318 per annum additional (10 K), 1623; French, July 23, 1879, upon jacket indorsed "Do this, Brady"; from August 1, 1879, increase 4 trips; allow \$29,733.33 (overt act, 21 K), 1640; entry of, in the journal of the Postmaster-General, 4325, 4329.
38113. Brady, May 1, 1879, from May 12, 1879, increase 2 trips; allow \$3,400; expedite to 45 hours; allow \$8,600.25 (22 S), 1957, 1958; (Brady), 3438; (Turner), 3355; Brady, March 8, 1881, from April 1, 1881, increase to 7 trips; allow contractor \$18,275; subcontractor \$13,333.33 (overt act 32 S), 1963; entry of, in the journal of the Postmaster-General, 4323.
38134. Brady, July 8, 1879, increase to 6 trips from July 14, 1879; allow \$2,328; expedite to 10 hours; allow \$5,432 (2 C), 866; entry of, in the journal of the Postmaster-General, 4323; (Brady) 3586; (S. W. Dorsey) 3939.
38135. Brady, June 26, 1879, increase 1 trip from July 14, 1879; allow \$438.80; expedite to 7 hours; allow \$2,630.40 (overt act 4 B), 778; entry of, in journal of the Postmaster-General, 4323; (Brady) 3412, 3930-3940.
38140. Brady, April 22, 1879, to increase to 2 trips from May 1, 1879; allow \$1,021.50 (71 E, defense), 3253; Brady, May 9, 1879; expedite to 12 hours; allow \$2,758.05; from May 19, 1879 (overt act averred as of May 23, 1879, 4 E), 1028-1029; entry of, in journal of the Postmaster-General, 4326; (Brady) 3553.

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35015. (25 R, defense), 3170.
35051. (81 T, defense), 2876-2877; (102 T, defense), 2887; (117 T, defense), 2895; (134 T, defense), 2908; (149 T, defense), 2909; (170 T, defense), 2920.
38113. (51 S), 3131; (52 S, defense), 3131; (62 S, defense), 3135; (131 S, defense), 3158; (156 S, defense), 3165; (159 S, defense), 3166.
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35051 (102 T, defense), 2887; (117 T, defense), 2895.

38113 (52 S, defense), 3131; (62 S, defense), 3135.

38145 (64 F), 1197-1198.

38156 (30 Q), 1894.

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38152 (24 M), 1783.

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38150 (overt act 6 N), 1793; entry of, in the journal of the Postmaster-General, 4327-4329.

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Miner, John R. (37 P), 1850; (35 G), 1298.

Vaile, H. M. (47 A, 50 A, 54 A, 57 A, and 60 A), 709-712; (63 A, 66 A, 67 A, 79 A, and 80 A), 712-715; (76 A), 714; (34 D), 1014; (38 D), 1015; (30 I), 1353; (28 L to 30 L), 1757; (35 L, 37 L, 38 L, 42 L, 44 L), 1758; (33 H), 1328; (35 H to 42 H), 1329; (39 P to 45 P), 1850-1851; (38 G), 1299.

Letters of—

To Brady, October 23, 1879, relative to pay of subcontractor (22 I), 1337; (Boone), 2696; (Rerdell), 2340.

November 15, 1880, asking change of schedule to 40 hours in summer and 60 hours in winter (24 I), 1338; (Boone), 2696; (Rerdell), 2341.

November 15, 1880, inclosing affidavits for remissions (25 I), 1338; (Rerdell), 2341.

May 24, 1879, inclosing proposition for 3 trips on a reduced schedule (7 I), 1332; (Rerdell), 2340.

May 5, 1879, asking change of address to care of M. C. Rerdell, box 706 (4 I), 1331; (Boone), 2696; (Rerdell), 2340.

May 4, 1878, requesting change of address to lock-box 714 (8 A), 581; (Boone), 2685; (Rerdell), 2320, 2554.

February 2, 1879, proposing to carry the mail on an expedited schedule less than *pro rata* (9 A), 582; (Boone), 2685; (Miner), 4241, 4276; (Rerdell), 2321, 2560.

November 27, 1878, requesting permission to sublet (9 K), 1633; (Boone), 2697; (Rerdell), 2343.

October 2, 1878, proposing to carry the mail 3 trips on a schedule of 72 hours (15 L), 1671; (Boone), 2698.

December 23, 1878, will carry the mail in 96 hours (10 H), 1244; (Miner), 4252; (Rerdell), 2339.

December 30, 1878, proposing to carry the mail 3 trips, 36-hour schedule (6 P), 1813; (Boone), 2699; (Miner), 4235-4236; (Rerdell), 2346.

December 3, 1878, inclosing proposition for expedition (8 G), 1232; (Rerdell), 2338, 2559.

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and J. C. Hayes to Brady, November 2, 1878, requesting withdrawal of sub-contract (32 P), 1836; (Boone), 2700; (Hayes), 1836; (Rerdell), 2347.

To C. H. French, April 15, 1878, relative to Douglas Grove (19 A), 612; (Boone), 2685, 2709; (Rerdell), 2321, 2555.

October 21, 1878, return collection orders (17 A), 612; (Boone), 2685; (Rerdell), 2321.

October 22, 1878, "You can supply an office once a week by a side supply, provided the postmaster don't kick" (34 A), 668; (Boone), 2685; (Miner), 4278, 4199-4200; (Rerdell), 2331.

January 28, 1879, little probability of increase until after July 1 (21 A), 613; (Boone), 2685, 2709; (Rerdell), 2321, 2556.

February 1880, inclosing draft (42 A), 696; (Rerdell), 2332, 2562.

To Nephi Johnson, October 11, 1878, notifying him of increase to 3 trips (26 D); (Boone), 2689; (N. Johnson), 988; (Rerdell), 2335.

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November 6, 1878, asking him to get up strong petitions for 48-hour schedule (31 D), 1007; (Boone), 2689; (Rerdell), 2335.

April 15, 1879, address M. C. Rerdell, agent, box 706 (21 D), 981; (Nephi Johnson), 980; (Rerdell), 2335.

To J. C. Hayes, November 2, 1878, paying direct makes extra work and delays settlement (24 P), 1823; (Boone), 2701; (Hayes), 1821; (Rerdell), 2347.

and M. C. Rerdell to Brady, May 15, 1879, asking withdrawal of subcontract (16 D), 966; (Boone), 2688.

and H. M. Vaile to Brady, May 5, 1879, asking withdrawal of subcontract (10 D), 954; (Rerdell), 2335.

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Sworn to January 22, 1879 (6 D), 951; (Boone), 2688; (Brady), 3555, 3435-3436; (S. W. Dorsey), 3773, 3945-3946; (Miner), 4244-4246; (Rerdell), 2241-2242, 2557, 2558, 2278, 2334-2335, 2342, 2361; (8 I), 1333; (Boone), 2696; (Miner), 4248; (Rerdell), 2340.

Sworn to February 1, 1879 (3 A), 571; (Boone), 2684; (Brady), 3550; (Miner), 4229-4230; (Rerdell), 2320.

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Pennell, Joseph, Miles City, Mont., testimony of, for the prosecution, route 35051, 2154-2171.

Perkins, Charles F., subcontractor, oath of, as to stock and carriers necessary and required (24 S), 1960-1961; (Boone), 2701; (Brady), 3438, 3542-3543; (Miner), 4182; (Perkins), 1990-1991; (Rerdell), 2350; (Smith), 1965, 1980, 1982; (Vaile), 4023-4025.

Letter of, to Rerdell, May 21, 1878, to run in 45 hours it will take double the stock (37 S, defense), 1999; (Perkins), 1998.

Subcontract of, dated January 16, 1879, signed John W. Dorsey, by M. C. Rerdell, attorney (12 S), 1955; (Perkins), 2001.

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Perkins, Freeman, postmaster, Piedra, to Second Assistant, January 3, 1880, as to detention of mail matter until the next mail east (128 F, defense), 3001.

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Route 35015. For daily service and schedule of 10 hours, recommended by G. G. Bennett (9 R), 1905.

For daily, and schedule of 10 hours (10 R), 1905.

Similar petition (11 R), 1905-1906.

Of postmasters, for extension of schedule to 16 hours, recommended by Granville G. Bennett, and indorsed, "Brener, write Judge B. that cannot be done. Brady" (16 R), 3396; (Brady), 3396.

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- Route 35051. From citizens of Montana, for three trips and schedule of 65 hours (23 T), 2144; (Maginnis), 3243, 3246.
- Similar petition (24 T), 2144; (Boone), 2702; (Maginnis), 3243, 3246, 3249 (Rerdell), 2362.
- For a daily mail, indorsed and recommended by Nelson A. Miles (36 T), 2150; (Miles), 2842.
- From Minneapolis, for daily line and reduction of time to 65 hours (37 T), 2151.
- From Saint Paul, language of which is identical with 37 T (38 T), 2151; (Boone), 2702; (Rerdell), 2362.
- From Miles City, for the establishment of mail route due westerly from Bismarck instead of via Buford, as at present (205 T, defense), 3300.
- Route 38113. From citizens of Colorado and Wyoming, for three trips and reduction of time to 84 hours (26 S), 1961; (Boone), 2702; (Perkins), 1993, 1996; (Rerdell), 2350.
- From Rawlins, for three trips and reduction of time to 84 hours recommended by J. B. Chaffee, W. W. Corlett, H. M. Teller, and T. M. Paterson (27 S), 1961-1962; (Boone), 2702; (Rerdell), 2350; (Smith), 1969.
- For increase to three trips and reduction of time to 84 hours (28 S), 1962; (Boone), 2702; (Rerdell), 2350; (Smith), 1969.
- From Bagg's Crossing and Dixon, for increase to seven trips and reduction of time to 36 hours recommended by W. T. Sherman, General (33 S), 1964; (Rerdell), 2350; (Sherman), 3606; (Taylor), 2074.
- From citizens and residents of Rawlins and other points, for seven trips and reduction of time to 36 hours (34 S), 1964; (Rerdell), 2350; (Smith), 1975-1979; (Taylor), 2076.
- Route 38134. For a daily line with a fast schedule, indorsed by J. B. Belford and H. M. Teller (60 C, defense), 3128.
- From citizens of Pueblo asking seven-times-a-week service to Silver Cliff and Rosita with a fast schedule, indorsed by J. B. Belford and H. M. Teller (61 C, defense), 3128-3129.
- From citizens of Pueblo for a daily line to Rosita and increased speed, indorsed by J. B. Belford and H. M. Teller (62 C, defense), 3129-3130.
- For daily line and fast time to Rosita, indorsed by J. B. Belford and H. M. Teller (63 C, defense), 3130.
- From Rosita, for increase to a daily service on a shorter schedule (70 C, defense), 3229.
- Route 38135. From Greenhorn, Colo., for increase to three trips, "*and faster time*," indorsed by James B. Belford, H. M. Teller, and N. P. Hill (7 B), 783; (Belford) 2782; (S. W. Dorsey), 3787; (Rerdell) 2543; (Sears) 829; (Teller), 2823.
- For six trips and a schedule of eight hours (10 B), 785.
- From Muddy Creek, for six trips "*and a faster schedule*" (11 B), 785; (S. W. Dorsey), 3787; (Rerdell), 2273, 2333, 2543-2544.
- For six trips "*on quicker time*" (12 B), 786; (S. W. Dorsey), 3787; (Rerdell), 2273, 2333, 2544-2545; (Sears), 830-831.
- For a daily mail, filed May 8, 1879 (13 B), 786.
- Route 38140. For increase to three times a week, and that the time be made faster (64 E, defense), 3257.
- From Colfax County to Brady, for three trips and fast time (76 E, defense), 3255; (Brady), 3453.
- Route 38145. For the establishment of a post-office and appointment of a postmaster at Pagosa Springs, indorsed by T. M. Paterson (106 F, defense), 2832-2833. Blank forms of, inclosed by S. W. Dorsey to Anthony Joseph (40 F and 41 F), 1103; (Boone), 2694; (Hill), 3689; (Rerdell), 2338.
- Five from Dolores, Animas City, and Grand Park View, Colorado, for daily mail from terminus of the Denver and Rio Grande Railroad to Animas City (12 F), 1080-1081; four similar (14 F, 15 F, 16 F, and 17 F), 1081.
- For daily service and increase of speed to 4 miles an hour, printed in full (24 F), 1088-1089.
- From Ojo Caliente, for three trips on a shorter schedule, indorsed by H. M. Teller and N. P. Hill (30 F), 1092; (Boone), 2692; (Rerdell), 2337, 2545-2546.
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- Similar from Park View, indorsed by H. M. Teller and N. P. Hill (32 F), 1093; (Teller), 2823.
- From Pine River, indorsed by H. M. Teller and N. P. Hill (33 F), 1094.
- From Navajos, indorsed by H. M. Teller and N. P. Hill (34 F), 1094; (Teller), 2823.
- From Tierra Amarilla (35 F), 1094; (Rerdell), 2338.
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- Route 38145. For extension of service to Taos and for daily service and faster time (55 F) 1138; (Boone), 2694-2695.
- Route 38150. For daily service and increased schedule, recommended by H. M. Teller, John L. Routt, and Charles Adams (5 N), 1788; (Teller), 2823.
- Route 38152. For daily service on route 38166, from Ouray to Barnum, via Los Pinos, recommended by H. M. Teller, John L. Routt, and Charles L. Adams, indorsed "Turner, is this a route? Invite proposals from contractors present, Brady" (26 M), 1784-1785.
- Route 38156. Of State officers of Colorado, dated April 28, 1879, for daily service, and that the time be made faster (12 Q), 1857; for extension of schedule to 24 hours from November 15 to April 15 (14 Q), 1858.
- Route 40104. For increase to 3 trips and schedule to 60 hours instead of 84 hours (17 K), 1636; (Boone), 2697; (Brady), 3548; (Miner), 4178; (Kridner), 1599, 1602-1603; (Rerdell), 2235-2236, 2344.
- On route 40105, signatures to which are identical with petition on route 40104, names printed in full (18 K), 1638-1639.
- Route 40113. From military officers and citizens of Camp Grant for daily mail with a fast schedule (9 O), 1798; (Boone), 2699; (Rerdell), 2345-2346.
- Of the citizens of Santa Fé and vicinity, for daily mail or tri-weekly service, with fast time (10 O), 1799; (Hill), 3689, 3692.
- For increase to 3 trips and faster time, indorsed by John G. Campbell, delegate (11 O), 1799; (Rerdell), 2346.
- From Clifton, Arizona, for increase to 3 trips with faster time, indorsed by John G. Campbell, delegate (12 O), 1799; (Rerdell), 2346, 2560.
- For daily line from Camp Thomas (30 O, defense), 3293; (S. W. Dorsey), 3940.
- From Clifton for 3 mails a week with faster time (31 O, defense), 3293.
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- Route 41119. For daily service 7 (*seven*) times a week and schedule of 48 hours, indorsed by George Q. Cannon (4 D), 950; (Nephi Johnson) 976-977, 978, 1006; (William D. Johnson) 1010-1013.
- For daily mail and schedule of about 48 hours; indorsed by George Q. Cannon (5 D), 950-951; (Boone), 2687; (Wm. D. Johnson), 1010-1013; (Rerdell), 2334.
- For *extension of schedule to 60 hours*; increased speed entirely unnecessary and an uncalled-for expense to the Government (15 D), 956; (excluded), 965.
- From Kanab, asking tri-weekly mail (70 D, defense), 3291.
- Of postmasters recommending service (69, defense), 3291.
- Route 44140. For daily service and greatly increased speed (13 I), 1335; similar (14 I), 1335.
- For 3 trips and much faster schedule (19 I), 1336; (Brady), 3584; (Rerdell), 2340.
- Route 44155. For 6 times a week and 72 hours; names printed in full; indorsed by John H. Mitchell (16 L), 1671-1672; (Schutz), 1716-1718.
- For 6 trips and 72 hours; names printed in full (17 L), 1672-1673; (Fisk), 1697-1698, 1759, 1691-1692; (Schutz), 1716-1718.
- For daily service and 72 hours; indorsed by John H. Mitchell (21 L), 1674-1675; (Schutz), 1716-1718.
- From The Dalles for daily service (22 L), 1675; (Schutz), 1716-1718.
- For daily service (23 L), 1675; (Fisk), 1691-1692; (Schutz), 1716-1718.
- For daily mail (24 L), 1675-1676; (Fisk), 1691-1692; (E. Hall), 1733, 1747-1748; (McBean), 1703.
- For daily service (25 L), 1676; (Boone), 2698; (Fisk), 1683; (E. Hall), 1733; (McBean), 1703; (Schutz), 1711-1716.
- For daily mail; indorsed by J. H. Slater and John Whiteaker (26 L), 1676; (Fisk), 1691-1692; (Schutz), 1716-1718.
- Route 44160. From Canyon City for daily mail and expedition to (96) *ninety-six* hours; indorsed by John H. Mitchell (14 H), 1247; (Boone), 2695; (E. Hall), 1726, 1748; (Miner), 4189-4190, 4273; (Rerdell), 2339.
- From Camp Harney for daily mail and expedition to (96) *ninety-six* hours (15 H), 1248.
- For daily mail and summer schedule of 60 hours; indorsed by J. H. Slater, and L. F. Grover, and John Whiteaker (20 H), 1250; (Boone), 2695; (Brown), 1310; (E. Hall), 1733; (Nephi Johnson), 1258; (Wm. D. Johnson), 1258-1259; (McBean), 1321; (Miner), 4192, 4273; (Powers, A. S.), 1345; (Rerdell), 2339; (Schutz), 1722.
- For daily service (21 H), 1250-1251; (Boone), 2695; (Brown), 1308; (Miner), 4273; (Rerdell), 2339.
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Similar (29 H), 1252; excluded, 1261-1265; admitted, 2675-2679; printed in full, 2683-2684; (Boone), 2695; (E. Hall), 1748, 1732-1733; (Miner), 4190-4191, 4273-4274, 4282; (Rerdell), 2339; (Waugh), 4304; (Woodward), 2675-2676.

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For daily mail presented by John Whiteaker (23 H), 1251; (E. Hall), 1726, 1748.

For daily service indorsed by J. H. Slater and Whiteaker (24 H), 1251; (Brown), 1308.

Route 46132.—From citizens of California for tri-weekly service and schedule of 36 hours (8 P), 1814; (Bergman), 1817.

From citizens of Southern California for schedule of 36 hours (9 P), 1814; (Bergman), 1817.

Of residents along the route for tri-weekly mail and schedule of 38 hours (13 P), 1815; (Bergman), 1817.

Five similar (15, 16, 17, 18, and 19 P), 1816; (Bergman), 1817.

Of postmasters on route 46130 and 46132 for tri-weekly mail and schedule of 38 hours on the latter route (14 P), 1815; (Bergman), 1815.

Route 46247.—For 6 trips indorsed by J. K. Luttrell, M. C. (11 G), 1234.

For expedition to 72 hours, indorsed by J. K. Luttrell, M. C. (12 G), 1234.

For 6 trips and 72 hours (14 G), 1236-1237.

Similar (15 G), 1237.

Nine similar, signed with 736 names (16 to 24 G), 1237.

For 7 trips, by C. P. Berry (29 G), 1239.

From Goose Lake Valley, protesting against reduction of service indorsed and recommended by John Whiteaker and C. P. Berry (75 G, defense), 3231-3132.

Of postmasters and others, Redding, May 1, 1880, for retention of 6 times a week service (77 G, defense), 3232-3233.

Of postmasters for increase, from 6 to 7 trips, indorsed by J. K. Luttrell and J. T. Farley (79 G, defense), 3233-3234.

For increase from 6 to 7 trips, and reduction of schedule to 40 hours in summer and 60 hours in winter, indorsed and recommended by J. K. Luttrell, J. T. Farley, and P. D. Wigginton (80 G, defense), 3238; (Turner), 3375.

For increase from 3 to 6 trips (81 G, defense), 3238.

Protesting against reduction of service to 3 trips (82 G, defense), 3239.

Pierce, Clark S., Cañon City, Oregon, mail carrier, testimony of, for the prosecution, route 44155, 1752-1754.

Piper, J. S., postmaster, Agate, letters of, to Brady, September 30, 1880. Cannot supply the office for two-thirds of his compensation as postmaster, (21 B), 789-790.

October 13, 1880. Agate can be supplied by adding three miles to the distance (22 B), 790.

Testimony of, for the prosecution, route 38135, 841-847.

Pitkin, Frederick W., Governor, letter of, to Key, April 25, 1879, urges increase in mail service from Pueblo to Rosita to 7 times a week with fast time, indorsed by James B. Belford (66 C, defense), 3227.

Post, E. J., letter of, to Postmaster-General, April 12, 1879, asking increase to 3 trips (75 E, defense), 3255.

Check drawn by S. W. Dorsey in favor of (62 X, defense), 3742.

Post, W. H., postmaster White River, letter of, to Second Assistant, no date; suggests that the schedule, which is five days, be increased to six during the winter (35 S), 1964 (Brady), 3409.

Power of attorney from John M. Peck to John R. Miner, dated January 10, 1878, authorizing Miner to sign Peck's name and to act for him in all matters in the Post-Office Department, 4212-4213.

Powers, A. S., subcontractor, affidavits of, as to difficulties in making 50-hour schedule (26 I), 1338-1339; (Brady), 3584-3585.

Sworn to before P. H. Woodward, February 25, 1882, as to failures and remissions (316 I, defense), 3103-3104.

Letters of, to M. C. Rerdell, January 11, 1880, in relation to the summer and winter schedules (51 I), 1459-1460; (Powers), 4157-4158.

September 15, 1880. Unless deductions are remitted, will have to quit (50 I), 1459; (Powers) 1457-1458.

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- Representatives in Congress, of California and Oregon, letter of, to Brady H. R—, 188—, requests that the service be restored to six trips instead of tri-weekly, signed James H. Slater, J. T. Farely, Newton Booth, R. Pacheco, C. P. Berry, John Whiteaker, H. F. Page, Horace Davis (71 G, defense), 3229-3230; (Page), 3661-3662.
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- Letters of, to J. W. Bosler, *letter-press copy of* May 22, —0; states he has been subpoenaed by the Appropriation Committee "to bring all books and papers relating to star mail route contracts belonging to S. W. Dorsey"; "we all here" think the books should not be produced, that there are several entries giving D. credit for large cash payments made to John Smith and Samuel Jones; that the committee will try to show that he had an interest in mail routes before last April. "General B. is much alarmed, and he and I had a long conversation to-day, during which he made several valuable suggestions which I shall follow" (43 X), 2622; (Brady), 3587-3588.
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- to A. S. Powers, February 20, 1880, Department has ordered all service to be reduced to one trip (29 I), 1346; (Powers), 1346.
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- Newspaper clippings containing letter of M. C. Rerdell to editor of the Evening Star, December 27, 1882, denying the statement that he has ever met or conferred with Messrs. Merrick, Bliss, or Ker on the subject of the Star Route cases, or anything else (40 X, defense), 2534; (Rerdell), 2533-2535.
- Newspaper clipping headed, "Rerdell and his co-defendants," referring to the possibility of Rerdell's appearing for the Government (42 X, defense), 2536; (Rerdell), 2536.
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To S. W. Dorsey, Washington, May 29, 1879, complaining that Rerdell has sued Vaile, Miner & Co., alleging the firm to be only Vaile and Miner; if it goes on it will expose their private affairs in which S. W. D. is interested, and will draw forth who are the real parties of Vaile, Miner & Co., asking Dorsey to advise him to dismiss his action at once, stating that Dorsey's judgment will suggest many embarrassments not occurring to Rerdell (30 X), 2246-2247; (Miner) 4183-4184; (Rerdell) 2246; (Vaile) 4028-4029, 3798, 4042-4044.

To R. A. Elmer, February 7, 1882, in relation to subcontract of C. H. French (98 A), 751; (Boone) 2686; (Rerdell) 2332.

To J. C. Hayes, January 27, 1879, inclosing draft (27 P), 1824; (Hayes) 1821.

To J. M. McGrew, July 9, 1880 (*read from the record of the last trial*) relative to the Jennings's case; although he was subcontractor of record, it was as trustee for J. W. and S. W. Dorsey, Jennings, and others; all the money collected not paid to Jennings was paid to liquidate the debts of J. W. and S. W. Dorsey and others; believes that Jennings and both J. W. and S. W. Dorsey are irresponsible, and it would be impossible for the writer to receive back the \$2,800, 4065.

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Vaile, Harvey M.—Continued.

Testimony of—Continued.

ought to reach between \$600,000 and \$700,000 per annum, 4021; makes no point of his loan to Rerdell during the trial, 4079; thinks the testimony of Rerdell (2526) that prior to the loan he had told witness he was going over to the Government is about correct, 4079-4080; does not recollect conversation with Rerdell (2587) in December or January last, in which Rerdell told him he was in communication with the Government, 4080; most emphatically he never said to Rerdell and Miner that he would have gone over to the Government himself if it was not for the fact that he had gone on the stand at the last trial, 4080-4081. For further testimony see *Route index*.

Van Buskirk, John M., surety on proposal of John M. Peck, route 44155, 552.

Vandervoort, Paul, R. M. S., letter to E. K. Valentine, January 5, 1880, incloses petitions for increased mail facilities (104 A, defense), 3265.

Verdict of "not guilty as to all the defendants," 5875.

Vernon, John H., called as a juror, 164; examined, 164-167; peremptory challenge for this juror asked on behalf of Rerdell and refused, the other defendants not consenting, 167; accepted by the prosecution, 182; sworn as a juror in the case, 182.

Walker, W. R., letter of, to S. W. Dorsey, U. S. S., May 10, 1879, asks assistance in securing increase of service (10 I), 1334; to John Whiteaker, M. C., May 10, 1879, asking assistance in securing increase of service, indorsed by Whiteaker, filed May 22, 1879 (15 I), 1335.

Walsh, John A., called as a witness and does not respond, 893.

Testimony of, for the prosecution, 2203-2221; in rebuttal, 4439.

Identifies his note and Brady's reply (24 X, 2206), 2205-2206; had a conversation December 28, 1880, at General Sheridan's house, 2203; Brady's difficulty with Jerome J. Hinds referred to, 2207; witness asks payment of the notes of Brady which he held, amounting to about \$25,000, Brady asks witness if he does not think that matter has been fairly liquidated, and reminds him that his contract has been expedited and increased, and, as a result, the pay had been largely increased, 2207; Brady tells witness that petitions are simply to enable him to act within the law, 2208; refers him to the Price and Peterson drafts as to his custom, 2208; that he exacted twenty per cent. of the increased pay multiplied by the term of the contract, 2208; that twenty per cent. of the increase in witness's case multiplied by three made about \$36,000, 2208-2209; that witness was not indebted to him for the increase under McDonough, as witness had loaned McDonough the money to pay S. P. Brown, 2209; that witness owed him \$8,000 as his pro rata contribution towards the passage of the appropriation bill, 2209; that there had been remissions of fines in his case, for which he (Brady) was accustomed to receive fifty per cent., 2209; witness doubts that contractors had agreed to pay any such money, Brady advises him to sell out, 2210; and asks him if he thinks it affords him (Brady) any amusement to make expedition, 2211; Brady took away the notes, 2211.

as to money transactions of Brady, 4439; offer of evidence overruled, 4445-4446.

Walsh, Thomas, called as a juror, 1; examined, 143-144; disqualified, 144.

Walters, J. W., postmaster, Greenwood, May 8, 1880, both himself and postmasters at Rosita and Pueblo "consider it a useless and expensive route" (9 C), 869; (Walters), 904-910, 919-921.

Walton, Joshua J., letter of, to S. W. Dorsey, U. S. S., May 3, 1879, asking him to aid in getting a daily mail (12 I), 1334.

Warrants issued by the Post-Office Department in payment of mail service, 709-714, 856-859, 936-940, 1059-1061, 1014-1018, 1211-1214, 1298-1301, 1328-1330, 1353-1354, 1775-1776, 1851-1852, 1951, 1659-1669, 1947-1948, 2085, 2650-2651.

Watts, John H., surety on proposals of John R. Miner and John W. Dorsey, 551, 553.

Waugh, James E., Washington, D. C., testimony of, for the defense, route 44160, 4304; as to handwriting of petition (29 H), 4304.

Webster, Ed., letter of, to Brady, April 18, 1879, giving reasons for increase of service (26 F), 1091.

Wheeler, D. W. C., surety on contracts of John M. Peck, John R. Miner, and John W. Dorsey, 544, 546-550.

Whigham, Henry, notary public, acknowledgment of, on contract of John M. Peck, route 34149, 545.

Whipple, William D., General, refers letter of General Nelson A. Miles, 2147.

Whistler, commanding, telegram of, to Postmaster-General James, Fort Keogh, March 27, 188-, reporting gross irregularity of mail service (206 T, defense), 3301.

White, James E., railway mail service, letter of, approves and forwards petition (110 A, defense), 3268.

Whiteaker, John, indorsement of—

On letter of W. S. Maxwell (16 I), 1335.

On letter of F. W. Osbourne (18 I), 1336.

On letter of W. R. Walker (15 I), 1335.

On petition (26 L), 1676.

On petition (20 H), 1250.

On petitions (23 H and 25 H), 1251.

On petition (75 G, defense), 3232.

Wigginton, P. D., indorsement of, on petition (80 G, defense), 3238.

Wilcox, order to embrace on route 40113 (35 O), 3294; (Brady), 3398.

Williams, S. H., called as a juror, 1; accepted by defense, 159; peremptorily challenged by prosecution, 175.

Williamson, L. P., letter of, to John R. Miner, September 16, 1879, relative to the mails; "we are doing all that is possible to keep mails on time" (209 T, defense), 3302.

Telegram from, April 5, 1881, ferry-boats all washed away and sunk (207 T, defense), 3301.

Wilshire, W. W., opening argument on behalf of Rerdell, 460-462.

Wilson, Amos M., clerk Post-Office Department, testimony of, for the prosecution, 487-492; manner of entering orders for increase and expedition upon the journal, 488; frequency with which the journal was signed, 488; how orders were certified to the Auditor, 488, 489, 490; journal kept by a clerk in the Second Assistant's office, 489-490; custom to certify orders before they were signed by the Postmaster-General, 489, 491.

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Certificates of, for temporary service (6 L and 7 L), 1667.

Letter of, July 1, 1878, has made temporary contract (13 L), 1665.

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Wilson, Jeremiah M., closing argument of, for the defense, 5035-5268.

Withers, Henry C., testimony of, for the prosecution, route 38135, 825-826, 837.

Wixom, Owen R., summoned as a talesman, 209; examined, 211-212; disqualified, 212.

Woodward, P. Henry, post-office inspector, testimony of, for the prosecution, route 34149, 582-589; route 44160, 2675-2676.

Wright, C. B., president Northern Pacific Railroad Company, letters of, to Key, July 15, 1878, asks increase to 3 trips on a schedule of 65 hours (20 T), 2142-2143; (Rerdell), 2361-2362.

To Brady, July 15, 1878, language identical with 20 T (21 T), 2143; (Rerdell), 2361-2362.

Wright, John A., letter of, by G. W. Lancaster, attorney, concurred in by John W. Dorsey, M, to Brady, December 3, 1878, requesting withdrawal of subcontract (10 S) 1955; (Rerdell), 2349; (Boone), 2701.

Subcontract of, dated May 1, 1878 (6 S), 1954; (Boone), 2701; (Rerdell), 2349.

Young, John M., called as juror, 188; accepted by prosecution, 188; by defense, 190; examined by the court, disqualified, 192.

Proceedings in the second Trial of the Case of the United States vs. John
W. Darsey, John R. Miner, John M. Peck, Stephen W. Dorsey, Harvey M. Vaile,
Montfort C. Berdell, and Thomas J. Brady For Conspiracy. Supreme court of
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Bd.: IV

Washington 1883

Decis. 94 t-4

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